

Sequeira

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

WRIT PETITION NO. 2162 OF 1997

Sau Sanjeevani Babanrao Pawar. .. Petitioner
Vs.
State of Maharashtra & ors. .. Respondents

Mr.V.K.Bodhare i/b Mr.A.M.Joshi, for the Petitioner.
Mr.A.D.Kango -Assistant Government Pleader, for Respondent Nos.1
to 3.
Mr.Rahul Walvekar i/b Mr.D.S.Sawant, for Respondent No.5.

***CORAM: N.M.Jamdar, J.
Saturday 17 October, 2015***

P.C. :

By this petition the Petitioner challenges the order passed by the School Tribunal dated 21 March 1997 allowing the appeal of Respondent No.5 and setting aside the promotion given to the Petitioner with effect from 6 February 1994.

2. The School Tribunal after narrating the facts has culled out the crux of the controversy as where the Petitioner validly relinquished her rights to be appointed as a Head Mistress. The School Tribunal has stated that the Petitioner was senior to Respondent No.5 and the contest in the appeal was only between the Petitioner and the Respondent No.5, as both of them were seeking their claim to the post of the Head. Even though the Petitioner was senior to Respondent No.5 if she had relinquished

her claim by following methodology under the Act, then no grievance can be made in respect of the promotion directed to be given to Respondent No.5.

3. The learned counsel for the Petitioner submitted that after the Petitioner gave the relinquishment letter on 27 August 1993, the Petitioner withdrew the same. Secondly he contended that the Education Officer by communication dated 13 December 1996 has stated that there appears to be no entry in the register regarding the relinquishment letter.

4. Rule 3(3) of Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and the Rules, states that if employee is relinquishing the claim to be appointed as a head mistress, shall communicate the same to the Education Officer by making a statement. An elaborate methodology has been provided in Rule 3 Clause (3). This is provided for to avoid allegations of coercion, fraud etc. Petitioner followed the methodology and the relinquishment became complete. Thereafter Respondent No.5 was promoted. In the circumstances, such casual withdrawal will create administrative difficulties. The Petitioner took a conscious decision to relinquish her claim and presumption arises that it was consciously taken once the methodology is followed. Therefore, mere withdrawal after relinquishment is complete, will not assist the Petitioner.

5. As regards the methodology laid down under Rule 3(3) being

followed the School Tribunal has recorded finding of fact that it was so carried out. The School Tribunal has noted that the relinquishment statement was attested by the Education officer and it was given in writing by the Petitioner. The Education Officer was a party before the School Tribunal. The Education Officer has not made any statement on oath that no such relinquishment took place. The communication issued by the Education officer is three years after the relinquishment. It is mentioned that the entry is not in the register. Thereafter the Education officer has merely recorded his opinion. This letter cannot be taken cognizance of as Education officer who is a party before the School Tribunal ought to take stand on oath and cannot issue mere communications. It is also not denied in the letter that Education Officer has attested the relinquishment. The School Tribunal cannot be faulted for not discarding the relinquishment letter on the ground that procedural formality of entry in the register was not done. Again in the letter it is only a statement of the Education officer that this is a procedure normally followed. In the circumstances, finding of fact reached by the Tribunal that relinquishment by the Petitioner was complete, cannot be termed as perverse.

6. The impugned order is dated 21 March 1997. Petition was admitted on 11 November 1997. No interim relief was granted. The Respondent No.5 has superannuated from services and presumably Petitioner also as according to the learned counsel for the Petitioner, she is not replying to the correspondence of the

advocate.

7. In the circumstances, no relief can be granted in this petition. The petition is dismissed. **Rule** discharged.

(N.M.Jamdar, J.)