

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LETTERS PATENT APPEAL NO. 324 OF 2002

Against**WRIT PETITION NO. 5138 OF 2002**

Babasaheb Sopan Sutkar)
 Headmaster in Sant Dnyaneshwar)
 Prashala, Sohale, Tal. Mohol,)
 District Solapur.) .. Appellant
 (Org. Petitioner)

Versus

- 1 Mrs. Joshi Kalindi Narsinh)
 (deleted as per order dated)
 29/10/2012 in C.A.No.422/12)
- 1 Barbole Mohan Navnath)
 Acting Headmaster,)
 Sant Dnyaneshwar Prashala,)
 Sohale, Tal. Mohol,)
 District Solapur.)
 (amended as per Court order)
 dated 29.10.2012 in CA 422/12)
- 3 Babruwahan Bhanudas Avtade)
 residing at Degaon, Dist.Solapur
- 4 Gorakh Laxman Ghule)
 residing at 3098/159/60 Gavali)
 Vasti, Laxmi Peth, Solapur)
- 4A Haribhau Bali Jadhav)
 residing at Post Tirhe, Taluka)
 North Solapur, Dist. Solapur)

- 5 The Deputy Director of Education)
Pune Region,17, Dr. Ambedkar)
Road, Pune-411 001.)
- 6 The Education Officer(Secondary)
Zilla Parishad, Solapur)
- 7 The Director of Education,)
Maharashtra State, Central Bldg.)
Pune-411 001.) .. Respondents

Mr. A.N. Mulla, Advocate for the appellant
Mr. Niranjan P. Shimpi, Advocate for R. Nos. 2 & 4A.
Mr. P. G. Sawant, AGP for State – R. Nos. 5 to 7.

CORAM:-NARESH H. PATIL &
V. L. ACHLIYA, JJ.
DATED :-26/03/2015

ORAL JUDGMENT: (Per Naresh H. Patil, J.)

Heard learned counsel for the parties.

2 It is contended that the appellant was appointed as Assistant Teacher on 1/7/1991. He was at that relevant time was qualified as B.A., B.Ed. He was appointed in D.Ed. scale. Respondent No. 1-Mrs. Joshi, who was senior to the appellant, was promoted as 'Headmaster' on 22/2/1995. Admittedly the management runs two schools and it is submitted that there is a common seniority list maintained by the management. Respondent

No.1-Mrs. Joshi was appointed on 10/6/1985.

3 Being aggrieved by the said order, a Writ Petition No. 5061 of 1999 was filed by the appellant Babasaheb Sutkar, challenging the order of promotion as a 'Headmaster' passed in favour of respondent No. 1-Mrs. Joshi. On a statement made by the management th said writ petition came to be disposed of by an order dated 29/9/1999. Respondent No. 1-Mrs. Joshi filed review petition (Civil Application No. 156 of 2000), which came to be dismissed on 8/2/2000.

4 Respondent No. 1-Mrs. Joshi came to be reverted and the appellant came to be promoted as 'Headmaster'. This order was challenged by respondent No. 1 in the School Tribunal by filing appeal. By judgment and order dated 28/8/2002 the School Tribunal passed following order:

- “1. Appeal is hereby allowed.
2. The order dated 30/9/1999 issued by Respondent No. 3, on behalf of and in the capacity of President of Respondent No. 1, Management, reverting appellant to the post of Asstt. Teacher from the post of Head Master, is hereby quashed and set aside.

3. The Appellant shall be deemed to be in continuous service of Management as Head-Mistress from the date of said reversion order dated 30/9/1999 onwards. She shall be entitled for all the benefits including back wages during the period from 30/9/1999 till to-day.
4. The Management shall comply with these directions within a period of 35 days.
5. Inform parties accordingly.”

5 Consequent to the order passed by the School Tribunal, respondent No. 1 came to be promoted as 'Headmistress' again. The order of the School Tribunal was challenged by the appellant in Writ Petition No. 5138 of 2002. By an order dated 18/9/2002 the learned Single Judge of this Court dismissed the writ petition. Being aggrieved by the orders passed by the School Tribunal and the learned Single Judge of this Court, the appellant has preferred this Letters Patent Appeal.

6 The counsel appearing for the appellant submitted that being a reserved category candidate, the appellant ought to have been promoted as 'Headmaster'. The management was running two schools, there were two posts of Headmaster and one could have

been reserved for the reserved category candidate. The management failed to comply with the mandatory provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 and Rules 1981 ("MEPS Act and Rules"). The learned counsel further submitted that though Respondent No. 1-Mrs. Joshi was senior but as the appellant's post was belonging to reserved category, the appellant ought to have been appointed as 'Headmaster'. Reliance was placed on Rule 3 (2) of the MEPS Rules, wherein it is provided that even if a candidate belonging to reserved class fails to complete five years teaching experience, relaxation is permissible. Such a relaxation was granted in favour of the appellant by the Zilla Parishad / Education Officer. In spite of the same, the management failed to promote the appellant.

7 The counsel appearing for the management submits that there is concurrent findings of fact by both the forums i.e. School Tribunal and the High Court. The scope in this Letters Patent Appeal ("LPA") is limited. The appellant has failed to point out any glaring error or misreading of evidence by the Court so as to invite interference of this Court in the LPA. The learned counsel

submits that the appellant was appointed in the D. Ed. scale. He was falling in 'D' category. Respondent No. 1 -Mrs. Joshi was falling in 'C' category. Respondent No.1-Mrs. Joshi was six years' senior to the appellant. In case out of two posts of Headmaster, one was reserved the management was exceeding the reservation quota as applicable at the relevant time.

8 Th management was not permitted under the relevant rules at the prevalent time to reserve 50% of the seats for the benefit of the reserved class. All these issues were taken into consideration while deciding the issues by the Tribunal which were affirmed by the learned Single Judge.

9 We have perused the judgment and order placed before us, the provisions of MEPS Act and Rules.

1 We noticed following deficiencies in the appellant's case which prevented the management for appointing him as a 'Headmaster';

- (a) the appellant was Junior to respondent No. 1-Mrs. Joshi;
- (b) the appellant was appointed in D. ed. scale in

the year 1985;

(c) The management was running two schools. There were two posts of Head of School and according to the management the management could not have exceeded reservation limits beyond 24% as per Rule 9 sub-Rule (10) of the MEPS Rules. The School Tribunal had in detail scanned the entire material facts, which finding was confirmed by the learned Single Judge of this Court.

10 In the facts of the case, we do not find that an interference is required in the decision reached by the learned Single Judge. In fact the learned Single Judge was exercising powers under Article 227 of the Constitution of India, while scrutinizing the judgment and order of the School Tribunal. But apart from that, we have looked into the merits, the contentions raised by the parties and appreciated the submissions advanced before us by the learned counsel appearing for the parties. There is no merit in the appeal. The appeal is dismissed.

11 We observe that, in case the post of Head Master is vacant, the management shall take appropriate decision within three

months in filling in the post of Head, strictly in accordance with law and MEPS Act and Rules, reservation policy and seniority list maintained by the management.

12 It is submitted that the appellant is still in service. We do not express any opinion on the decision making process of the management which would be undertaken hereafter.

(V. L. ACHLIYA, J.)

(NARESH H. PATIL, J.)

md.saleem