

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2078 OF 2009

Mr. Shinde Sambhaji Pandurang

... Petitioner

vs.

State of Maharashtra & Ors.

... Respondents

Mr. V.K. Bodhare i/b Mr. A.M. Joshi for the Petitioner.

Mr. S.L. Babar, AGP for the Respondent Nos.1 and 2/State.

Mr. Rahul D. Motkari for the Respondent No.3.

Mr. Sandeep R. Waghmare for the Respondent No.4.

Coram : **A.A.Sayed, J.**

Date : 2 December 2016

P.C. :

1 The challenge in this Petition filed under Articles 226 and 227 of Constitution of India is to the judgment and order dated 14 October 2008 passed by the School Tribunal, Kolhapur Region, Kolhapur, whereby the Appeal filed by the Petitioner/original Appellant under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short) came to be dismissed. The said Appeal was filed by the Petitioner challenging the order of supersession w.e.f. 1 July 1993 promoting Respondent No.4 as Head Master.

2 The Respondent No.3 Management runs two Schools viz. Kai. Sanjay Gandhi Vidyalaya at Gunavane and Mathachiwadi Vidyalaya at Mathachiwadi. The Petitioner is an Assistant Teacher teaching in the Secondary School at Kai. Sanjay Gandhi Vidyalaya at Gunavane. The Respondent No.4 Shri Kadam Laxman Kondiram who was an Assistant Teacher was arrayed in the Appeal before the School Tribunal as Respondent No.2. The Respondent No.5 Shri Khalate Goraknath Namdeo who was also an Assistant Teacher was arrayed as a Respondent No.3 in the Appeal. Shri Khalate was senior to the Petitioner but he did not challenge the promotion granted to Shri Kadam. Thus, the dispute is essentially between the Petitioner and Shri Kadam with regard to the post of Head Master. According to the Petitioner, Shri Kadam was promoted to the post of Head Master superseding him.

3 The case of the Petitioner in the Appeal was as follows - Kai. Sanjay Gandhi Vidyalay, Gunawane, was started by the Respondent-Management in the year 1979 and the Petitioner was teaching the said School since beginning. Mathachiwadi Vidyalaya, Mathachiwadi, was started in the year 1983-84. Grant-in-aid was received by the Kai. Sanjay Gandhi Vidyalaya, Gunawane, from the year 1982. Grant-in-aid was received by Mathachiwadi Vidyalaya, Mathachiwadi, from the year 1997.

4. The particulars of the Petitioner and Shri Kadam in respect of their qualification and date of appointment are as under:

	Petitioner/Appellant	Respondent No.4
Qualification:	B.A. (English) B.Ed.	B.Com., B.Ed.
Date of appointment	09.06.1979	01.07.1988

The further case of the Petitioner was that he was senior to Shri Kadam as his date of appointment is prior to that of Shri Kadam. In the seniority list prepared in the year 2000-01, he (except for Shri Khalate Goraknath), was shown as senior to other teaching staff. Thus, when the post of Head Master arose in Mathachiwadi Vidyalaya, the Respondent Management was under an obligation to consider him for the said post. In the year 1985, though he was offered to work as Head Master, he agreed to join if he was paid the scale as prescribed by the Government. Since the Respondent-Management expressed its inability to pay full scale as per the rules framed under the MEPS Act, the Respondent Management refused to appoint him as Head Master. Shri Kadam could be appointed as Head Master on regular basis only from 1998 because his initial appointment was on 1 June 1993. The appointment of Shri Kadam as Head Master on regular basis was never brought to the notice of the staff during the course of the last 10 years and it was only in the year 2000 when the common seniority list was circulated that he came to know about the promotion given to Shri Kadam on regular basis.

5 The Respondent Management had filed Written Statement opposing the Appeal. The case of the Respondent Management in the Written Statement is as follows:

The Appellant has not come with clean hands. While making the appointment of Head Master, the Respondent-Management had issued a letter to Shri Kadam as well as Shri Khalate asking their willingness to work as Head Master. The Petitioner as well as the Shri Khalate had given in writing that they were not interested for the post of Head Master. The Petitioner had approached the Court after a long gap of seven years and he was not entitled to disturb the present set up of the appointment of Head Master. The Petitioner was not ready to accept the post of Head Master in the year 1985 as his appointment was on unaided School and now when the School has become aided, he is interested in the said post. Shri Kadam was working as in-charge Head Master even prior to 1993 and this fact was within the knowledge of the Petitioner. Prior to that Shri Khalate was working as in-charge Head Master. The Petitioner himself had relinquished his right to the post of Head Master in the year 1985 and he was not entitled to raise any dispute after a long gap of 15 years.

6 Respondent No.2 Shri Kadam had also filed his Written Statement before the School Tribunal wherein he has interalia contended as under:

He was appointed as full time Assistant Teacher in the Mathachiwadi Vidyalaya with effect from 1 July 1988. He completed five years of teaching experience and became eligible for the post of Head Master as per the Rule 3 of the Maharashtra Employees of Private Schools Rules, 1981 ('MEPS Rules' for short). He was promoted to the post of Head Master at the Mathachiwadi Vidyalaya, Mathachiwadi on 1 July 1993. The Petitioner has made a false statement that I was promoted in 1998 when he was well aware that my promotion is of 1993 and the false statement is made to save limitation. The Education Officer has sanctioned his approval as Head Master by an order dated 7 August 1995. Considering the date of appointment and continuous service the Petitioner may be senior, but with effect from 1 July 1993, he has come in the category 'A' of Schedule 'F' of the MEPS Rules and the Petitioner remained in category 'C'. The Petitioner has himself stated that he was not ready to accept the post of Head Master of unaided School. The Petitioner had waived the right which had occurred to him and has not approached the Court with clean hands.

7 The School Tribunal after hearing the parties framed the following points for determination and given its findings as follows:

"Points.

Findings.

1. *Does the appellant prove that he is senior teacher than the respondent no.2?*

Yes.

2. *Does the appellant prove that the respondent management has illegally promoted to respondent no.2 as a Head Master by superseding the appellant?* No.
3. *Is the appellant entitled for promotion as a Head Master in the place of Respondent No.2?* No.
4. *What order?* As per final order.”

8 I have heard the learned Counsel for the parties, perused the material produced on record. In para 16 of the impugned order, the School Tribunal has held as follows:

“16. Though the appellant is senior than the respondent no.2 and respondent no.3 Shri Khalate is senior to the appellant, the respondent management by its letters dated 1.8.1985 (ex.33/9, 14) requested the appellant and Shri Khalate i.e. respondent no.3 whether they are willing to be appointed as a Head Master in Mathachiwadi Vidyalaya, Mathachiwadi which is unaided school w.e.f. 16.8.1985. The appellant by his letters dated 13.8.1985 and 14.8.1985 (ex.33/10 and 11) and the respondent no.3 by his letter dated 21.8.1985 (ex.33/15) refused to accept the post of Head Master of Mathachiwadi Vidyalaya, Mathachiwadi because said school was unaided. They have informed the management that they will accept the post of the Head Master in any school which is 100% aided. Therefore, the respondent management was constrained to appoint the appellant as a Head Master of the unaided school though he is junior to the appellant and respondent no.3. Now said school became aided school

and the appellant is claiming said post by challenging the promotion of the respondent no.2. When the appellant had refused to act as a Head Master in Mathachiwadi High School, Mathachiwadi, he has waived the right to be appointed in the school where the respondent no.2 is appointed. The respondent no.2 was appointed as a Head Master on unaided school w.e.f. 1.7.1993. The appellant filed this appeal on 27.12.2000 when the school became aided. It is therefore, clear that the appellant has purposely filed this appeal after about seven and half years and there is no reason to file it at such a belated stage. Because the appellant was aware about the appointment of the respondent no.2, who is junior to him, because the appellant and the respondent no.3 both have refused to act as a Head Master on the unaided school. Therefore, by his conduct the appellant is estopped from claiming the post of Head Master in Mathachiwadi High School, Mathachiwadi till the respondent no.2 is working there and said post becomes vacant. This shows that the right of the appellant has been extinguished by his conduct and because of delay and laches on his part. Therefore, though the appellant is senior than the respondent no.2 in seniority list, his promotion will be accrue after promotion of the respondent no.2 Shri Khalate who is senior to the appellant. Without promoting Shri Khalate i.e. respondent no.3 the appellant can not claim his promotion as a Head Master in any other school. Thus it is clear that the appellant has no right to claim the post of a Head Master where the respondent no.2 is working as his right has been extinguished and he is estopped from claiming the post of the respondent no.2. Therefore, it can not be said

that the respondent management had appointed the respondent no.2 as a Head Master of Mathachiwadi High School, Mathachiwadi by superseding the claim of the appellant. Thus the appointment of the respondent no.2 as a Head Master of Mathachiwadi High School, Mathachiwadi has been legally made by the respondent no.1 in consultation with the Education Department and no illegality is attributed to the respondent nos.1 and 4 while appointing and approving the appointment of the respondent no.2 as a Head of the school. Thus the appellant has failed to prove that the respondent no.2 has been illegally promoted as a Head Master by superseding his legal claim. Therefore, the appellant is not entitled to any relief as claimed by him. Hence, I answer points no.2 and 3 in the negative and proceeds to pass the following order:

ORDER

- 1) *The appeal stands dismissed.*
- 2) *No order as to costs.”*

9 The Court is informed that the Petitioner as well as the Respondent No.2 Shri Kadam have since retired. In these circumstances what is pressed before the Court is only the arrears of difference in salary and retiral benefits to the Petitioner as Head Master. At the outset, I find it necessary to observe that the Petitioner has not come to Court with clean hands and is dis-entitled to any reliefs only on that count. The Petitioner himself has written letter dated 13 August 1985 wherein he has expressed his unwillingness to work as

Head Master of the unaided School. There is no reference of his said letter dated 13 August 1985 and the Petitioner has clearly suppressed this letter in the Memo of Appeal and it is averred in the Memo of Appeal that the Respondent Management 'refused' to appoint him as Head Master. Apart from the above, the averment of the Petitioner in the Memo of Appeal that the appointment of Shri Kadam as Head Master on regular basis has never brought to the notice of the staff during the course of last 10 years and it was only in the year 2000 when the common seniority list was circulated he came to know about the promotion given to Shri Kadam on regular basis cannot be believed as Shri Kadam was discharging the duties on the post of Head Master since the year 1993 and the Petitioner himself had relinquished that post.

10 Shri Kadam's initial appointment is of 1 July 1988. He was appointed as the Head Master way back on 1 July 1993 which was approved by the Education Officer and prior thereto he was even working as in-charge Head Master. The Petitioner has filed the Appeal before the School Tribunal only on 27 December 2000 after coming to know that the School had become an aided School and the School Tribunal has rightly held that there was delay and laches on the part of the Petitioner in approaching the School Tribunal. The Petitioner had clearly acquiesced in the appointment of Shri Kadam as the Head

Master and had waived his right for being appointed as Head Master. The Petitioner was thus estopped from the claiming the post of Head Master by virtue of his conduct. In my view, the conduct of the Petitioner dis-entitles him to any relief which has been rightly rejected by the School Tribunal and the Tribunal rightly observed that the Appeal was filed after seven and half years at a belated stage. Shri Kadam had continued to be the Head Master right from 1993 and the Tribunal rightly did not disturb the functional set up of the School merely because the Petitioner having refused the promotion as Head Master in 1985 had chosen to approach the School Tribunal after seven and half years and after the Mathachiwadi School became an aided school. The judgment of the Supreme Court in the case of **B.S. Bajwa & Anr. vs. State of Punjab & Ors, JT 1988(1) SC 57** relied upon by the learned Counsel also supports the case of Shri Kadam. The Supreme Court in the aforesaid case has held that it is well settled that in service matters the questions of seniority should not be reopened after the lapse of a reasonable period as it results in disturbing settled position.

11 The judgment of the Division Bench in **Nirmala Revappa Pattanshetti vs. Mahadeo Ramchandra Mali & Ors., 2006 (2) Mh.L.J. 566** relied upon by the learned Counsel for the Petitioner was on different facts inasmuch as the Division Bench found that the the

Petitioner therein had not relinquished his claim voluntarily and in unequivocal terms which is the basic requirement of sub-rule (3) of the Rule 3 of the MEPS Rules.

12 In light of the above, no interference is called for in the impugned order. The Petition is accordingly dismissed. No order as to costs.

(A.A.Sayed, J.)

