

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 7138 OF 2013.

Shri Shivaji Shankar Kamble

.. Petitioner

Vs.

The President

Halkarni Bhag Shikshan Prasarak

Mandal & ors.

.. Respondents

Mr.M.S.Topkar, for the Petitioner.

Mr.Chandrakant Chavan, for Respondent Nos.1 and 3.

Mr.A.R.Metkari-Assistant Government Pleader, for Respondent No.2.

***CORAM: N.M.Jamdar, J.
Friday 4 September, 2015***

PC.:

By this petition the Petitioner challenges the order passed by the School Tribunal, Kolhapur dated 13 March 2013 dismissing the appeal filed by the Petitioner.

2. The Petitioner filed an appeal bearing No.53 of 2012 in School Tribunal Kolhapur on 21 October 2011 challenging the promotion given by Respondent No.3 to the post of Head master on 14 September 2015 and with a further prayer that the Petitioner be given promotion to the post of Head Master.

3. The Respondent-management has four schools i.e. at Halkarni, Narewadi, Terani and Kadalge. The Petitioner was initially appointed on 20 January 1993. The Respondent No.3 was appointed on 15 February 1985. The Petitioner contended that the Petitioner belongs to Scheduled Caste (SC) while Respondent No.3 belongs to *Hindu Gavali* (NT-B). According to the Petitioner, as per the roster point a candidate belonging to Scheduled Caste was entitled to be promoted even though the Respondent No.3 was senior to him. The Petitioner contended that the stand taken by the Respondent-management that the roster point of Scheduled Caste stands exhausted in view of the appointments of one Shedge Kashinath Ramchandra and one Mr.Ganapati Appa Shende, is incorrect. The Petitioner contended that Mr.Shedge who was promoted in the year 1995 and continued till February 2004 was not entitled to be promoted as he was not to be treated as belonging to Scheduled Caste. As regards the promotion of Mr.Shende, the Petitioner contended that though Mr.Shende belonged to Scheduled Caste his domicile was from Karnataka and in view of the settled legal position he was not entitled to benefit of reservation in the State of Maharashtra. According to the Petitioner since these two persons who previously occupied the post of Head master under the Scheduled Caste category were not entitled for the said post, the roster point for Scheduled Caste could not be stated to have been exhausted. Consequently he contended that the appointment of Respondent No.3 was not legal.

4. The School Tribunal noted that most of the facts were not in dispute, however, since challenge was made to the appointments, of either Mr.Shedge or Mr.Shende by the Petitioner and that having not being done, at this stage it was not open to the Petitioner to contend that the roster point did not get exhausted. The School Tribunal also held that one Tharkar Tippanna Annappa who belongs to Scheduled Caste category was senior to the Petitioner and therefore, in any case the Petitioner cannot be said to be entitled for grant of promotion. Accordingly by the impugned order dated 30 March 2013 School Tribunal dismissed the appeal.

5. The learned counsel for the Petitioner submitted that there was no occasion for the Petitioner to challenge the appointment of either Mr.Shendge or Mr.Shende and both having been now retired there is no question of joining them in this appeal and therefore, on this ground the appeal could not have been rejected. He also submitted that there was no occasion to give any finding regarding the seniority of Mr.Tharkar and his claim was never put into issue. The learned counsel for the Respondent supported the decision of the School Tribunal.

6. Even assuming Mr.Shendge and Mr.Shedge were not entitled to occupy the post under Scheduled Caste category, the Petitioner who was appointed in the year 1993 with full knowledge allowed him to complete the full tenure spanning from 1993 to 2010 (inclusive of both the years). Admittedly, there is also no representation also made that the promotion of these two persons

in Scheduled Caste category was bad in law as they were never entitled to hold the said post. It cannot be said that the Petitioner was not aware of the implications of the exhaustion of roster point and his future claim. The seniority list was presumed to be known. At this stage, if it is held that promotion of Mr.Shedge and Mr.Shende was unlawful, it will prejudicially affect their retiral benefits as it would be declared that they were never entitled to hold the said post. These two persons have also not been made party Respondents before the School Tribunal. In the circumstances the view taken by the School Tribunal cannot be termed as perverse.

7. The learned counsel for the Petitioner is however justified in making a grievance as regards the observations made in respect of Mr.Tharkar. Mr.Tharkar was not a party Respondent in the appeal. It is a contention of the Petitioner that even Mr.Tharkar who is domiciled in Karnataka is not entitled to be considered from Scheduled Caste category. In absence of lis between Mr.Tharkar and the Petitioner, the issue as to who out of them is entitled for the promotion should not have been gone into by the School Tribunal. Therefore, the observations made by School Tribunal in respect of Mr.Tharkar will have to be set aside to be kept open when the contest between these two arises in respect of the promotion in future.

8. In the circumstances, the Writ petition is rejected by confirming the dismissal of the appeal, however with a clarification

that the observations made by the School Tribunal in respect of the *inter se* seniority between the Petitioner and Mr.Tharkar, are kept open to be decided as and when situation so warrants.

(N.M.Jamdar, J.)