

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 482 OF 2009

Mrs. Priya Pratap Parab,
Assistant Teacher, Rauji
Rane Memorial High School, Maulinguem,
Bicholim, Goa.

... Petitioners

V e r s u s

1. Shree Rauji Rane Memorial High School,
Maulinguem,
Bicholim-Goa.
Through its Administrator,
Shri R. W. Dhande.
2. Shree Mhalsa Educational Society
a Society registered
under the Societies
Registration Act,
through its Chairman
Shri Babasaheb Rane,
Maulinguem,
Bicholim, Goa.
3. Smt. Ranjana B. Powarnee Ranjana
M. Shirodkar, aged about 40 years,
Acting Headmistress, Rauji Rane Memorial
High School, Maulinguem,
Bicholim, Goa.
Residing at Bicholim Goa.

4. The Director, }
Through Directorate of Education }
Government of Goa, }
Panaji, Goa. }

(Amendment carried out as
per Order dt. 21.09.16 passed
in MCA no. 742 of 2016).

5. State of Goa, }
Through its chief Secretary }
Having Office at Secretariat }
Porvorim, Goa. }

... Respondents

Mr. Nitin Sardessai, Senior Advocate with Ms. Suzette Pereira, Advocate for the Petitioner.

Mr. Pradosh Dangui, Addl. Government Advocate for the Respondent nos. 1 4 and 5.

Mr. V. A. Lawande, Advocate for the Respondent no. 2.

Mr. J. P. Mulgaonkar, Advocate for the Respondent no. 3.

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

Date: 29th August, 2016

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

Heard Shri Nitin Sardessai, learned Senior Advocate appearing for the Petitioner, Shri P. Dangui, learned Addl. Government Advocate appearing for the Respondent no. 1, Shri V. A. Lawande, learned Counsel appearing for the Respondent no.2 and Shri J. P. Mulgaonkar, learned Counsel appearing for the Respondent no. 3.

2. The above Petition, inter alia, seeks to set aside the Order dated 24.07.2009 passed by the Respondent no. 2 appointing the Respondent no. 3 as Headmistress of the concerned School.

3. Briefly, the facts of the case as stated by the Petitioner are that the Petitioner was appointed as a teacher in the year 1992 whereas the Respondent no. 3 came to be appointed in the year 1994 in the concerned School. A Seniority List was finalised somewhere in the year 2007 thereby

showing the Respondent no. 3 as the senior most teacher and the Petitioner at serial no. 5. In the meanwhile, in view of a dispute raised by the Petitioner to such Seniority List on the ground that the Petitioner was the senior most trained teacher of the concerned school as opposed to by the Respondent no. 3, a revised Seniority List was prepared in the year 2009 whereby the Petitioner was shown at serial no. 1 and the Respondent no. 3 was shown at serial no. 2.

4. There were proceedings initiated by the Respondent no. 3 on the ground that she was appointed as an officiating Headmistress though a vacant post of Headmistress was available in the concerned Schools. This Court issued directions to fill up the vacancies of the Headmistress/Headmaster. In the meanwhile, a DPC was constituted and in the Minutes of the Meeting held on 10.07.2009, the DPC recommended the Respondent no. 3 to be appointed as Headmistress of the concerned School. Ultimately, by the impugned Order dated 24.07.2009, the representation of the Petitioner was rejected and the Respondent no. 3 was appointed as Headmistress of the concerned School.

5. Being aggrieved by the said decision, the Petitioner has filed the above Petition for the aforesaid reliefs.

6. Mr. Nitin Sardessai, learned Senior Advocate appearing for the

Petitioner has pointed out that on bare perusal of the Minutes of the DPC held on 10.07.2009, it clearly reveals that the DPC acted based on the Seniority List prepared in the year 2007 when a revised Seniority List was already in place much before the said meeting. Learned Senior Advocate has thereafter taken us through the Minutes to point out that though the DPC accepted the existence of the revised Seniority List, nevertheless, on untenable grounds, the DPC relied upon the Seniority List of the year 2007. Learned Senior Advocate further pointed out that as the Petitioner was the senior most trained teacher of the concerned School, there is no reason to refuse the Petitioner of the promotion of being appointed as the Headmistress of the concerned School. Learned Senior Advocate has thereafter taken us through Rule 87-A of the Goa School Education Rules, 1986, to point out that the manner in which the Seniority List is to be communicated and thereafter also took us through the endorsement of receipt of the revised Seniority List by the Respondent no. 3 which is found at page 87 of the paper book. Learned Senior Advocate further pointed out that though the Respondent no. 3 had not accepted the Seniority List, the DPC was not within its right to discard the Seniority List which was duly prepared by the Management. Learned Senior Advocate further submits that as the revised Seniority List has not been considered by the DPC at the concerned meeting held on 10.07.2009, the recommendations itself stand vitiated and, as such, the consequent impugned Order passed by the Respondent nos. 3 and 4 deserves to be quashed and set aside.

7. On the other hand, Shri J. P. Mulgaonkar, learned Counsel appearing for the Respondent 3 has vehemently argued to point out that the revised Seniority List stands vitiated as, according to him, the procedure as laid down in Rule 87 A of the Goa School Education Rules, 1986, has not been complied with. Learned Counsel further pointed out that there are no objections invited by the Respondent no. 2 to such Seniority List and, consequently, the revised Seniority List is untenable in law. Learned Counsel further pointed out that the Respondent no. 3 has elaborately stated in the affidavit in reply the facts to disclose that the Respondent no. 2 had indulged upon an illegal exercise of powers to target the Respondent no. 3 merely because she had initiated proceedings before this Court to appoint a regular Headmistress. Learned Counsel has thereafter pointed out that the revised Seniority List does not have initials of the Respondent no. 3 and as such the DPC was within its right to discard the revised Seniority List. Learned Counsel further pointed out that as the revised Seniority List was not prepared in terms of the relevant Rules, the DPC was justified to discard such list and rely upon the list prepared in the year 2007 to make its recommendations. Learned Counsel has also pointed out that the Petitioner would not qualify to be a trained teacher in the year 1992 as she did not have the requisite qualifications. Learned Counsel further pointed out that as the Respondent no. 3 was more qualified than the Petitioner, the DPC was justified to recommend the name of Respondent no. 3 for the concerned post

of Headmistress.

8. Mr. P. Dangui, Learned Addl. Government Advocate appearing for the Respondent nos. 1, 4 and 5, has pointed out that the records submitted to the Director of Education disclosed that the initials of the Respondent no. 3 were not found in the revised list submitted to the Department. Learned Addl. Government Advocate as such submits that the DPC was justified to discard such revised Seniority List as it was not prepared in terms of Rule 87 A of the Goa School Education Rules,

9. Mr. Lawande, learned Counsel appearing for the Respondent no. 2, has pointed out that the revised Seniority List was duly communicated to the Respondent no. 3 and, in fact, the Respondent no. 3 has appended her initial endorsing the receipt of such Seniority List. Learned Counsel further pointed out that as such the DPC was not justified to discard the revised Seniority List as contended by the learned Counsel appearing for the Respondent no. 3.

10. We have considered the submissions of the learned Counsel and we have also gone through the records. The limited point for consideration based on the rival contentions is whether the DPC was justified to rely upon the Seniority List prepared in the year 2007 whilst making the impugned recommendations for the appointment of the Headmistress in the

meeting held on 10.07.2009. On going through the Minutes of the said meeting, it clearly shows that in fact the revised Seniority List was placed before the DPC. Though the DPC does not dispute that the Seniority List was revised, nevertheless, such revised Seniority List was discarded on the ground that it was not communicated nor any opportunity given to the Respondent no. 3 to raise the objections. The fact that the Seniority List was revised, is not otherwise disputed by the Respondent no. 3. The only contention raised by the Respondent nos. 3 and 4 is that such revised Seniority List was not in accordance with the Rules and that it was not communicated to the Respondent no. 2. But, however, on perusal of the endorsement of the Respondent no. 3 on the revised Seniority List as found at page 87 of the paper book, we find that in fact the Respondent no. 3 had endorsed the revised Seniority List prepared in the year 2009. In such circumstances, the contention of the learned Counsel appearing for the Respondent nos. 3 and 4 that the revised Seniority List prepared in the year 2009 was not communicated to the Respondent no. 3 cannot be accepted. Once the Seniority List was revised and the Respondent no. 3 has not raised any independent challenge to such Seniority List, it was not open to the DPC to discard such Seniority List on the spacious ground that such list was not prepared in terms of the Rules.

11. On going through the provisions of Rule 87 A of the Goa School Education Rules,, it clearly provides a right of Appeal to the person aggrieved

with the Seniority List. It was open to the Respondent no. 3 if so advised to raise a challenge in terms of such Rules. Having failed to do so, we find that the question of examining the contention of the Respondent no. 3 that the revised Seniority List was an illegal act on the part of the Respondent no. 2 cannot be examined in the present Petition as the Respondent no. 3 was notified of such Seniority List. This disputed question of fact cannot be examined by this Court in a Petition under Article 226 of the Constitution of India essentially when such allegations are raised as a defence to the claim put forward by the Petitioner and a remedy was available to the Respondent no. 3 to challenge such Seniority List.

12. Mr. J. P. Mulgaonkar, learned Counsel appearing for the Respondent no. 3, has pointed out that the objections raised by the Petitioner were belated and, as such, the Management was not justified to examine such objections. We are afraid, that such contention of the learned Counsel cannot be considered when it is now well settled that in case an Order passed by mistake results in a continuous wrong it is open for the concerned authority to rectify such errors.

13. In the present case, we find that the DPC whilst making its recommendations on 10.07.2009, has relied upon the Seniority List which was prepared in the year 2007. It was expected of the DPC to consider the revised Seniority List when admittedly there was no challenge to such List

raised by any of the aggrieved parties before the competent forum. As such, we find that on this ground alone, the recommendations of the DPC and the consequent order dated 24.07.2009 stands vitiated and deserves to be quashed and set aside.

14. It is brought to our notice that in the meanwhile, the Management of the School is with the Administrator of the concerned School. As such, the Respondent no. 1, shall proceed to constitute a fresh DPC and consider the eligible candidates for promotion to the post of Headmistress/Headmaster of the concerned School within three months from the date of receipt of the Order in accordance with law.

15. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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