

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1987 OF 2007

Tukaram Mahadu Chaskar,
Age 46 years, Occu. Service,
C/o. New English School,
Hivargaon Ambare,
Post Dongargaon Tq. Akole,
Dist. Ahmednagar.

... PETITIONER

VERSUS

1. The Secretary
Dnyanodaya Shikshan Prasarak
Mandal, Sangamner
C/o Nimgaon (Bk.) Tq. Sangamner,
District Ahmednagar.
2. Head Master,
Sarjunath Vidyalaya,
Savargaon Pat Tq. Akole,
District Ahmednagar.
3. Tukaram Ramji Kanwade,
Age 37 years, Occu. Service,
C/o Sarjunath Vidyalaya,
Savargaon Pat Tq. Akole,
District Ahmednagar.
4. The Education officer,
Zilla Parishad, Ahmednagar.

... RESPONDENTS

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Mr. S. T. Shelke, Advocate for the Petitioner.

Mr. R. N. Dhorde, Senior Counsel, for Respondent Nos.1 to 3.

Mr. S. W. Munde, AGP for Respondent No.4.

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CORAM : **P. R. BORA, J.**

Reserved on : 01st July, 2016.

Pronounced on : **27th July, 2016.**

JUDGMENT:

. The present writ petition is filed against the judgment and order dated 23rd February, 2007, passed by the School Tribunal, Solapur, in Appeal No.75 of 2005.

2 The Petitioner had filed the aforesaid appeal before the School Tribunal for cancellation of the appointment of Respondent No.3 on the post of headmaster of Sarjunath Vidyalaya at Savargaon Pat with effect from 1st August, 2003, alleging the same to be illegal. Consequently, the Petitioner had prayed for his appointment on the said post and to extend all the consequential benefits of the said post to him.

3 It was the contention of the Petitioner in the said appeal that he was illegally superseded by the School Management (Respondent No.2) while making appointment of Respondent No.3 to the post of headmaster of Sarjunath Vidyalaya at Savargaon Pat. It was the further contention of the Petitioner that though he has given

his consent for the appointment on the said post of headmaster, the consent so given was ignored by the School Management and though Respondent No.3 is much junior to him and was also lacking the required experience, was appointed to the said post of headmaster. The Petitioner had, therefore, sought quashment of the order whereby Respondent No.3 was promoted to the post of headmaster of the subject school and had consequently prayed for his appointment to the said post.

4 The school management as well as Respondent No.3 resisted the contentions raised by the Petitioner in the appeal filed by him before the School Tribunal. In the reply filed by the school management and Respondent No.3, it was their contention that the Petitioner himself had relinquished the claim to the said post of headmaster for the reason that the said school namely Sarjunath Vidyalaya at Savargaon Pat was not receiving 100% grants at the relevant time and for one more reason that the said school was in tribal as well as hilly area. It was their further contention that the Petitioner though while communicating his response to the willingness asked by the management for to be appointed to the post of subject school, did not expressly record his refusal to accept the said post,

the conditional consent given by the Petitioner was nothing, but refusal to accept the said post. It was their further contention that though the appointment of Respondent No.3 was made with effect from 1st August, 2003, and the Education Officer had approved the said appointment vide the order passed on 17th May, 2003, neither the Petitioner nor any of the senior teacher did raise any objection to the said appointment or the approval granted to the said appointment by the Education Officer till the year 2005 and only after the subject school started receiving 100% grants, that objection was raised by the Petitioner. According to the Respondents, such belated objection was liable to be rejected. The Education Officer (Secondary), Zilla Parishad, Ahmednagar, had also filed his affidavit in reply justifying the appointment of Respondent No.3 to the post of headmaster. The learned School Tribunal on assessment of the evidence brought on record before it in the form of affidavits of the respective parties and the documents submitted on their behalf, dismissed the appeal filed by the Petitioner vide the impugned order.

5 Shri Shelke, learned counsel for the Petitioner submitted that the grounds assigned by the School Tribunal while rejecting the appeal filed by the present Petitioner, are erroneous and

unsustainable. The learned counsel submitted that the School Tribunal has failed in appreciating the relevant provisions in the MEPS Act and Rules. The learned counsel taking me through the said provisions submitted that the School Tribunal has misconstrued the said provisions thereby causing injustice to the Petitioner. The learned counsel submitted that on 2nd July, 2003, the Petitioner had communicated his consent for the appointment on the post of headmaster at Sarjunath Vidyalaya at Savargaon Pat in response to the letter dated 28th June, 2003, issued by the school management. The learned counsel submitted that perusal of the said letter would reveal that the Petitioner has communicated his consent for such appointment and by way of abundant precaution also prayed for protecting his pay while making such appointment. The learned counsel submitted that in no case the aforesaid communication should have been treated as refusal to accept the appointment by the Petitioner. According the learned counsel, the School Tribunal has grossly erred in arriving at such conclusion.

6 Inviting my attention to Rule 3 of the MEPS Rules and more particularly to the explanation provided below sub-rule 3 of Rule 3, the learned submitted that, had the Petitioner relinquished his claim

to the subject post, it was incumbent on the part of the Petitioner to make a statement in his own handwriting before the Education Officer within a period of 15 days from the date of receipt of the communication from the school management asking for his consent to the said appointment; however, when the Petitioner was willing for appointment to the said post and had not relinquished his right to the said post, the Petitioner was not at all required for making any such statement before the Education Officer. The learned counsel submitted that, on the contrary, as per the explanation to sub-rule 3 of Rule 3 of the MEPS Rules, unless such refusal to accept the promotion by the Petitioner is recorded by him in his own handwriting before the Education Officer, it ought to have presumed by the school management that the Petitioner is willing to accept the said post. It was further contended by the learned counsel that when no such statement was made by the Petitioner in his own handwriting, the school management should have restrained itself from making the appointment of Respondent No.3 and must have made the appointment of the Petitioner.

7 The learned counsel further submitted that the Petitioner was under *bona fide* impression that no regular appointment has been

made to the post of headmaster of the school at Savargaon Pat and that Respondent No.3 is asked to work as in-charge headmaster of the said school. The learned counsel further submitted that the moment the Petitioner became aware of the approval granted by the Education Officer to the appointment of Respondent No.3 to the post of headmaster vide the order passed on 28th March, 2005, the Petitioner lodged his protest with the school management and also with the Education Officer and immediately, thereafter, preferred an appeal before the School Tribunal challenging his supersession in making said appointment.

8 The learned counsel submitted that as per the provisions of MEPS Act and Rules, Respondent management was under an obligation to appoint the Petitioner to the post of headmaster at Sarjunath Vidyalaya at Savargaon Pat. The learned counsel further submitted that the School Tribunal failed in proper appreciation of the provisions under the MEPS Act and Rules and has for wrong reasons dismissed the appeal filed by the present Petitioner. The learned counsel has, therefore, prayed for setting aside the order passed by the School Tribunal as well as the order passed by the school management thereby appointing Respondent No.3 on the post of

headmaster of Sarjunath Vidyalaya at Savargaon Pat and consequently the directions for the appointment of the Petitioner to the said post.

9 Shri R. N. Dhorde, learned senior counsel for Respondent Nos.1 to 3 supported the order passed by the School Tribunal. The learned senior counsel submitted that perusal of the letter dated 2nd July, 2003, sent by the Petitioner to the Secretary of the School Management, would reveal that same cannot be said to be a letter of consent, but in fact implied refusal to accept the post of headmaster at Sarjunath Vidyalaya at Savargaon Pat. The learned counsel submitted that at the relevant time Sarjunath Vidyalaya at Savargaon Pat was not receiving 100% grants from the Government, and as such, not only the Petitioner, but no senior teachers from the granted school was willing to accept the post of the headmaster of the said school. The learned senior counsel brought to my notice that though Respondent No.3 stands at serial No.17 in the list of seniority, since none of the senior teachers accorded consent and shown willingness for to be appointed to the post of headmaster at Sarjunath Vidyalaya at Savargaon Pat, the school management appointed Respondent No.3 to the said post.

10 The learned senior counsel submitted that there was one more reason that the senior teachers were not willing to accept the post of headmaster of Sarjunath Vidyalaya at Savargaon Pat as the said school is in the tribal as well as hilly area. The learned senior counsel submitted that it was Respondent No.3, who since the year 1997 had worked at the said school at Savargaon Pat for most of the period and had also worked as the in-charge headmaster of the said school. The learned senior counsel submitted that though one Vishnu Genuji Bhor was appointed to the said post prior to making appointment of Respondent No.3 to the said post, within few months of his appointment, said Shri Bhor requested the school management to relieve him from the said responsibility and to revert him back to the post of assistant teacher at his previous school.

11 The learned senior counsel further submitted that, thereafter, by following due process of law, the appointment of Respondent No.3 was made and it was not objected to by the present present Petitioner for the period of long two years. The learned senior counsel submitted that the Petitioner cannot be permitted to take an exception to the said order after such long lapse of time. The learned

senior counsel submitted that though this Court in the case of **Secretary, Shiorai Education Society, Wani Vs. Presiding Officer, School Tribunal, Aurangabad and others**, reported in, **[2000(2) Mh.L.J. 752]** has held that the appeal to the Tribunal challenging supersession is not governed by the requirement to file the same within 30 days as provided in Section 9(2) of the MEPS Act, in the said judgment itself, the Court has observed that such appeal is, however, to be filed within reasonable time. The learned senior counsel also placed reliance on the judgment of the Honourable Supreme Court in the case of **Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane & Ors**, reported in, **[2013 (6) ALL MR 425 (S.C.)]** wherein the Honourable Supreme Court has ruled that though no limitation is provided under the provisions of MEPS Act for filing an appeal against the order of supersession, it must be filed within reasonable time and if not filed so, shall be liable to be dismissed on the point of limitation alone. The learned senior counsel submitted that the School Tribunal has after having considered the entire material on record has rightly dismissed the appeal filed by the Petitioner and no interference is required in the said judgment. The learned senior counsel has, therefore, prayed for dismissal of the

appeal.

12 Shri S. W. Munde, learned AGP for Respondent No.4 also supported the impugned judgment and order by reiterating the contentions raised in the affidavit in reply filed on behalf of Respondent No.4 in the present petition.

13 After having heard the arguments advanced by the learned counsel for the respective parties, it appears that the controversy in the present matter revolves around the letter dated 2nd July, 2003, sent by the present Petitioner to the Secretary of the school management in response to the letter dated 28th June, 2003, sent by the school management to the Petitioner. In letter dated 28th June, 2003 sent by the school management to the Petitioner as well as the other senior teachers, it was informed to all of them that the post of headmaster of Sarjunath Vidyalaya at Savargaon Pat was to be filled in by promotion. The Petitioner and other senior teachers were, therefore, requested to communicate their acceptance or refusal for such appointment. The letter as aforesaid was obviously sent by the school management in compliance with sub-rule 3 of Rule 3 of the MEPS Rules. The said sub-rule 3 of Rule 3 and the

explanation below it, reads thus:

“3. Qualifications and appointment of Head –

(1) ...

(2) ...

(3) The Management of a school including a night school shall fill up the post of the Head by appointing the seniormost member of the teaching staff (in accordance with the guidelines laid down in Schedule “F” from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfills the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

Explanation – For the purpose of this rule, the Management shall communicate any occurrence of vacancy of the Head of the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his

statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be presumed that he has relinquished his claim on the said post :

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the

Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post.”

14 The question arises whether the letter dated 2nd July, 2003, sent by the present Petitioner in response to the aforesaid communication dated 28th June, 2003, shall be treated as his acceptance to the said post or refusal to the said appointment. According to the Petitioner, the Petitioner has communicated his acceptance for such appointment whereas according to Respondent Nos.1 to 3, the Petitioner has impliedly refused to accept the said appointment. It is the contention of the Respondents that since the Petitioner did not communicate his unconditional acceptance for such appointment and also did not make any statement in his own handwriting before the Education Officer within 15 days from the date of receipt of communication dated 28th June, 2003 as aforesaid, in respect of the acceptance or refusal of the appointment to the said post, the Petitioner must be deemed to have relinquished his claim to the said post and in the circumstances, the Respondents made an appointment of Respondent No.3 to the post of headmaster of the

school at Savargaon Pat with effect from 1st August, 2003. I deem it appropriate to reproduce the letter dated 2nd July, 2003, written by the Petitioner to the Secretary of the school management, which reads thus:

“2/7/2003

प्रति,
मा.सेक्रेटरी साहेब,
ज्ञानोदय शिक्षण प्रसारक मंडळ संगमनेर
द्वारा निमगाव ब्रु।। ता. संगमनेर जि. अ.नगर.

अर्जदार — श्री चासकर तुकाराम महादु उपाध्यक्ष, न्यु
इंग्लिश स्कूल हिवरगाव आंबरे.

विषय — संस्थेच्या माध्यमिक विद्यालयातील
मुख्याध्यापक या पदावरील बढतीचे संदर्भात
होकार नकार कळविणे बाबत.

संदर्भ — जा.क्र.१४/२००३-२००४ दिनांक २८/६/२००३
चे पत्रानुसार.

महाशय,

विनंती अर्ज करतो की, वरील संदर्भात अनुसरून आपण माझे कोणतेही आर्थिक नुकसान होणार नाही याची दक्षता घेवून मला सर्जुनाथ विद्यालय सावरगाव पाट येथे मुख्याध्यापक म्हणुन पदोन्नती देणार असाल तर मी ही पदोन्नती आपल्या आदेशानुसार स्विकारण्यास तयार आहे.

कळावे.

आपला विश्वासु,
स्वाक्षरीत/—
मा. मुख्याध्यापक
न्यु इंग्लिश स्कूल हिवरगाव आंबरे
ता. अकोले जि. अ.नगर यांचे मार्फत रवाना”

15 From the contents of the aforesaid letter, it is quite evident that the Petitioner has not expressly refused to accept the promotion to the post of headmaster of Sarjunath Vidyalaya at Savargaon Pat. However, at the same time, the letter so sent by the Petitioner cannot be said to be his unconditional acceptance for to be appointed by way of promotion to the said post. The Petitioner has neither in the appeal before the School Tribunal nor in the present petition, has provided any explanation or justification for submitting such conditional acceptance or in other words why such condition was incorporated by him in the aforesaid letter. As stated by the Petitioner in para 5 of his petition, it is the responsibility of the management to pay the salary as per the scales provided under the Act and Rules irrespective of grant-in-aid. If this is the contention of the Petitioner then there was no reason for the Petitioner to convey such conditional acceptance.

16 The further conduct of the Petitioner, however, supports the contention raised by the Respondent management that the Petitioner was unwilling to accept the promotion to the subject post. As has come on record, the willingness of the other teachers, who were senior to Respondent No.3, was also called for in the same

manner it was called of the Petitioner. Respondent No.2 alongwith his affidavit in reply has filed on record copy of such communications made by the school management with all senior teachers and the reply received by the said senior teachers. Perusal of the said record shows that all the teachers, who were senior to Respondent No.3, have in clear terms recorded their refusal for such appointment. Almost all of them have contended in their letter of refusal that since the aforesaid school at Savargaon Pat is not receiving grants from the Government, they are not willing to accept the promotion to the post of headmaster of the said school. As has been contended by the Respondents, after having received the refusal from all the said senior teachers and letter dated 2nd July, 2003 from the present Petitioner, they did appoint Respondent No.3 to the post of headmaster of the school at Savargaon Pat by way of promotion with effect from 1st August, 2003.

17 The material on record shows that after making such appointment of Respondent No.3, a proposal was forwarded by the school management seeking approval to the said appointment from the Education Officer (Secondary) Zilla Parishad, Ahmednagar. The

material on record further shows that the Education Officer accordingly granted approval to the appointment of Respondent No.3 on the post of headmaster with effect from 1st August, 2003. The Education Officer in his affidavit in reply filed in the present petition has stated that such approval was granted vide order dated 17th May, 2004. The Respondents have also placed on record copy of the said approval.

18 It was sought to be canvassed by the learned counsel for the Petitioner that the approval to the appointment of Respondent No.3 to the post of headmaster was granted vide order dated 28th March, 2005, and not vide order dated 17th May, 2004. The learned counsel invited my attention to the document at Exhibit P-I filed by the Petitioner alongwith his affidavit in rejoinder. I have perused both the aforesaid documents i.e. approval granted vide order dated 17th May, 2004 and the approval granted vide order dated 28th March, 2005. The approval granted vide order dated 17th May, 2004, clearly evinces that the said approval was granted by the Education Officer (Secondary) Zilla Parishad, Ahmednagar, to the appointment of Respondent No.3 to the post of headmaster with effect from 1st

August, 2003 on non-grant basis whereas the subsequent approval order dated 28th March, 2005 demonstrates that the approval was granted on grant-aid basis. However, in both the appointments the approval is granted with effect from 1st August, 2003.

19 Though it was further sought to be canvassed that the Petitioner was unaware of the fact that Respondent No.3 has been appointed to the post of headmaster and was *bona fide* believing that Respondent No.3 has been appointed as an acting headmaster, the contention so raised by the Petitioner is unacceptable. It cannot be believed that the Petitioner was not having any knowledge of the appointment made of Respondent No.3 to the post of headmaster of the subject school. There are only three schools run by the Respondent management. It cannot remain a secret that the Petitioner has been appointed to the post of headmaster of the school at Savargaon Pat. It further cannot be believed that the Petitioner and the other senior teachers were not having knowledge of the fact that the appointment of Respondent No.3 to the post of headmaster has been approved by the Education Officer vide the order passed on 17th May, 2004. From the material on record there is reason to believe

that though the Petitioner was quite aware of the fact that Respondent No.3 has been regularly appointed to the post of headmaster and that his appointment has been also approved by the Education Officer, Zilla Parishad, the Petitioner did not raise any grievance for the reason that at the relevant time, the school at Savargaon Pat was not receiving grants and the appointment of Respondent No.3 was also approved on non-grant basis. The Petitioner did raise the objection only after the school at Savargaon Pat started receiving 100% grants. It is, thus, evident that till then the Petitioner was not at all inclined to accept the post of headmaster of the subject school.

20 Letter dated 2nd July, 2003, if read in the background of the aforesaid facts, the only inference, which can be drawn goes to suggest that the Petitioner has impliedly refused to accept the promotion to the post of headmaster of the school at Savargaon Pat, which at the relevant time was not receiving the Government grants. In the above circumstances, though the Petitioner has now raised the ground of non-compliance of Rule 3 of the MEPS Rules, the objection so raised, is unsustainable and the Petitioner is estopped from raising all such objections. Had the Petitioner lodged his protest immediately

after the appointment of Respondent No.3 to the post of headmaster contending that he has been superseded in making such appointment, it could have been certainly said that the Petitioner was genuinely interested in getting the promotion to the said post. The conspicuous silence kept by the Petitioner for the period of two years and more particularly till the date the school at Savargaon Pat started receiving grants, demonstrates that at the relevant time he was not willing to accept the promotion. In view of the fact that the Petitioner himself has impliedly relinquished his right to the promotion to the post of headmaster, he does not have any right to allege that he has been superseded by the school management while making appointment of Respondent No.3 to the post of headmaster of the school at Savargaon Pat.

21 After having considered the entire material on record, it does not appear to me that any illegality was committed by the school management in making appointment of Respondent No.3 to the post of headmaster. There also appears no error on the part of Respondent No.4 in granting approval to the appointment of Respondent No.3 to the post of headmaster of the school at

Savargaon Pat. Though some of the observations and the conclusions recorded by the School Tribunal in the impugned judgment cannot be subscribed, since ultimately the School Tribunal has dismissed the appeal, I do not see any reason to cause any interference in the final conclusion so recorded by the School Tribunal. In the result, the petition fails. It is accordingly dismissed. However, without any order as to the costs. Rule discharged.

[P. R. BORA, J.]

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