IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2622 OF 2014

Vitthal Dattatray Kotekar .. Petitioner
Vs.
Antarbharati Shikshan Mandal & Ors. .. Respondents

Mr.N.V. Bandiwadekar for the petitioner.
Mr.Surel Shah for the respondent nos.1 & 2.
Ms.Prabha Badadare for the respondent no.4.
Mr.A.R. Metkari, AGP for the respondent no.5.

ALONG WITH
WRIT PETITION NO.5529 OF 2014

Dilip Dattatray Prabhavale .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Mr.Saurabh Patil i/by Mr.Avinash Belge for the petitioner.
Mr.A.R. Metkari, AGP for the respondent nos. 1 to 3.
Mr.Surel Shah for the respondent nos.4 & 5.
Ms.Prabha Badadare for the respondent no.7.

CORAM : R.D. DHANUKA, J.
DATE : 18th July 2016

P.C.

. I have heard learned counsel appearing for all the parties in both these petitions.

2. There is no dispute that the Education Officer while determining the seniority under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 had taken assistance of the President of Kolhapur District Secondary School

Association and based upon the report of the said Association, had prepared a seniority list which has affected the petitioner in Writ Petition No.2622 of 2014 and also the petitioner in Writ Petition No.5529 of 2014.

3. Based upon such seniority list prepared by the Education Officer after taking assistance of the President of Kolhapur District Secondary School Association, the management took an action against the petitioner in Writ Petition No.2622 of 2014 by reverting the petitioner to the original post.

4. Pursuant to the order dated 30th October 2015 passed by this Court, Deputy Director of Education has filed an affidavit in Writ Petition No.5529 of 2014 admitting that the Education Officer had received a complaint regarding seniority maintained by the management and the Education Officer had taken assistance of Mr.B.D. Patil of Teachers' Association who prepared a report and made a suggestion to the Education Officer. The Deputy Director of Education in the said affidavit has admitted that the Education Officer could not have relied upon the report submitted by Mr.B.D. Patil of Teachers' Association and could not have prepared the seniority list based on the such report.

5. Learned counsel appearing for the parties have agreed that the orders passed by the school tribunal in both the matters be set aside and the matters be remanded back to the Education Officer for preparation of fresh seniority list in accordance with law.

6. I therefore pass the following order :-

(a) The impugned orders passed by the school tribunal which are subject matter of the aforesaid two writ petitions are set aside;

(b) The Education Officer is directed to determine the seniority list after considering the objection, if any, raised by the petitioners in both the matters after giving them an opportunity of being heard;

(c) It is made clear that the management is also permitted to participate in the proceedings before the Education Officer on the issue of seniority list;

(d) The management is directed not to rely upon original seniority list prepared by the Education Officer;

(e) The management would be at liberty to take action based on the seniority list prepared by the Education Officer pursuant to this order. If any fresh action is taken by the management based on the seniority list as may be determined by the Education Officer, affected parties would be at liberty to challenge the action on the part of the management by filing an appropriate proceedings;

(f) It is made clear that the school tribunal would be empowered to decide the effect of that seniority as an incidental issue while deciding the appeal under Section 9 of the MEPS Act, 1977 if filed by the aggrieved party;

(g) All contentions of all the parties in both the petitions are kept open;

(h) Writ petitions are disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.