

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

WRIT PETITION NO. 2535 OF 2011

Shri Balkrishna Sattappa Shinde,
R/o. Vadanage, Tal. Karveer,
Dist. Kolhapur.

... Petitioner

v/s

1. Vadanage Education Society, Vadanage,
Tal. Karveer, Dist. Kolhapur.
2. Head Master,
Devi Parvati Secondary and Higher
secondary School, Vadanage,
Tal. Karveer, Dist. Kolhapur.
3. The Education Officer (Secondary),
Zilla Parishad, Kolhapur.
4. Shri Nivas Ganpati Barale,
R/o. Vadanage, Tal. Karveer, Dist. Kolhapur. ... Respondents

Mr.Amit Borkar for the petitioner.

Mr.S.D. Rayrikar, A.G.P for Resp. No.3.

CORAM: N.M. JAMDAR, J.

DATED : 25TH AUGUST, 2015

ORAL ORDER:

The petitioner challenges the judgment and order passed by the School Tribunal, Kolhapur, dated 22 October 2007 dismissing

the appeal filed by the petitioner on the ground of it not being maintainable.

2. The petitioner is working with the respondent school as a Assistant Teacher with effect from 12 June 1989 in the D.Ed. scale. Respondent No.4 was given D.Ed. scale with effect from 1 September 2013 in the month of April 2004. The petitioner filed an appeal bearing No.25 of 2004 taking exception to the grant of B.Ed. scale to respondent No.4. According to the petitioner, the act of granting B.Ed. scale to respondent No.4 was by way of supersession of the petitioner. The School Tribunal, relying upon the decision of the Division Bench of this Court in the case of *Mrs.Saramma Varghess v/s The Secretary, President S.I.C.E.S. Society & ors.*, reported in *1990(1) Bom.C.R. 185*, came to the conclusion that the petitioner and respondent No.4 were equal in all respect in respect of fixation of seniority as they fall in the same category. The School Tribunal held that there was no supersession and consequently the appeal could not be preferred under Section 9 of the M.E.P.S. Act, 1977.

3. The learned counsel for the petitioner relied upon the decision of the Division Bench in the case of *Ankush Malhari Kamble v/s Gramoday Samittee, Kurduwadi & ors.*, reported in *2010(5) Mh.L.J. 731*. Relying upon this decision, he submitted that if a teacher who has been granted B.Ed. scale is reduced to D.Ed. scale amounts to reduction in status and consequently

reduction in rank, conversely non-grant of D.Ed. scale to the petitioner and grant of it to respondent No.4, will amount to supersession. It is not possible to accept the submission as in the very same decision a reference is made to the decision of learned Single Judge (A.P. Deshpande, J.) of this Court in Writ Petition No.2728 of 1996 dated 12 January 2007 in the case of ***Shikshan Prasarak Sanstha & anr. v/s Shri Subhash Eknath Salunke & ors.*** In this decision, the petitioner management had challenged the order passed by the School Tribunal in respect of grant of higher pay scale to the concerned teacher on the ground that the School Tribunal did not have jurisdiction since there was no supersession. The learned Single Judge observed thus -

“7. The relevant criteria for maintainability of the appeal under Section 9 of the Act, would be supersession of claim of an employee by Management while making appointment to any post by promotion. Unless and until an employee demonstrates that the post in question, to which he is making a claim is a promotional post, the Tribunal would not have jurisdiction to entertain the Appeal. As the claim made by the Respondent No.1 was for higher pay scale, admissible to trained graduate teacher, which is not the promotional post as per the provisions of the Act and the Rules, the appeal filed is misconceived and could not have been entertained by the School Tribunal.”

The Division Bench in the case of *Ankush Kamble* (supra), after noting this decision, distinguished the same on the ground that, that was a case of supersession is not being considered in higher

scale which would be different than the scale already granted and subsequently deprived of. Therefore, the contention of the learned counsel for the petitioner that the decision of the Division Bench would apply even in converse situation, cannot be accepted. The School Tribunal has also relied upon the decision of the Division Bench in the case of *Mrs.Saramma Varghess* (supra). Apart from this position, the decision of the learned Single Judge in the case of *Shikshan Prasarak Sanstha* (supra) covers the issue and, therefore, no error can be found with the order passed by the School Tribunal. No other decision taking any contrary position of law is shown.

4. The School Tribunal has dismissed the appeal of the petitioner only on the ground of maintainability, which finding is being confirmed and therefore all contentions on merits are open.

5. The petition is rejected.

(*N. M. JAMDAR, J.*)

C E R T I F I C A T E

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

Uploaded by :
Shri B.S. Bhangale,
Private Secretary to Hon'ble
Shri Justice N.M. Jamdar.

Uploaded on : 03/09/2015