

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3771 OF 2015

Pandurang Trimbak Sawant
Age 56 years, Occ. Service,
R/o Plot No.4, Telephone Colony,
Pimple Road, Amanler,
District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai - 32.

2. Khandesh Shikshan Mandal,
Amalner, District Jalgaon
Through its Chairman.

3. The Secretary,
Coordination Committee,
Khandesh Shikshan Mandal,
Amalner, District Jalgaon.

4. The Education Officer (S),
Zilla Parishad, Jalgaon.

5. Dhanraj Himmatrao Thakur,
Age major, Occ. Service,
R/o G.S.High School, Amalner,
District Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Patil Vinod Prakash
AGP for Respondents 1 & 4 : Shri Basarkar A.P.
Advocate for Respondents 2 & 3 : Shri Yawalkar Siddhartha B.
Advocate for Respondent 5 : Shri Patil Sandesh R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 28, 2016

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ORAL JUDGMENT :-

1. Heard.
2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 1.1.2015, delivered by the School Tribunal, Nasik by which Misc. Application No.10 of 2013 seeking condonation of delay has been rejected.

5. The contention of the petitioner is that he has been denied promotion as an Assistant Head Master on various occasions. The first occasion arose in June 2001 when the post of Assistant Head Master was created and reserved for the Scheduled Caste Category. The petitioner belongs to the said category. He was denied the said promotion and assured that he would be accommodated in future. Similar occasions arose in 2003, 2006, 2011 and 2013 when the post of Assistant Head Master fell vacant.

6. The petitioner submits that he had tendered his representations to the management on 3.10.2001, 16.10.2001, 23.11.2004, 25.7.2007, 23.2.2008, 18.11.2009, 13.4.2010, 26.9.2011, 23.3.2013, 16.4.2013, 8.7.2013, 25.9.2013 and 19.10.2013. Since his efforts for redressal of his grievance were rendered futile, he finally filed an Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) on 21.12.2013.

7. Shri Patil, learned Advocate for the petitioner contends that denial of promotion is a recurring cause of action. Same has occurred on five occasions as noted above. The School Tribunal has rejected the application on the ground that the claim dates back to June 2001 and the Appeal has been filed after 12 years. He tenders across the Bar, an affidavit sworn by the petitioner stating therein that he is willing to waive all monetary benefits from June 2001 in relation to the post of Assistant Head Master. He further submits that the petitioner has only 14 months service left prior to his retirement.

8. Shri Yawalkar, learned Advocate appearing on behalf of respondent Nos.2 and 3 / management submits that there are three posts of Assistant Head Master available with the educational institution. Considering the ratio laid down by the learned Full Bench of this Court in the matter of New English High School Association, Nagpur Versus Baldev Fakira Ade [2006 (6) Mh.L.J. 882], unless there are four posts available, there cannot be a reservation provided for one post. He, however, adds that all these issues can be gone into by the Tribunal while considering the contentions of the petitioner as well as the management.

9. With regard to the delay caused, he submits that though supersession or denial of promotion may amount to a recurring cause of action, in the instant case, the cause of action has arisen in the years 2001, 2003, 2006, 2011 and 2013. The grievance of the petitioner, at best, could be considered in relation to the last cause of action since he has not assailed

any of the actions of the management with relation to appointment of Assistant Head Master in the years 2001, 2003, 2006 and 2011. Moreover, even if the grievance of the petitioner is considered today, the same would be from the date of filing of the Appeal and its decision and cannot be made effective retrospectively. He, therefore, submits that this petition be dismissed with costs.

10. Shri Patil, learned Advocate appearing on behalf of respondent No.5, opposes this petition on the ground that presently, respondent No.5 is the Assistant Head Master. The affidavit-in-reply filed by respondent No.5 would make it clear that he has been appointed with effect from 1.6.2001 from the S.T. category since the post was reserved for the S.T. category. The claim of the petitioner is without merits, considering the orders passed by the Education Officer on which respondent No.5 relies upon.

11. The learned AGP submits that the present issue is between the petitioner and respondent Nos.2 to 5.

12. I have considered the submissions of the learned Advocates.

13. Denial of promotion and continued supersession can be a recurring cause of action since it continues from the date it has so occurred. Nevertheless, it cannot be ignored that the petitioner has not assailed his purported first supersession on 1.6.2001, when respondent No.5 herein was appointed. It is for more than 12 years that the petitioner has kept silent

notwithstanding the fact that he has made several representations.

14. The grievance of the petitioner is that the post of Assistant Head Master also fell vacant in 2013. He claims supersession in 2013 as a consequence of which he has lodged his Appeal on 21.12.2013. Considering the same and taking into account the affidavit filed by the petitioner today, the Appeal lodged by the petitioner can be restricted only to the extent of the alleged cause of action which is said to have arisen in 2013.

15. In the light of the above, this petition is partly allowed. The impugned order dated 1.1.2015 is quashed and set aside. Misc. Application No.10 of 2013 is allowed on the condition that the cause of action in the Appeal shall be restricted only to the post of Shri M.R. Sonar, who has retired from the post of Assistant Head Master in 2013 and has been arrayed as respondent No.5 in the petitioner's appeal. The reliefs sought by the petitioner shall, therefore, be restricted to the cause of action that may have arisen pursuant to the retirement of Shri M.R. Sonar. The petitioner shall, therefore, not be entitled to raise any issues with regard to the earlier causes of action in the light of the fact situation and also by taking into account his affidavit filed today, which is marked as Exhibit "X" for identification.

16. The School Tribunal shall accordingly register the appeal filed by the petitioner and, considering the fact that he has fourteen months left for retirement, shall endeavour to decide the said appeal as expeditiously as

possible and preferably on/or before 14.12.2016.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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