

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 468 OF 2016

Shri Premanad G.Phadte,
aged 55 years.
Resident at House No. 46-E at Arlem, Raia,
Salcete, (Goa) – 403 720*
presently holding the post of Teacher Grade-I
of Mathagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. no. 53,
Comba, Margao, 403 601, (Goa). ... Petitioner

V e r s u s

1. State of Goa,
through the Secretary (Education),
Government of Goa,
with his office at the Secretariat Complex,
Porvorim, Bardez, (Goa)
2. The Director,
Directorate of Education,
Government of Goa,
Porvorim, Bardez, (Goa).
3. Chairman,
School Managing Committee
of Mathagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
with his office at 'Tirtharoopa',
A. N. Naik Road, Aquem, Alto,
Margao, 403 602, (Goa).
4. Manager,
School Managing Committee
of Mathagramashtha Hindu Sabha's
'Shree Damodar Higher Secondary School of Science,
with his office at 'Tirtharoopa',
A. N. Naik Road, Aquem, Alto,
Margao, 403 602 (Goa).
5. Shri R. K. Dessai,
presently holding the post of Principal

in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,
Comba, Margao, 403 601, (Goa).

6. Smt. M. R. Bandekar,
presently holding the post of 'Teacher Grade-I'
in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,
Comba, Margao, 403 601, (Goa).
7. Smt. A. G. Navelkar,
presently holding the post of 'Teacher Grade-I'
in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,
Comba, Margao, 403 601, (Goa).
8. Shri S. B,. Talekar,
presently holding the post of 'Teacher Grade-I'
in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,
Comba, Margao, 403 601, (Goa).
9. Shri P. B. Dubale,
presently holding the post of 'Teacher Grade-I'
in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,
Comba, Margao, 403 601, (Goa).
10. Shri B. G. Sawant,
presently holding the post of 'Teacher Grade-I'
in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,
Comba, Margao, 403 601, (Goa).
11. Shri K. L. Kammar,
presently holding the post of 'Teacher Grade-I'
in Mahtagramashtha Hindu Sabha's,
'Shree Damodar Higher Secondary School of Science,
P. B. No. 53,

Comba, Margao, 403 601, (Goa). ... Respondents

Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. D. Lawande, Addl. Advocate General with Mr. Aamir Jamadar, Addl. Government Advocate for the Respondent no. 1.

Mr. D. Pangam, Advocate for the Respondent no. 5.

Mr. P. Bandodkar, Advocate for the Respondent nos. 3 and 4.

Coram :- F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Reserved for Judgment on : 26th July, 2016
Judgment to be pronounced on : 25th November, 2016

JUDGMENT (Per F. M. Reis, J.)

Heard Mr. Padgaonkar, learned Counsel appearing for the Petitioners, Mr. D. Lawande, learned Additional Advocate General appearing for the Respondent no. 1, Mr. Bandodkar, learned Counsel appearing for the Respondent nos. 3 and 4 and Mr. D. Pangam, learned Counsel appearing for the Respondent no. 5.

2. The above Petition, inter alia, seeks for a direction to the Respondent nos. 1 to 4 by setting aside the promotion of the Respondent no. 5 w.e.f. the date on which the Respondent no. 5 was promoted to the post of Principal of the said School with consequential benefits.

3. Briefly, it is the contention of the Petitioner that the Petitioner was appointed to the post of Teacher Grade-I in Shree Damodar Higher Secondary School of Science, Margao, on 23.06.1988 and that he obtained training qualification in the form of Bachelor's Degree in the year 1990 within five years of his appointment as Teacher as Grade I and has been continuously in service in the said School from the date of his appointment. It is further contended that Shri Uday V. Ballikar, who was occupying the post of Principal of the said School, upon being appointed by direct recruitment in the year 1989, retired on attaining the age of superannuation on 30.04.2014. The Petitioner being the Senior most Grade-I Teacher, vide letter dated 02.05.2014, addressed to the Chairman of the Managing Committee of the said School, requested that he be appointed as a Principal therein. But, however, such letter was refused to be accepted by the said Office. In response to the said letter of the Petitioner, he was served with the letter dated 04.06.2014 from the Chairman of the School Managing Committee, inter alia, stating that the Resolution had been taken by the Management of the said School on 28.05.2014 to deprive the Petitioner of the post of the Principal which was being enclosed along with the said letter. Pursuant to the recommendations of the DPC on 13.06.2014, the fifth Respondent came to be appointed as a Principal of the said School. The Director of Education vide its communication accorded approval to the said appointment on 25.06.2014. It is further contended by the Petitioner that there was no tangible or valid ground or reason for by-passing the Petitioner and

appointing the Respondent no. 5 who is Junior to him against the post of Principal. It is also contended that the approval given by the Director of Education for such appointment is arbitrary and illegal and that the Respondent nos. 1 to 4 acted in contravention of the provisions of the School Education Rules by denying to the Petitioner promotion to the post of the Principal. Being aggrieved by such promotion of the Respondent no. 5 as the Principal of the said School, the Petitioner preferred a Writ Petition in this Court being Writ Petition no. 95 of 2015 challenging the Order of promoting the Respondent no. 5 to the said post. Vide Oral Judgment dated 27.07.2015, this Court disposed of the Writ Petition filed by the Petitioner directing the Respondent no. 2 to re-examine the approval in terms of the averments made in the said affidavit on the basis of the reasons already submitted by the Respondent no. 3 in accordance with law. By communication dated 04.09.2015, the Respondent no. 2 wrote to the Respondent no. 3 that the approval earlier granted for the promotion of the Respondent no. 5 as Principal of the said School, has been withdrawn and the Respondent no. 3 was directed to conduct a fresh DPC after considering the Petitioner, being the senior most Teacher Grade-I as per the Goa School Education Act, 1984 and the School Education Rules, 1986. Despite of the approval granted having been withdrawn, the Respondent nos. 3 and 4 allowed the Respondent no. 5 to occupy the post of the Principal and function as such. It is further contended by the Petitioner that in view of the said de-approval of the Director, the School Management was to hold a

review DPC and, as such, it could examine only admissible material which was before the earlier DPC. But, however, it is further contended that in view of the said directions of the Director, the question of holding a de-novo exercise of DPC on the basis of new material is illegal. It is further pointed by the Petitioner, that the Petitioner has been compelled to approach this Court in view of the arbitrary and illegal exercise undertaken by the Respondent no. 3 for the second time to get his grievance redressed. It is further contended that the Management of the School has fabricated documents for the purpose of denying rightful claim of the Petitioner. It is also pointed out that all the allegations do not reflect on the integrity as a Teacher of Grade-I of the Petitioner in the said School. It is further contended that though four memos were issued to the Petitioner during his career as a Teacher Grade-I, each of those Memos have been satisfactorily replied by the Petitioner. It is further pointed out that till the occurrence of the vacancy, they did not result in any Disciplinary Proceedings against the Petitioner before the DPC met for the first occasion. It is further pointed out that the fresh approval given by the Director of Education is without any valid and good reason and mechanically granted and, as such, it was incumbent upon the Director of Education to see that claim of the Petitioner being the Senior most Teacher was not bye-passed. It is further pointed out that the reason given by the DPC to bye-pass the candidature of the Petitioner are neither tangible and valid in law. It is further pointed out that the vacancy arose on 30.04.2014 and anything that occurred subsequent to

that date could not have been considered by the DPC whilst assessing the relative merits of eligible candidates. But, however, the Management-Respondent no. 3 has been manufacturing circumstances malafidely in order to malign the Petitioner. It is further contended that Respondent nos. 1 to 4 have gone contrary to the Order dated 27.07.2015 passed by this Court in the said earlier Writ Petition wherein the Respondent no. 2 was directed to re-examine the approval granted on the basis of the reasons already submitted by the Respondent no. 3.

4. The Respondent no. 3 filed their affidavit in reply, inter alia, contending that the Petition is hit by delay and laches. It is further contended that jurisdiction to make selection is vested in the Selection Committee/DPC and that the manner of making the assessment are exclusively the functions of the Selection Committee/Department Selection Committee. It was further pointed out that on 05.11.2015, the Respondent was communicated the recommendations of the DPC and had been provisionally appointed to the post of the Principal and thereafter on 09.12.2015, the Management confirmed the appointment of the Respondent no. 5 to the post of the Principal. It is further pointed out that the Management has recorded serious lapses during the tenure of the Petitioner and have enumerated such lapses in their reply. It is further pointed out that the post of the Principal requires honesty, loyalty towards the Management, integrity and confidentiality in the matters considering administration of the

School without any questionable or malicious approach and attitude towards the Management of the Institution. It is further contended that just because the Petitioner is the Senior most person working in the Higher Secondary School, cannot be the ground to appoint the Petitioner as a Principal of the said School. It is further pointed out that Seniority would be considered only when merit and fitness are approximately equal. It is further pointed out that Shri P. A. Naik, was nominated by the Chairman of the Managing Committee to act as a Chairman for the purpose of DPC. It is further pointed out that DPC has considered confidential report and all the relevant documents to examine the suitability and eligibility of the Petitioner and it also followed the Office Memorandum dated 08.02.2002 of the merit cum seniority as mentioned in the last paragraph of the sub-committee report. It is also denied that the report of the sub-committee is a nullity and is in violation of the principles of natural justice. It is further pointed out that the records reveal that the Petitioner is not suitable for the post of Principal or fit to be a Principal.

5. The Respondent no. 5, has also filed a reply, inter alia, contending that he was appointed as a Principal of the School by Order dated 05.11.2015 and Director of Education granted approval on 07.12.2015. He has also pointed out that he was initially appointed as a Grade-I Teacher on 29.08.1989 and that for the last twenty five years of service, there was not even a memo issued to him by the Principal or the Managing Committee. He

has also stated that he effectively communicated with the Management and with complete faith between the Principal and the Management. It is further pointed out that the Petitioner remained absent on the date fixed for Selection in the year 1996 when he was directed to remain present on a Sunday for selecting cum practice for a cultural program. It is further pointed out that the Petitioner has admitted of being instrumental in instigating to file Right to Information of the School for disclosing certain information. The allegations made by the Petitioner are also denied by the Respondent no. 5 in his affidavit in reply. It is further pointed out that the role of the Director is to either approve or reject the recommendations made by the DPC. It is further pointed out that when the Director of Education does not grant approval, the only option is to refer back for fresh consideration by the DPC. It is further pointed out that on basis of the Minutes of the DPC held on 05.11.2015, approval was granted to the Respondent nos. 3 and 4 for the promotion of Respondent no. 5 and the same was communicated to the Respondent no. 3. It is further pointed out that the Respondent no. 2 granted approval as the findings and the reasons of the DPC were tangible and valid for bye-passing the seniority of the Petitioner.

6. Shri C. Padgaonkar, learned Counsel appearing for the Petitioner, has assailed the impugned Order appointing the Respondent no. 5 essentially on the ground that the whole action on the part of the Management is arbitrary, malafide and bias against the Petitioner. Learned

Counsel further pointed out that despite of the earlier approval granted was withdrawn by the Respondent no. 2, the Respondent no. 3 mischievously made fresh allegations against the Petitioner which were allegedly examined by the DPC whilst making the recommendations in favour of the Respondent no. 5. It is further pointed out that the Petitioner being the Senior most Teacher, was entitled to be appointed as a Principal and there is no reason to dispute the integrity of the Petitioner in performing his duties and that the alleged memos never led to any disciplinary proceedings against the Petitioner. Learned Counsel further pointed out that the malafide acts of the Respondent nos. 3 and 4 in manufacturing documents to by-pass the seniority of the Petitioner in making the appointment of the Principal are illegal and unsustainable in law. Learned Counsel has also taken us minutely through the alleged minutes of the DPC in question to point out that irrelevant material has been considered whilst making such recommendations. Learned Counsel further pointed out that Mr. P. A. Naik, was not entitled to be the Member of the DPC meeting as he has a personal grudge and bias against the Petitioner. It is further pointed out that once the approval was withdrawn by the Respondent no. 2, there was no question of holding a fresh DPC but only a review DPC could be called for on the basis of the material which was placed before the earlier DPC. Learned Counsel as such pointed out that the impugned Order be quashed and set aside.

Learned Counsel has relied upon the Judgment of this Court in ***Writ Petition no. 69 of 1999*** in the case of ***Smt. Malini M. Xete vs. The***

Director of Education, Government of Goa & Others.

7. On the other hand, Shri D. Lawande, learned Addl. Advocate General appearing for the Respondent no. 1, has pointed out that the Minutes of the DPC meeting in question clearly discloses that all the relevant material was examined by the DPC whilst making his recommendations. Learned Addl. Advocate General has thereafter taken us through the breaches committed by the Petitioner which clearly show that there was dereliction by the Petitioner which dis-entitled him from being the Principal. Learned Addl. Advocate General has further pointed out that this Court cannot sit in an Appeal in the recommendations of the DPC and, as such, as there is no patent irregularity committed by the DPC whilst making such decision, the question of interfering in the impugned Order is not at all justified.

8. Shri Pangam, learned Counsel appearing for the Respondent no. 5, has further pointed out that the fact that the dereliction on the part of the Petitioner in making documents and giving a wrong answer of the said question, would itself show the incompetency of the Petitioner of becoming a Principal. It is further pointed out that holding a post of a Principal is a very responsible post and, as such, the incompetency of the Petitioner in giving a wrong answer to questions set by him would itself justify the recommendations by the DPC. Learned Counsel further pointed out that the

Petitioner was instrumental in instigating to get information under the Right of Information Act to create disrepute in the functioning of the School. Learned Counsel further pointed that the allegations made against the Petitioner are very grave which have been duly considered by the DPC and, as such, no interference is called for in the recommendations. It is further submitted that the Management has distrust with the Petitioner and, as such, there will be grave instability in the functioning of the School in case the recommendations are set aside by this Court. It is further pointed out that interference of this Court in such recommendations is very minimum and, as such, the question of exercising jurisdiction under Article 226 of the Constitution of India to set aside the recommendations of DPC is not at all justified. It is further submitted that the DPC has duly considered the Rules applicable to the facts whilst making the recommendations and has come to the conclusion that the Petitioner is not fit or suitable to be the Principal and, as such, the question of interfering in the impugned decision is not at all justified.

Mr. Pangam, learned Counsel, has relied upon the Judgment of the Apex Court reported in **(2007) 14 SCC 641** in the case of ***Union of India & anr. vs. S. K. Goel & Ors.***

9. Mr. Bhandodkar, learned Counsel appearing for the Respondent nos. 3 and 4, has supported the submissions of Mr. Pangam, learned Counsel appearing for the Respondent no. 5.

10. We have duly considered the submission of the learned Counsel and we have also gone through the records. The essential grievance of the Petitioner is that the DPC whilst making the recommendations afresh has examined allegations against the Petitioner which were not at all in existence when the post of the Principal became vacant. The fact that the Petitioner was the Senior most Teacher is not in dispute. It would be relevant to transcribe the averments in the affidavit of the Director of Education in the earlier Writ Petition recorded in Para 4 of the Oral Judgment dated 27.07.2015 in Writ Petition no. 95 of 2015 which reads thus :

“4. During the course of the hearing of the above writ petition, the respondent No.2/Director of Education has filed an affidavit dated 27th July, 2015, *inter alia*, stating at paras 5, 6, 7, 8 and 9 thus :

" 5. I state that the DPC considered facts and material presented before the committee and recommended the second senior most teacher in grade I as fit for promotion to the post of Principal of Shree Damodar Higher Secondary School of Sciences. I state that the decision arrived at in the DPC was submitted for approval of this Respondent vide letter No. DHSS/ADM/App/2014-15/119 dated 23/06/2014.

6. I state that in view of the recommendations of the DPC, Approval was granted by this Respondent for the promotion of the Respondent No.5 to

the post of Principal of Shree Damodar Higher Secondary School of Sciences, vide letter of Approval dated 25/06/2014.

7. I state that on going through the facts mentioned the present Petition, it shows that the Petitioner was the Senior most teacher Grade-I. I state that if there was nothing adverse against him such as Disciplinary Proceedings wherein Memorandum of Charge has been issued and Charge is framed or otherwise the Petitioner is ineligible or non-meritorious then only could the senior most teacher in Grade I be held back from promotion.

8. I state that after perusal of the record it shows that the management of the School at the relevant time has not made out any such case nor had the DPC found any such matter therein.

9. I state that in view of the approval granted by the Director of Education as regards the DPC wherein the Respondent No.5 was promoted to the post of Principal of Shree Damodar Higher Secondary School of Sciences would require reconsideration and re-examination of the matter. I state that as such the approval dated 25/06/2014 would be reconsidered again."

11. We have also noted therein that there were no reasons given in the DPC recommendation dated 13.06.2014. In Para 8 of the said Judgment, this Court directed the Respondent no.2 to re-examine the approval in terms of the averments made in the said affidavit on the basis of the reasons already submitted by the Respondent no. 3 in accordance with law and the

relevant Rules. Thereafter, by letter dated 04.09.2015, the Respondent no. 3 withdrew the letter dated 25.06.2014 granting approval to the Respondent no. 5 and the Respondent no. 3 was directed to conduct a fresh DPC after considering the Senior most Teacher Grade-I, the Petitioner herein, as per the Goa School Education Act, 1984 and the School Education Rules, 1986. It would be pertinent to note that in the affidavit filed in the above Petition, the Director did not find favour with the allegations made against the Petitioner whilst making the earlier recommendations. It is not disputed that at that stage, admittedly, there was nothing adverse against the Petitioner such as Disciplinary Proceedings wherein Memorandum of Charge has been issued or that otherwise the Petitioner is ineligible or non-meritorious to the post of Principal.

12. On perusal of the fresh recommendations by the DPC, we find that besides the earlier allegations against the Petitioner, show cause notices dated 31.03.2015, Memo dated 30.06.2015, Memo dated 31.03.2015 and letter of the ex-Principal besides letter dated 30.07.2015 with regard to adverse remarks were considered by the DPC. As pointed out herein above, it was clearly stated that the Respondent no. 2 would have to examine the approval based on the reasons and the material placed by the Respondent no. 3 before the earlier DPC. In such circumstances, the DPC directed by the Respondent no. 2 which was in the nature of a review DPC could not examine fresh material created after the vacancy arose to make the

Petitioner allegedly ineligible to the post of the Principal.

13. Rule 86(2) of the School Education Rules, 1986 reads thus :

“(2) The vacancy of Principal, Higher Secondary School/Primary Training Institutes, Headmasters of Secondary Schools and Middle Schools and the Asst. Headmasters of Secondary Schools shall be filled up by promotion subject to the eligibility conditions prescribed in rule 78. While filling up these posts, the managements shall first explore the possibility of selecting the senior most teacher from the next below category indicated in column 5 of Table under rule 78. While making such selection the management shall also give very careful consideration and shall select the best qualified and most competent person among those available for selection/appointment to the post. Seniority shall be the first criteria subject to fitness and merit. If the claim of a senior eligible teacher is by-passed, the reason for the same in writing will have to be recorded in the minutes by the promotion committee. The claim of the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons.”

14. The said Rule clearly provides that Seniority shall be the first criteria subject to fitness and merit. The fact that the Petitioner was Senior

most is not disputed as pointed out herein above. The allegations which have been made against the Petitioner in connection with the absence from duty and other lapses admittedly did not lead to any disciplinary proceedings nor any Memorandum of Charge against the Petitioner. There were no adverse remarks in the confidential report noted by the DPC against the Petitioner which were in fact notified to the Petitioner. The Judgment relied upon by Mr. Pangam, learned Counsel appearing for the Respondent in the case of ***Union of India & anr. vs. S. K. Goel & Ors.*** (supra) clearly observes that adverse entries in particular posts may not be communicated if the downgrading grade met the benchmark. No doubt, the DPC is not required to be guided merely by the overall grading, if any, recorded in the CRs but make its own assessment on the basis of the entries in the CRs. To this effect, the DPC enjoins full discretion to devise its method and procedure for objective assessment of the suitability and merit of the concerned candidate. The Apex Court has also, inter alia, observed that there will ordinarily be no interference by the Courts of law in the recommendations and proceedings of the DPC unless such DPC meetings are conducted illegally or in gross violation of the statutory Government instructions and Rules or there is misgrading of the confidential reports. In the present case, though the recommendations suggest that the CRs and personal file of the Petitioner and other materials were examined, there are no specific adverse entries stated in the recommendation which have influenced the DPC to hold that the Petitioner was not suitable, for the subject post. Primarily, the

allegations referred to therein are essentially matters which as pointed out herein above have not been led to any Disciplinary proceedings against the Petitioner. Merely because an application was said to have been moved at the behest of the Petitioner under the Right to Information Act, cannot in any way suggest that it would affect the suitability of the Petitioner to hold the post of Principal.

In such circumstances, denying the Petitioner on the basis of material which came into existence only after the post of Principal became vacant, is unsustainable in law. The act on the part of the Respondent no. 3 in making such fresh allegations against the Petitioner is arbitrary and unsustainable in law. In fact, the recommendations of the DPC clearly rely upon such subsequent material to draw its conclusions. We find that the material as such examined by the DPC in drawing such conclusions are erroneous and cannot be sustained considering the direction issued by this Court whilst disposing of the earlier Writ Petition. Having relied upon non-admissible material, the recommendations of the DPC stands vitiated and deserves to be quashed and set aside.

15. This Court in the Judgment in Writ Petition no. 69 of 1999 dated 08.03.1999, has observed at Paras 4 and 5 thus :

“4. Rules governing the matter of promotion

may prescribe different factors which will have to be taken into consideration in the decision making process. Seniority, merit and fitness are normally considered as relevant in such matters, but which factor should weigh more in comparison with other factors for consideration depends on the language used in the relevant Rules. In some Rules the seniority may play a prominent role, whereas in some others, merit may be the dominant factor. The phraseology used in the Rule will determine as to what importance the Selection Committee will have to give to each of the items for consideration. The Rule quoted above has not in one place but in three places clearly indicated that the Rule does want that the seniority has to be given importance. The first sentence of the portion quoted above directs the management to explore the possibility of selecting the senior most teacher. Then the Rule prescribes that seniority shall be the first criteria and if the name of the senior most eligible teacher is to be by-passed, the reasons have to be recorded in the minutes and lastly, the Rule reminds that the claim of the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons. A cumulative reading of all the norms under sub-Rule (2) of Rue 86 goes to show that the Rule requires that normally a senior qualified teacher will have to be selected. It is only when there are tangible

reasons to by-pass the claim of such person, any person junior to him can be selected. The Rule does not give equal importance to seniority and merit. Admittedly, the petitioner is senior most among the eligible persons. We are told by the learned Counsel for the Management that the Departmental Promotion Committee selected the respondent No. 5 on the basis of the appreciation of the relative merit. The report of the Departmental Promotion Committee mentions the following remarks in respect of the working of the petitioner and the respondent No. 5:---

Sr. No.	Name of teacher as per seniority	Academic year & Grading	1989-90	1990-91	1991-92	1992-93	1993-94
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1.	Mrs. Malini Xete	Good	Good	Very Good	Good	Good	Good
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2.	Mr. Mohan Naik	Very Good	Very Good	Very Good	Excellent /Outstanding	Very Good	
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It is true that the petitioner had been given a 'Very Good' remark only for one year and for four years she has received remarks 'Good' and the respondent No. 5 has received 'Very Good' remarks for four years and in one year he was adjudged to be 'Excellent and Outstanding'. Assuming for a moment that when performance of teachers was assessed, the respondent No. 5 was found to be better than the petitioner, but we cannot lose sight of the fact that even the petitioner has been adjudged to be 'Good' for four years and 'Very Good' in one year in the five

years which were relevant. Therefore, it is not the case of the Management that the petitioner has something indicating her unsuitableness to her credit. When the seniority has been made the principal consideration by the Rules, it would only be permissible to by-pass the claim of the senior most person if there is something negative which would disentitle him from being given what is due according to his seniority. This negative has to be something to do with the job for which he is being considered. Therefore, in no uncertain terms, the Rule prescribes that such a reason which plays negative role in denying just promotion to a senior most teacher will have to be recorded in the minutes of the Departmental Promotion Committee. This is to ensure that arbitrarily any claim of a senior most person is not by-passed. The use of the expression "tangible reasons" also indicates that the reasons must have some relevance with the purpose to be achieved. We do not find anything on record in the confidential remarks awarded to the petitioner which would disentitle her for the post for which she is being considered. There is absolutely nothing against her at least on record which is made available to us. On the contrary, what is alleged is that the petitioner is sought to be by-passed, firstly, denying her the post of Acting Headmaster, secondly, in delaying the meeting of the Departmental Promotion Committee and lastly,

denying her the post of Headmistress on the regular basis by-passing her seniority on the grounds impermissible in the Rules.

5. Shri Sonak has invited our attention to the judgment in *Budh Ram v. State of Punjab & others* 1987(1) S.L.R. 77 of a learned Single Judge of Punjab & Haryana High Court, who was required to deal with a similar situation. Suitable candidates from the clerical cadre were to be recommended for enlistment of 'B' Class Naib Tehsildars. The names were to be recommended on the basis of seniority-cum-merit. When the senior person is not recommended, reasons for ignoring him were to be forwarded along with his personal record. In the five years immediately preceding the promotional process, the petitioner had received 'Very Good' remarks in two years and 'Good' remarks in the three years, whereas his juniors had received 'Very Good' remarks on three or four occasions and 'Good' remark only on one occasion. The learned Judge referring to an earlier judgment of the same Court in *Shri Shadi Lal v. The-Deputy Commissioner, Gurgaon and others*, 1974(1) S.L.R. 217, observed that where selection has to be made on the basis of seniority-cum-merit, if the senior most eligible person has merit for the promotion post, he shall be selected irrespective of the better merit of his juniors. The petition was allowed and the

promotion of the juniors was quashed. The petitioner before us is on a better footing. The Rule which was interpreted by the learned Single Judge of Punjab & Haryana High Court was the rule of seniority-cum-merit. In the instant case, seniority has been given even more importance as compared to seniority-cum-merit rule.”

16. Looking into the observations made therein, we find that the DPC has not followed the well settled principles in examining the relative merit of the candidates for the post of the Principal whilst making the recommendations. As such, as the recommendations of the DPC itself stands vitiated, the consequent approval by the Respondent no. 2 of such appointment deserves to be quashed and set aside.

17. We also find that the directions issued by the Respondent no. 2 to hold a review DPC by said letter dated 04.09.2015 withdrawing the approval has not been complied with in accordance with law and, consequently, we find it appropriate in the interest of justice to quash and set aside the recommendation of the DPC as well as the consequent approvals and the appointment of the Respondent no. 5 and direct the Respondent nos. 3 and 4 to comply with the directions issued by the Respondent no. 2 in the said letter dated 04.09.2015 and hold a review DPC in the light of the observations made herein above and in accordance with law within three months from today. In peculiar facts herein, the respondent no.5 shall continue as acting Principal for a period of two months only to enable the respondents to appoint the Principal in accordance with law. Apart from that, the allegations which have been made

against the Petitioner, prima facie, do not show or involve any moral turpitude and moral integrity in performing his functions as the senior most Teacher in the School in question.

18. In view of the above, we pass the following :

ORDER

(I) The recommendations of the DPC dated 13.06.2014 as well as the subsequent approvals by the Respondent no. 2 dated 25.06.2014 and 04.09.2015 is quashed and set aside.

(II) The Respondent nos. 3 and 4 are directed to call for a review DPC and proceed to appoint the Principal in the light of the observations made herein above and in accordance with law.

(III) Rule is made absolute.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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