

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 4832 OF 2016**

Smt.Pushpanjali Subodha Shenvi)
Age 46 yrs, Occ. Service,)
R/o. 401, Ritesh Tower,)
Opp.Tejashree M.S.E.B.Office,)
Santoshi Mata Road, Kalyan (West),)
Dist. Thane.) **..... Petitioner**

VERSUS

1. Nagrik Seva Mandal,)
Ganesh Wadi, Kalyan (East),)
Dist. Thane – 421 301)
Through Chairman/Secretary,)

2. Head Master,)
Ganesh Vidya Mandir [Secondary])
Ganesh Wadi, Kalyan (East),)
Dist. Thane – 421 301)

3. The Education Officer,)
[Secondary], Zilla Parishad, Thane)

4. Shri Dinesh Ganpati Barudwale,)
R/At Laxmi Park Coop.Hsg.Socy,)
B/2 A-204, Kanchangaon Kambalpada,)
Thakurli [East], Tal Kalyan,)
Dist. Thane – 421 306.) **..... Respondents**

Mr.Narendra Bandiwadekar for the Petitioner.

Mr.Sudhir Deshpande for Respondent No.1.

Mr.A.R.Metkari, A.G.R.for Respondent No.3.

Ms.Swarna Munshi for Respondent No.4.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 5th JULY, 2016

PRONOUNCED ON : 28th JULY, 2016

JUDGMENT :

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for a writ of certiorari inter alia praying for quashing and setting aside the impugned order and judgment dated 4th March, 2016 passed by the learned Presiding Officer, School Tribunal, Navi Mumbai thereby dismissing the appeal filed by the petitioner under section 9(1) (b) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules framed thereunder (for short the said MEPS Act and the said MEPS Rules). The petitioner herein had impugned the order of supersession dated 10th July, 2013 issued by the respondent no.1 management promoting the respondent no.4 to the post of the headmaster and had prayed for an order and direction against the management to promote the petitioner on the post of the head mistress w.e.f. 10th July, 2013 and to pay her all the salary as per scale, dues including back wages, emoluments, etc. attached to the said post since 10th July, 2013.

2. Some of the facts for the purpose of deciding this writ petition are as under :-

3. The respondent no.1 is an institution which runs an aided private secondary school known as Ganesh Vidya Mandir, Secondary School. The said school is having classes of standard 8 to 10.

4. The petitioner had acquired her B.A.degree in the year 1991 and B.Ed.degree in the year 1993 and M.A.degree in the year 2006. On 11th June, 1993, the petitioner was appointed as an assistant teacher in the said school on clear vacancy and permanent post. It is the case of the petitioner that the said appointment was duly approved by the Education Officer (Secondary Section) Zilla Parishad, Thane. It is the case of the petitioner that when the petitioner was appointed to the said post as an assistant teacher on 11th June, 1993, the petitioner was already having qualification of B.A., B.Ed. and thus was a “Trained Graduate Teacher” and had thus entered category 'C' of Schedule 'F' of the said MEPS Rules framed under the provisions of the said MEPS Act.

5. It is the case of the petitioner that the respondent no.4 was appointed as a teacher in the said school on 8th August, 1991. According to the petitioner, no documentary evidence whatsoever was produced by the respondent no.4 in support of the said claim such as appointment order, approval order etc. It is the case of the petitioner that from the documents on record, it appears that the respondent no.1 was appointed as assistant teacher in the said school on 14th June, 1993. On the date of such appointment as assistant teacher, the respondent no.4 was having qualification of S.C.C., A.T.D. (Arts Teachers' Diploma). It is the case of the petitioner that since respondent no.4 did not have the prescribed qualification for the post of the assistant teacher in the secondary school i.e. B.A., B.Ed. and therefore the appointment of the respondent no.4 on 14th June, 1993 was as an untrained teacher.

6. Sometime in the year 1995, the respondent no.4 passed A.M.(Arts Master) and thereafter he passed B.A. in the year 2005. It is the case of the petitioner that even if the qualification of the Arts Master is treated equivalent to

B.Ed., the respondent no.4 became trained graduate teacher in the year 2005 only when he passed B.A. and entered the Category 'C' of Schedule 'F' for the first time in the year 2005. It is the case of the petitioner that the petitioner thus was senior to the respondent no.4 since she entered the Category 'C' of Schedule 'F' first.

7. Mrs.Kalpana Avinash Wadnere was working as a Head Mistress in the said school and resigned from the said post on 8th July, 2013. It is the case of the petitioner that since the petitioner was the next senior most teacher, she was entitled to be promoted to as headmistress in the said vacant post. The petitioner made an application dated 10th August, 2013 to the respondent no.1 and requested for her promotion to the said post of Head Mistress. On 24th October, 2013, the petitioner made a representation to the Education Officer and raised an objection to the seniority list submitted by the management. On 16th January, 2014, the petitioner submitted a reminder to the Education Officer.

8. It is the case of the petitioner that on 24th March, 2014 the petitioner received copy of a caveat dated 19th March, 2014 filed by the management in this case. It was stated in the said caveat that the respondent no.4 had been appointed as Head Master on 10th July,2014 and an approval to the said appointment was granted by the Education Officer on 10th January, 2014. It is the case of the petitioner that the petitioner came to know about the illegal promotion of the respondent no.4 made by the management as headmaster in the said school in the vacancy having arisen due to the resignation of Mrs.Kalpana Avinash Wadnere after service of the caveat by the respondent no.1. The petitioner accordingly made an application on 25th March, 2014 to the Education Officer and pointed out that the petitioner was senior to the respondent no.4 and inspite of such seniority, the petitioner was superseded by promoting the respondent no.1.

9. By his letter dated 3rd April 2014, the Education Officer directed the management to appear before the Education Officer on 9th April, 2014 along with approval orders, year-wise seniority lists, roster, appointment order and the other necessary documents. The Education Officer served a copy of the said notice also upon the petitioner. The petitioner appeared before the Education Officer on 9th April, 2014 and pointed out her seniority over the respondent no.4 and as to how the petitioner was entitled to be promoted to the post of the headmaster in the said school. The petitioner thereafter made a representation to the Education Officer on 11th April 2014, 26th April 2014 and to the Deputy Director of Education on 29th April 2014. There was however no response from the Education Officer or Deputy Director of Education to the said representation made by the petitioner.

10. On 19th May, 2014, the petitioner herein filed an appeal (8 of 2014) before the school tribunal under section 9(1)(b) of the said MEPS Act against the respondents and prayed for setting aside the order of supersession dated 10th July, 2013 and applied for order and direction against the management to promote the petitioner as headmaster w.e.f.10th July, 2013 with all consequential service benefits. The said appeal was resisted by the management as well as by the respondent no.4.

11. By an order and judgment dated 4th March, 2016, the learned presiding officer of the school tribunal dismissed the said appeal filed by the petitioner and holding that on the basis of the date of appointment, respondent no.4 was senior to the petitioner and therefore the promotion of the respondent no.4 to the said post of headmaster will not amount to supersession of the petitioner since the respondent no.4 was senior to the petitioner. This order and judgment of the

school tribunal is impugned by the petitioner in this petition filed under Articles 226 and 227 of the Constitution of India.

12. Mr. Bandiwadekar, learned counsel appearing for the petitioner invited my attention to the Rule 6 of M.E.P.S.Rules which provides for minimum qualification for the post of teacher and non-teaching staff in the primary schools, secondary schools, junior colleges of education and junior collage classes attached to secondary school and senior colleges as specified in Schedule 'B'. Reliance is placed on Item II which provides for qualification for a trained teacher for secondary schools and junior colleges of education. He submits that under clause (1) of Item II for a graduate teacher, the required qualification is a Bachelor's degree in teaching or education of any statutory University or a qualification recognized by Government as equivalent thereto. He submits that for an appointment of a assistant teacher for a secondary school, the candidate is required to be a trained graduate teacher who is holding B.A./B.Sc./B.Com.,B.T./B.Ed. or its equivalent qualification. He submits that when the petitioner was appointed as an assistant teacher on 11th June, 1993, the petitioner was already having the requisite qualification of B.A. and B.Ed. and was thus appointed as a trained graduate teacher. The petitioner also received a salary for the post of trained graduate teacher and the said salary was paid from the grant-in-aid released by the Education Officer in favour of the respondent no.2 school, since it being an aided school.

13. It is submitted by the learned counsel for the petitioner that the respondent no.4 did not produce any documentary evidence such as appointment order etc. to show that he was appointed as a teacher in the respondent no.2 school on 8th August, 1991. He submits that in any event the record produced by the

respondent no.4 on record of the school tribunal showed that when the respondent no.4 was appointed as an assistant teacher on 14th June, 1993, he was having qualification of S.S.C., A.T.D. He submits that on the date of appointment of respondent no.4 as an assistant teacher on 14th June, 1993, he did not have the prescribed qualification for the post of assistant teacher in the secondary school i.e. B.A./B.Sc./B.Com.,B.T./B.Ed. and other equivalent qualification. It is submitted that the appointment of the respondent no.4 on 14th June, 1993 thus was as an untrained teacher.

14. It is submitted that the respondent no.4 has admittedly passed Arts Master only in the year 1995 which could be equivalent to B.Ed. The respondent no.4 admittedly passed B.A. only in the year 2005. He submits that since the respondent no.4 acquired the requisite qualification for the post of assistant teacher i.e. A.M.(Art Master's Diploma) in 1995 and the B.Ed. only in the year 2005, the respondent no.4 become a trained graduate teacher and entered the Category 'C' of Schedule 'F' only in the year 2005. He submits that the petitioner however had already entered in Category 'C' of Schedule 'F' on 11th June, 1993 i.e. much prior to the respondent no.4 entered the Category 'C' of Schedule 'F'.

15. It is submitted that since the respondent no.4 did not have the requisite qualification for the post of an assistant teacher till 2005, the name of the respondent no.4 was placed in other categories mentioned in Schedule 'F' depending upon his qualification. He submits that since on the date of the appointment of respondent no.4 as an assistant teacher on 14th June, 1993, the respondent no.4 was having qualification of S.C.C., A.T.D., his initial appointment was to be treated as an appointment in Category 'H' and not in Category 'C'. He submits that only on the basis of the date of appointment of the respondent no.4 alleged to have been of the year 1991, the respondent no.4 could not claim

seniority over the petitioner who was qualified trained graduate teacher as on 14th June, 1993 i.e. much prior to the respondent no.4 became trained graduate teacher.

16. Learned counsel for the petitioner placed reliance on Rule 12 of M.E.P.S.Rules which provides for an obligation on the part of the management to prepare seniority list of the teaching staff including headmaster and assistant head master and non-teaching staff in the school in accordance with the guidelines laid down in Schedule F. Learned counsel for the petitioner invited my attention to the Item II of Schedule 'F' of M.E.P.S. Rules and submits that a qualification for a trained graduate teacher is prescribed in Category 'C' as B.A./B.Sc./B.Com.,B.T./B.Ed.or its equivalent. He submits that when the respondent no.4 was appointed as assistant teacher, he had passed S.C.C. and A.T.D. and admittedly did not have the qualification of D.Ed. The respondent no.4 thus would not have entered Category 'C' when he was appointed as an assistant teacher.

17. Reliance is also placed on Note 4 which provides that category mentioned in Category 'C' represented the ladder of the seniority and had been mentioned in descending order. It is submitted that the school tribunal has dismissed the appeal filed by the petitioner basically on the ground that the petitioner had not raised any objection to the seniority list prepared by the management and circulated under Rule 12 of the M.E.P.S. Rules showing the name of the respondent no.4 as senior to the petitioner and thus could not claim seniority over the respondent no.4. It is submitted by the learned counsel that merely because the petitioner did not raise any objection to her placement in the seniority list previously prepared by the management, the petitioner cannot be prevented from raising such objection to any subsequent seniority list prepared by the

management or to the promotion effected by the management on the basis of such seniority lists.

18. It is submitted that it is a matter of record that the petitioner had raised a seniority dispute by raising an objection on 24th October, 2013 and thereafter when the then headmistress Mrs.Kalpana Avinash Wadnere had resigned and the petitioner being the next senior-most teacher was entitled to be promoted to the said post as headmistress. In support of this submission that the finalization of the seniority list under Rule 12 of the M.E.P.S. Rules was not final and conclusive and section 9 of the M.E.P.S.Act overrides Rule 12, learned counsel for the petitioner placed reliance on the judgment of this court in case of **Umesh Balkrishna Vispute vs. The State of Maharashtra & Ors.**, 2001(3) All M.R. 25 and in particular paragraphs 19 to 21.

19. It is submitted by the learned counsel for the petitioner that the school tribunal was empowered to decide the issue of seniority while deciding the issue of supersession of the petitioner as an incidental question. He submits that the school tribunal however totally failed to consider the mandatory provisions of the M.E.P.S.Act and the Rules and more particularly Rule 6, Rule 12, Schedule 'B' and Schedule 'F'. He submits that the impugned order passed by the school tribunal shows perversity and non application of mind.

20. It is submitted by the learned counsel for the petitioner that the school tribunal could not have rejected the appeal of the petitioner on the ground that in the minutes of the meeting of all the teachers and staff held on 8th July, 2013, the petitioner was also present and had signed on the consent letter giving no objection in promoting the respondent no.4 as a head. He placed reliance on Rule 3(3) of the

M.E.P.S.Rules and submits that if any vacancy in respect of the post of headmaster occurs, it is the duty of the management to communicate the occurrence of such vacancy of the head to the senior most qualified teacher having satisfactory record of service and to ask him to submit his willingness for appointment to the post within a period of 15 days from the date of receipt of such communication.

21. It is submitted that a claim of such senior most qualified teacher having satisfactory record of service, for the appointment to the post of Head, can be disregarded only if such senior most teacher of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. Such statement has to be recorded by such senior most teacher in his own handwriting before the Education Officer within a period of 15 days from the date of receipt of the communication from the management about occurrence of vacancy. He submits that the Education Officer has to make an endorsement on the said statement having been recorded in his presence. He submits that once such statement is recorded in the handwriting of such senior most teacher in the presence of the Education Officer and an endorsement is made by the Education Officer thereon, such senior most teacher cannot be allowed to withdraw his statement.

22. Learned counsel for the petitioner invited my attention to the said minutes of the meeting dated 8th July, 2013 and a joint consent letter of all the teachers purportedly giving no objection to the promotion of the respondent no.4 as a headmaster and would submit that no such mandatory requirement under Rule 3(3) of the M.E.P.S.Rules for giving no objection by the senior most teacher who was eligible for the said post was followed. The said minutes of the meeting prepared by the management showing the presence of the petitioner or the

signature of the petitioner on the common alleged consent letter which was not in the handwriting of the petitioner or was not made in the presence of the Education Officer and the Education Officer not having made any endorsement thereon could not be considered as binding or in compliance with Rule 3(3) of the M.E.P.S. Rules and thus no cognizance thereof can be taken by the school tribunal against the petitioner. He submits that even such common consent letter would indicate that the signature of all the teachers whether they were eligible to be appointed as headmaster in the vacancy having occurred or not and even the non-teaching staff including the peons who had nothing to do with the said promotion, their signatures were obtained by the management on the said common alleged consent letter. He submits that the school tribunal however did not consider this glaring fact and considered the said documents having binding effect under Rule 3(3) of the M.E.P.S. Rules illegally.

23. Insofar as NOC given by the respondent no.4 on 14th March, 1996 for appointment of Ms. Kalpana Avinash Wadnere and no objection of the petitioner to the said appointment of Ms. Kalpana Avinash Wadnere is concerned, it is submitted by the learned counsel for the petitioner that at the first instance the respondent no.4 who was not the next senior most teacher was not required to give any such NOC for appointment of Ms. Kalpana Avinash Wadnere as a headmistress. He submits that even if the respondent no.4 had given such NOC and the petitioner had not raised any objection to the respondent no.4 giving such NOC it would not amount to an estoppel against the petitioner. The respondent no.4 was admittedly not the next senior most teacher when the said vacancy had arisen in the year 1996 and thus was not bound to give such NOC. The school tribunal has given weightage to such NOC given by the respondent no.4 in the year 1996 which was of no significance and was unwarranted under Rule 3(3) of the M.E.P.S. Rules. It is

submitted that the impugned order shows total perversity and illegality having been passed in violation of the provisions of M.E.P.S.Act and the Rules.

24. It is submitted by the learned counsel for the petitioner that merely because the respondent no.4 was promoted as supervisor since 13th June, 2005, there was no effect on the seniority of the petitioner. He submits that as a supervisor, the respondent no.4 could only get additional allowance and would have continued to remain as a teacher. He submits that the appointment of the respondent no.4 to the said post of supervisor would not make him senior to the petitioner in view of the fact that when the petitioner was appointed as an assistant teacher on 14th June, 1993, the petitioner was already holding the qualification of a trained graduate teacher on the date of such appointment itself whereas the respondent no.4 obtained requisite qualification of a trained graduate teacher only in the year 2005. The petitioner thus entered the Category 'C' of Schedule 'F' first in point of time and was senior to the respondent no.4 in all respect. He submits that the impugned order passed by the school tribunal holding that the respondent no.4 was senior because of his promotion as supervisor is totally perverse and shows illegality in the impugned order.

25. Insofar as the view taken by the school tribunal that even if the petitioner and the respondent no.4 were appointed as assistant teacher on the same day i.e. 14th June 1993, since the respondent no.4 was born earlier than the petitioner, the respondent no.4 was to be given a seniority on that ground is concerned, it is submitted by the learned counsel for the petitioner that the date of birth of the respondent no.4 could be relevant only if the respondent no.4 also would have obtained the requisite qualification as a trained graduate teacher and would have been appointed on the same day when the petitioner who was holding

the qualification of a trained graduate teacher and not otherwise.

26. It is submitted that the petitioner who was a trained graduate teacher on 14th June, 1993 and the respondent no.4 became trained graduate teacher in 2005, the case of the respondent no.4 could not have been compared with the case of the petitioner and the respondent no.4 could not have been given seniority on the basis of his date of birth being prior to the date of birth of the petitioner. He submits that the reasons recorded by the school tribunal on this ground also shows perversity and deserves to be set aside.

27. Learned counsel for the petitioner placed reliance on the judgment of this court in case of **Anjali Jayant Khati vs. Bal Mandir Sanstha, Nagpur & Ors.**, 2009(1) All M.R.221 and in particular paragraph 11 and would submit that unless and until the respondent no.4 would have acquired the qualification as B.Ed. or professional qualification, he could not go in the ladder. The respondent no.4 could enter the 'C' Category only when he acquired training or professional qualification. He submits that the date of continuous appointment is not the only criteria for fixation of seniority.

28. Learned counsel for the petitioner placed reliance on the judgment of this court in case of **Ashok Narayan Sathe vs. Education Officer (Secondary) Zilla Parishad, Solapur and others**, 2007(4) Mh.L.J. 358 and in particular paragraphs 7 to 10 and would submit that since on the date of appointment of respondent no.4 as assistant teacher, the respondent no.4 had not become graduate, he could not be considered as trained graduate. It was necessary for him to possess both B.A. degree as well as B.Ed. qualification or equivalent to B.Ed. qualification for considering him to be a trained graduate teacher.

29. Learned counsel appearing for the petitioner also placed reliance on the judgment of Full Bench of this court in case of ***St.Ulai High School, through its Principal & Anr. vs. Devendraprasad Jagannath Singh & Anr.*** 2007(1) Bom.C.R.540 and would submit that the decision on the issue of inter se seniority under Rule 12 of the M.E.P.S.Rules is not final. The tribunal would have jurisdiction while deciding the lawfulness of the act of the management to adjudicate upon the correctness of the definition of the Education Officer under Rule 12 as an incidental question.

30. Mr.Deshpande, learned counsel for the respondent no.1 on the other hand submits that the respondent no.4 was appointed by the management as a drawing teacher on 8th August, 1991 and such date of appointment was all throughout shown in the muster roll, seniority list etc. He submits that the petitioner had signed all such seniority list from 1995 without raising any objection about the seniority of the respondent no.4 having shown above the seniority of the petitioner or about the date of appointment of the respondent no.4. He submits that the respondent no.4 was already having the qualification of Arts Teachers' Diploma which was acquired by the respondent no.4 in the year 1990 when the respondent no.4 was appointed as a drawing teacher from 8th August, 1991. He submits that the respondent no.4 thereafter acquired the qualification of Arts Masters' Diploma in the year 1995 which was equivalent to the B.Ed. degree. He submits that the respondent no.4 had obtained B.A. degree in the year 2005.

31. On the issue raised by the petitioner whether the respondent no.4 was a qualified trained graduate teacher on the date of appointment of the respondent no.4 as an assistant teacher or not, the learned counsel for the respondent no.1

invited my attention to the Schedule 'B' II which provided for the qualification of a trained teacher in a secondary school and junior colleges of education. He placed reliance on Item 3 which provides for qualification of drawing teacher which reads thus :-

“ A Drawing Teachers' or a Drawing Masters' certificate or an Art Masters' Certificate or Art Teachers' Diploma or Art Masters' Diploma. ”

32. It is submitted that the Art Teachers' Diploma which was obtained by the respondent no.4 was equivalent to the qualification of B.Ed. He placed reliance on Rule 3(1)(b) and would submit that on the date of the vacancy for the post of headmaster having arisen, the respondent no.4 was the senior most qualified assistant teacher and had fulfilled the conditions and qualification set out in Rule 3(1)(b) of the M.E.P.S.Rules. He also placed reliance on the letter dated 9th April, 2014 from the petitioner to the Education Officer and would submit that in the said letter addressed by the petitioner herself, she had admitted that the respondent no.4 was appointed as teacher on 8th August, 1991. He submits that the petitioner thus cannot be allowed to dispute the date of the appointment of the respondent no.4 as a drawing teacher in the respondent no.2 school as 8th August, 1991. He submits that the respondent no.4 was thus qualified assistant teacher since 1991 and since the petitioner was appointed on 14th June, 1993, the respondent no.4 was senior to the petitioner in all respect.

33. Learned counsel for the respondent no.1 placed reliance on Government Resolution dated 25th November, 1988 and submits that under the said Government Resolution, the qualification of Art Masters' Diploma obtained by the respondent no.4 in the year 1995 was made equivalent to the qualification

prescribed in Category 'C' and thus respondent no.4 became eligible to be promoted as headmaster he being senior most teacher.

34. Learned counsel for the respondent no.1 made an attempt to distinguish the judgment of this court in case of **Umesh Balkrishna Vispute** (supra) and in case of **Anjali Jayant Khati** (supra) on the ground that respondent no.4 had already obtained the qualification of Art Teachers' Diploma much prior to the appointment of the petitioner and would submit that the respondent no.4 was thus a qualified trained graduate teacher on the date of the appointment of the respondent no.4 in the year 1991 itself.

35. Learned counsel for the respondent no.1 placed reliance on the judgment of Supreme Court in case of **Viman Vaman Awale vs. Gangadhar Makhriya Charitable Trust and others** (2014) 13 SCC 219 and in particular paragraphs 18, 22 and 23. He submits that since the respondent no.4 was already a qualified trained graduate teacher in the year 1991, the acquisition of higher qualification at a later date, even when such a higher qualification is a requisite qualification for the higher post, will not be determinative for fixing the seniority. He submits that since the respondent no.4 was already holding requisite qualification of Arts Teachers' Diploma on the date of his appointment as a teacher, his seniority was to be counted on the basis of continuous appointment and since the respondent no.4 was appointed prior in point of time to the petitioner, the respondent no.4 was senior to the petitioner.

36. It is submitted by the learned counsel for the respondent no.1 that since the petitioner had not challenged the seniority list since 1995 till 2013 showing the name of the respondent no.4 as a senior to the petitioner, muster roll,

the date of the appointment of the respondent no.4 as 8th August, 1991, the petitioner was estopped from claiming that the petitioner was senior to the respondent no.4 or on that ground was eligible to be promoted as headmaster.

37. It is submitted by the learned counsel for the respondent no.1 that in the year 2005, the post of supervisor had fallen vacant. The respondent no.1 management had promoted the respondent no.4 to the said post of supervisor. The petitioner however did not raise any objection even at that stage. The reliance is placed on Rule 5(5) of the M.E.P.S. Rules in support of the submission that the post of supervisor has to be filled based on seniority cum merit. He submits that the petitioner thus could not claim the seniority over the respondent no.4 having not raised any objection when the management granted promotion to the respondent no.4 to the said post of supervisor and not claiming the promotion to the said post.

38. Learned counsel for the respondent no.1 submits that in the year 1996, Mrs.Kalpana Avinash Wadnere was appointed as headmistress. The respondent no.4 had given his NOC to the said promotion of Mrs.Kalpana Avinash Wadnere reserving his right to claim the said post in future. He submits that the petitioner did not raise any objection to the said no objection given by the respondent no.4 reserving his right to claim the said post in future. He submits that the petitioner cannot be permitted to claim seniority over the respondent no.4 on that ground also.

39. Insofar as submission of the learned counsel for the petitioner that the cause of action had arisen on the date of the service of caveat dated 19th March, 2014 filed by the management is concerned, it is submitted by the learned counsel

for the respondent no.1 that the petitioner was present in the meeting held by the management on 8th July, 2013 which was also attended by the other teaching and non-teaching staff of respondent no.2 school. In the said meeting the management had proposed to appoint the respondent no.4 as a headmaster. The petitioner gave his no objection to the management to appoint the respondent no.4 as a headmaster. He also placed reliance on the letter addressed by all the members of staff giving their no objection for appointment of the respondent no.4 to the post of headmaster. He submits that the school tribunal has recorded various findings of fact which cannot be interfered with by this court in this petition under Article 226 read with Article 227 of the Constitution of India. Learned counsel for the respondent no.4 adopted the submissions made by the learned counsel for the respondent no.1.

40. Mr.Bandiwadekar, learned counsel for the petitioner in rejoinder submits that neither the respondent no.1 nor the respondent no.4 had produced any appointment letter of the respondent no.4 as drawing teacher before the school tribunal or even in this proceedings. No such contention had been raised either by the respondent no.1 or by the respondent no.4 in the written statement filed before the school tribunal.

41. Insofar as submission of the learned counsel for the respondent no.1 that the qualification of the Arts Teachers' Diploma was equivalent to the B.Ed. is concerned, it is submitted that the said qualification of Arts Teachers' Diploma was not equivalent to the first three categories mentioned in Category 'C' of Schedule 'F'. It is submitted that under Rule 3(1)(b) of the MEPS Rules, for an appointment of 'Head' in a secondary school, the qualification prescribed is that the candidate shall be a graduate possessing Bachelor's degree in teaching or education of a

statutory University or any other qualification recognized by Government as equivalent thereto and shall possess not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which atleast two years' experience shall be after acquiring Bachelor's degree in teaching or education. He submits that the respondent no.4 had not satisfied the said mandatory qualification.

42. Without prejudice to his aforesaid submission, it is submitted that at the most the qualification of Art Teachers' Diploma obtained by the respondent no.4 on the date of his appointment as assistant teacher could be considered as equivalent to B.Ed. He submits that admittedly on the date of appointment of respondent no.4 as assistant teacher, the respondent no.4 had not passed the graduation and thus could not have entered Category 'C'. He submits that only if the respondent no.4 would have entered Category 'C' of Schedule 'F' and would have been senior to the petitioner and would have satisfied other conditions set out in Rule 3(1)(b), the respondent could have been promoted as a headmaster.

43. Insofar as submission of the learned counsel for the respondent no.1 that the respondent no.4 was appointed as a drawing teacher and the qualification required for the said post was Arts Teachers' Diploma is concerned it is submitted by the learned counsel for the petitioner that it was neither pleaded nor proved by the respondent no.1 or by the respondent no.4 that the respondent no.4 was appointed as a drawing teacher before the school tribunal. He submits that in any event even if the respondent no.4 was appointed as a drawing teacher based on his qualification of Arts Teachers' Diploma, on the basis of such qualification, respondent no.4 could not have become a trained graduate teacher. He submits that the Schedule 'B' 'II' specifically provides for separate qualification for

Graduate Teachers, for under graduate teachers, for drawing teachers, for craft teachers and for language teachers. He submits that even if the respondent no.4 had obtained qualification of Arts Teachers' Diploma or Arts Masters' Diploma for the purpose of appointment as a drawing teacher, on the basis of the said qualification, the respondent no.4 could not claim himself to be a graduate teacher for which a separate qualification was provided in Schedule B(II).

44. Insofar as reliance placed by the learned counsel for the respondents on the Government Resolution dated 25th November, 1988 in support of his submission that the qualification of Arts Teachers' Diploma could be considered for entering Category 'C' of Schedule 'F' for the purpose of promotion is concerned, it is submitted by the learned counsel for the petitioner that even the said Government Resolution will not assist the case of the respondent nos.1 or 4. He submits that even under the said Government Resolution, for the purpose of entry in a Category 'C' of Schedule 'F', a teacher shall possess the degree of a recognized University plus Art Masters' Diploma etc. He submits that admittedly on the date of appointment of the respondent no.4 as assistant teacher, he did not have both the degrees.

45. It is submitted that in any event under the said resolution, the Government had directed that the said provision made in the Government Resolution should be incorporated in the M.E.P.S.Rules by amending the M.E.P.S.Rules. He submits that admittedly the M.E.P.S.Rules are not yet amended by incorporating the decision taken by the Government referred to in the said Government Resolution. In support of this submission, learned counsel for the petitioner invited my attention to section 16 of the M.E.P.S.Act and would submit that under the said enabling provision, the State Government is empowered to

make the rules for prescribing the minimum qualification for recruitment of employees of private schools, superannuation, re-employment, promotion etc. Rules as may be framed by the State Government shall be subject to the conditions of previous publication and have to be placed before each house of the State Legislature. He submits that even if the Government Resolution is held applicable, the same being sub-ordinate legislation under Article 162 of the Constitution of India, it cannot prevail over the statutory rules framed by the State Government under section 16 of the M.E.P.S.Act.

46. Learned counsel for the petitioner distinguished the judgment of Supreme Court in case of **Viman Vaman Awale** (supra) on the ground that the Supreme Court in the said judgment had considered the qualification required for a primary teacher under Rule 2(1) read with Schedule 'B'. He submits that the qualifications required for appointment of a Head in a primary school are totally different and are not at all applicable in respect of the appointment of Head in a secondary school. He submits that the said judgment of Supreme Court relied upon by the respondent no.1 is thus not applicable to the facts of this case and reliance thereon is totally misplaced. He submits that the issues raised before the Supreme Court in the said judgment were totally different. It is submitted that the conditions of continuous appointment with qualification was not satisfied by the respondent no.4 in this case.

47. It is submitted by the learned counsel that since the respondent no.4 was junior to Mrs.Kalpana Avinash Wadnere, he was not required to give his NOC when the said Mrs.Kalpana Avinash Wadnere was promoted. He submits that the petitioner was neither required to give any such NOC nor was called upon to give such NOC when the said Mrs.Kalpana Avinash Wadnere was being promoted as a

headmistress. He submits that the management had obtained NOC even from peons and clerks while proposing to promote the said Mrs.Kalpana Avinash Wadnere to the post of headmistress though the peons and clerks had nothing to do with such promotion to the post of the headmistress. They were neither eligible nor were senior to the said Mrs.Kalpana Avinash Wadnere.

REASONS AND CONCLUSIONS :-

48. I have heard the rival submissions made by the learned counsel for the parties at length and have given my anxious consideration to the rival submissions made by the learned counsel. A perusal of the record shows the following undisputed facts in the above matter.

49. The respondent no.1 i.e. Ganesh Vidya Mandir, Secondary School is having standard 8 to 10. The petitioner had acquired her B.A. Degree in the year 1991, B.Ed. Degree in the year 1993 and M.A. Degree in the year 2006. The petitioner was appointed as an Assistant Teacher in the school on a clear and permanent vacancy on 14th June 1993. Her appointment was duly approved by the Education Officer (Secondary Section) Zilla Parishad, Thane. In so far as the respondent no.4 is concerned, he had obtained qualification of the Art Teacher's Diploma (ATD) some time in the year 1990, certificate of Art Master in the year 1995 and passed B.A. in the year 2005.

50. It is the case of the respondent no.4 that he was appointed as a Drawing Teacher in the said school on 8th August 1991 and his name was shown all throughout in the muster roll and the seniority list as an Assistant Teacher.

51. The question that arises for consideration of this Court is as to whether the petitioner had entered the Category 'C' of Schedule 'F' of the M.E.P.S. Rules before the respondent no.4 and for the purpose of promotion to the post of Head Master, the petitioner was senior to the respondent no.4 or vice versa.

52. A perusal of the impugned order passed by the school tribunal indicates that there is no dispute that the respondent no.4 had completed his qualification of Art Master after the year 1991 and B.A. in the year 2005. In so far as the dispute about the date of appointment of the respondent no.4 on 8th August 1991 in the respondent no.2-School is concerned, a perusal of the order passed by the school tribunal indicates that the school tribunal has placed reliance on a letter addressed by the petitioner to the Education Officer referring to the date of appointment of the respondent no.4 as 8th August 1991. A perusal of the record however indicates that neither the management nor the respondent no.4 could produce any letter of appointment of the respondent no.4 appointing the respondent no.4 as a Drawing Teacher with effect from 8th August 1991.

53. Be that as it may, the fact remains that the respondent no.4 as well as the petitioner herein were both appointed as Assistant Teachers on 14th June 1993. Admittedly, on the date of appointment of the respondent no.4 as an Assistant Teacher, the respondent no.4 did not have any of the qualifications prescribed in Item II of Schedule B of the M.E.P.S. Rules or at least B.A. degree.

54. A perusal of the order passed by the school tribunal further indicates that the school tribunal has also considered the order dated 4th October 1994

passed by the management sanctioning the leave of the respondent no.4 stating that the respondent no.4 was working as a Drawing Teacher from the academic years 1991 to 1994 and the leave for the period from 10th October 1994 to 30th April 1995 was sanctioned by the management in favour of the respondent no.4 as without pay for acquiring higher qualification of the Art Master. It is thus clear beyond reasonable doubt that when the said leave was sanctioned by the management on 4th October 1994, the respondent no.4 till then did not have qualification of Art Masters' Diploma though the respondent no.4 was appointed as an Assistant Teacher in the year 1993.

55. Rule 6 of the M.E.P.S. Rules provides for Qualifications of Teachers and non-teaching staff. Under the said rules, it is provided that the minimum qualifications for the posts of teachers and the non-teaching staff in the primary schools, secondary schools, Junior Colleges and Junior Colleges of Education shall be as specified in Schedule 'B.' Schedule B (II) provides for Qualifications for Trained Teachers in Secondary Schools and Junior Colleges of Education. The said provision provides for separate qualifications for Graduate Teachers, Undergraduate Teachers, Drawing Teachers, Crafts Teachers and for Language Teachers.

56. A perusal of the said provision clearly indicates that qualifications for Graduate Teachers and for Drawing Teachers are totally different. The qualification for appointment of a Drawing Teacher is "Drawing Teachers' or Drawing Masters' Certificate or an Art Masters' Certificate or Art Teachers' Diploma or Art Masters' Diploma." It was the case of the respondent no.4 that he had possessed the qualification of Art Teacher's Diploma in the year 1991 and was appointed as a Drawing Teacher. Under clause 1 of Schedule B (II)

which deals with the qualifications for Graduate Teachers, a candidate who is appointed as a Graduate Teacher must possess a Bachelor's degree in Teaching or Education of any statutory University or a qualification recognised by Government as equivalent thereto.

57. Such candidate was required to be a trained graduate teacher who was holding B.A./B.Sc./B.Com.,B.T./B.Ed. or its equivalent qualification. It is not in dispute that though the respondent no.4 was appointed as an Assistant Teacher on 14th June 1993, he was only possessing the qualification of Art Teachers' Diploma and was not holding qualification of B.A. and B.Ed. However, the petitioner, on the other hand, was already holding the qualification of B.A. and B.Ed. on the date of her appointment as an Assistant Teacher in the year 1993. The petitioner was receiving a salary for the post of trained graduate teacher from the grant-in-aid released by the Education Officer in favour of the respondent no.2-School.

58. In my view, the respondent no.4 on the date of his appointment as an Assistant Teacher on 14th June 1993 was an untrained teacher. He had admittedly passed the Art Master qualification in the year 1995 and even if the said Art Master qualification was to be treated as an equivalent to B.Ed. degree, the fact remains that the respondent no.4 possessed B.A. degree only in the year 2005. In my view, the respondent no.4 thus obtained the requisite qualification for the post of Assistant Teacher only in the year 2005 when the respondent no.4 had passed his B.A. degree. In my view, even if the respondent no.4 had obtained the qualification of Arts Teachers' Diploma prior to the date of his appointment as a Drawing Teacher which was one of the qualifications for the post of drawing

teacher, the said qualification of Art Teachers' Diploma could not be compared with the qualification of the Graduate Teachers which qualification is a much higher qualification which was required for the appointment of assistant teacher in the secondary school. In my view, the order passed by the school tribunal on this issue thus shows perversity and is in violation of the provisions of the M.E.P.S. Rules.

59. Schedule 'F' of the M.E.P.S. Rules prescribes Guidelines for fixation of Seniority of Teachers in the primary schools, secondary schools, Junior Colleges of Education and Junior College Classes attached to Secondary Schools and Senior Colleges. In this matter, the parties are governed by the guidelines for fixation of Seniority of Teachers in the secondary schools. Category 'C' of Schedule 'F' provides for various qualifications. Note 4 of Category 'C' of Schedule 'F' provides for categories mentioned in the said Schedule 'F' which represent the ladder of seniority and have been mentioned in descending order.

60. In so far as the seniority for the post of Head Master in the secondary school is concerned, such Head Master must possess qualification of B.A./B.Sc./B.Com.,B.T./B.Ed. or its equivalent qualification. It is undisputed position that when the petitioner and the respondent no.4 were appointed as Assistant Teachers on 14th June 1993, though the petitioner was already holding the qualification of B.A. and B.Ed., admittedly the respondent no.4 was not holding the qualification of B.A./B.Sc./B.Com. which was one of the requisite qualification for appointment of a candidate as an assistant teacher.

61. In my view, since the respondent no.4 did not possess the requisite

qualification on the date of his appointment as an Assistant Teacher whereas the petitioner was already holding the requisite qualification on the date of her appointment as an Assistant Teacher i.e. 14th June 1993, the petitioner entered the Category 'C' of Schedule 'F' of the M.E.P.S. Rules first and thus became senior to the respondent no.4. Finding of the school tribunal on the issue of qualification of Art Teachers' Diploma obtained by the respondent no.4 is totally perverse and is contrary to the guidelines applicable for fixation of Seniority of Teachers in the secondary schools prescribed in Schedule B of the M.E.P.S. Rules. In my view, the qualification of Arts Teachers' Diploma obtained by the respondent no.4 which was the qualification for appointment of a Drawing Teacher could not have been considered for the purpose of appointment as Assistant Teacher.

62. Division Bench of this Court in the case of **Anjali Jayant Khati** (*Supra*) has held that the date of continuous appointment is not the only criteria for fixation of seniority. Seniority has to be fixed according to Rules laid down in Schedule 'F' to the M.E.P.S. Rules. It is held that while fixing the seniority, the date of acquisition of B.Ed. qualification would also become material. Unless one acquires or possesses such qualification as B.Ed. or professional qualification, one cannot go up in the ladder. If a teacher is a graduate but does not hold training or professional qualification, he cannot fall in Category 'C'. He may enter 'C' Category only on the day he acquires training or professional qualification. It is held that a trained teacher would be put above the untrained teacher though length of service wise, the untrained teacher may be senior. In my view, the judgment of the Division Bench of this Court in the case of **Anjali Jayant Khati** (*Supra*) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

63. In my view, even if the respondent was appointed as drawing teacher in the year 1991, since he did not possess the requisite qualification to become assistant teacher, based on his appointment as drawing teacher in the year 1991, he could not be treated as senior to the petitioner.

64. A perusal of the order passed by the school tribunal indicates that the school tribunal has rejected the appeal filed by the petitioner herein also on the ground that the seniority list prepared by the management in the year 1995-96, 1996-97 clearly showed the name of the respondent no.4 at serial no.2 and the name of the petitioner herein at serial no.3 and also the date of appointment as 8th August 1991 and 14th June 1993 respectively which was not disputed by the petitioner. It is held that the petitioner had signed the seniority list prepared by the management without any protest in which the respondent no.4 was shown senior to the petitioner which indicated that the petitioner had knowledge of the fact that the respondent no.4 was senior to her.

65. This Court in the case of *Umesh Balkrishna Vispute (supra)* has considered this issue while interpreting Rule 12 of the M.E.P.S. Rules. It is held by the Division Bench of this Court that finalization of seniority list in terms of Rule 12 of the M.E.P.S. Rules is not final and conclusive and is not binding on the tribunal. Section 9 (1) of the M.E.P.S. Act has overriding effect over such determination and finalization of the seniority list in terms of Rule 12 of the M.E.P.S. Rules and the dispute relating to seniority list can also be considered by the tribunal as an incidental question while deciding the controversy in regard to the supersession.

66. In my view, merely because the petitioner, on few occasions, has not disputed the seniority list showing the position of the respondent no.4 as senior to the petitioner, since no effect to the seniority list was given by the management by giving any promotion to the respondent no.4 or otherwise till there was vacancy in the post of Head Mistress, the petitioner was not precluded from raising such issue of seniority when the petitioner was sought to be superseded by the management by promoting the respondent no.4. In my view, the school tribunal thus could not have considered the said seniority list which was showing the respondent no.4 as senior to the petitioner as final and conclusive and ought to have decided the issue of seniority as an incidental issue on the basis of the correct date of entry in Category 'C' of Schedule 'F.'

67. Full Bench of this Court in the case of ***St.Ulai High School, through its Principal & Anr. Vs. Devendraprasad Jagannath Singh & Anr.***, reported in ***2007 (1) Bom.C.R. 540*** has held that a determination of inter se seniority is not final and conclusive. Where the action taken by the management against an employee on the basis of such determination and where the action taken falls within the description contained in clauses (a) and (b) of Sub-section (1) of Section 9 of the M.E.P.S. Act, an appeal before the school tribunal for challenging action of management would be maintainable. Full Bench of this Court in the said judgment has held that Rule 12 does not confer finality of the decision of the Education Officer. It is held that if the management, on the basis of the determination by the Education Officer in the matter of inter se seniority, proceeds to supersede an employee while making an appointment to any post by promotion, the act of supersession is subject to an appeal under Sub-section (1) of Section 9 and the Tribunal while deciding the legality of an order of supersession is entitled to decide as an incidental question, the correctness of a determination

made by the Education Officer on the question of seniority to render a full, final and effective adjudication of the matter in controversy.

68. It is held that where the management has not taken any consequential action of a description falling in Sub-section (1) of Section 9, the employee is at liberty to take recourse to the remedies available in law to challenge the decision of the Education Officer while filing an appeal under Sub-section (1) of Section 9 of the M.E.P.S. Act. In my view, even if the petitioner had not disputed the seniority list showing the respondent no.4 as senior to the petitioner till 2013 when the respondent no.4 was sought to be promoted as Head Master, the fact remains that the petitioner had made a representation when the then Head Mistress Mrs.Kalpana Vadnere resigned from the said post on 8th August 2013. By the said representation, the petitioner had requested the management to appoint her as a Head Mistress in the said vacancy. The petitioner also made a representation to the Education Officer raising an objection to the seniority list submitted by the management. In my view, the finding of the school tribunal rejecting the appeal filed by the petitioner on the ground that the petitioner had knowledge of the seniority of the respondent no.4 above her, is perverse and contrary to the provisions of the M.E.P.S. Act and M.E.P.S. Rules and also the law laid down by this Court in the case of ***St.Ulai High School, through its Principal & Anr. (supra)***.

69. The school tribunal in the impugned order has rejected the appeal filed by the petitioner also on the ground that when the said Mrs.Kalpana Vadnere had resigned from the post of Head Mistress and to fill in the said vacancy, a meeting of all the teachers by the management was held on 8th July 2013, the petitioner who was one of the teachers attended the said meeting had signed the

minutes of meeting giving no objection to the appointment of the respondent no.4 as Head Master and did not raise any objection to the promotion of the respondent no.4. A perusal of the minutes of the said meeting indicates that the said meeting was attended by the teaching as well as non-teaching staff including the petitioner. It was not the case of the respondents that the said minutes of meeting which were considered as no objection by the signatories to the said minutes of meeting, were in the hand writing of the petitioner.

70. Rule 3 of M.E.P.S. Act provides for qualifications and appointment of a Head. Rule 3 (b) provides that a person to be appointed as a Head of the secondary school shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and shall possess not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education.

71. The explanation to the said rule clearly provides that the management has to communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and has to ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of such communication. It further provides that the claim of the senior-most qualified teacher having satisfactory record of service for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. The said explanation further clarifies that the said statement in writing shall not debar such senior-most

qualified teacher from being considered for subsequent vacancies as and when occur. Such a senior-most teacher has to record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of such communication from the management indicating the occurrence of the vacancy of Head. It further provides that the Education Officer has to endorse on the said statement as having been recorded in his presence. Such statement once made by such a teacher before the Education Officer cannot be allowed to be withdrawn.

72. There is no dispute that the said minutes of meeting admittedly were not in the handwriting of the petitioner. The said minutes of meeting were not signed by the petitioner before the Education Officer. The petitioner though was a senior-most qualified teacher and was having satisfactory record of service was not communicated the occurrence of vacancy of the Head by the management. The Education Officer admittedly did not make any endorsement recording the statement of no objection alleged to have been given by the petitioner in his presence. In my view, the procedure prescribed for no objection of a senior-most qualified teacher having satisfactory record of service for appointing any other teacher junior to her in her place was mandatory and not discretionary. In my view, the order passed by the school tribunal rejecting the appeal filed by the petitioner on the ground that the petitioner was present in the said meeting held by the management to consider the vacancy due to the resignation of Mrs. Kalpana Vadnere and had given her consent and did not raise any objection to the promotion of the respondent no.4 is totally contrary to and in violation of Rule 3 and more particularly the explanation thereto.

73. A perusal of the minutes of meeting dated 8th July 2013 indicates that in the said meeting, 'no objection' was also taken from non-teaching staff including peons and clerks whose no objections were not at all warranted for the purpose of filling in the post of Head Master in the vacancy created in view of resignation of Mrs. Kalpana Vadnere. In my view, the signatures obtained by the management on the minutes of meeting dated 8th July 2013 from the teachers junior to Mrs. Kalpana Vadnere and other non-teaching staff itself showed non-application of mind on the part of the management. It is clear that the management used to take signatures from all the employees of the School whether such 'No Objection' was required to be obtained from such staff or not. In my view, no cognizance of such purported 'No Objection' thus could be taken by the school tribunal while considering the case of supersession of the petitioner.

74. In so far as the finding of the school tribunal that since the petitioner as well as the respondent no.4 were appointed as Assistant Teachers on the same date i.e. 14th June 1993 and the date of birth of the petitioner being 10th July 1970 whereas the date of birth of the respondent no.4 being 18th December 1969, the respondent no.4 was senior to the petitioner by age is concerned, in my view, this part of the order of the school tribunal also shows illegality and perversity. In my view, the respondent no.4 could have been treated as senior to the petitioner on the basis of earlier date of birth of the respondent no.4 only if both of them would have possessed the requisite qualification for the post of assistant teacher on the date of their appointment on the same day. The school tribunal, in my view, has committed a patent illegality by giving the benefit to the respondent no.4 of the earlier date of birth than that of the petitioner in the facts of this case.

75. In so far as the finding of the school tribunal that though the respondent no.4 was promoted as a Supervisor since 13th June 2005, in respect of such promotion, the petitioner had not raised any objection which would show that the respondent no.4 was senior to the petitioner and on that ground, the respondent no.4 was entitled to be promoted as Head Master is concerned, in my view, even if the respondent no.4 was appointed as Supervisor since 13th June 2005 that would not affect the seniority of the petitioner and would not make any change in so far as the entry of the petitioner in Category 'C' of Schedule 'F' of M.E.P.S. Rules is concerned which was prior in point of time of the entry of the respondent no.4 therein.

76. In my view, on appointment of the respondent no.4 as Supervisor, he could get only additional allowance but still could not be considered as senior to the petitioner who had entered Category 'C' of Schedule 'F' prior in point of time while considering the promotion to the post of Head Master/ Head Mistress.

77. In so far as the submission of the learned counsel for the respondent no.1 and the respondent no.4 that admittedly the respondent no.4 was appointed as a Drawing Teacher on 8th August 1991 i.e. much prior to the date of the appointment of the petitioner as an Assistant Teacher on 14th June 1993 and thus continuity of services of the respondent no.4 will have to be considered from the date of initial appointment is concerned, in my view, there is no substance in this submission of the learned counsel for the respondent no.1 and the respondent no.4. Division Bench of this Court in the case of *Anjali Jayant Khati (Supra)* has held that the date of continuous appointment is not the only criteria for fixation of seniority. Seniority has to be fixed according to Rules laid down in

Schedule 'F' to the M.E.P.S. Rules. Since the respondent no.4 did not possess the requisite qualification for appointment as an Assistant Teacher on the date of his appointment to the said post on 14th June 1993, the appointment of the respondent no.4, if any, as a Drawing Teacher prior to the appointment of the petitioner as an Assistant Teacher would be of no relevance for the purpose of determination of the seniority over the petitioner and for the purpose of promotion to the post of Head Master. A perusal of the record clearly indicates that on the date of appointment of the respondent no.4 as an Assistant Teacher, the respondent no.4 did not possess the requisite qualification for appointment to the post of Assistant Teacher. Qualification obtained by the respondent for appointment as drawing teacher could not be considered as the qualification for appointment of an assistant teacher.

78. In so far as the reliance placed on the Government Resolution dated 25th November 1988 by the learned counsel for the respondent nos.1 and 4 is concerned, a perusal of the record indicates that no such resolution was relied upon by them before the school tribunal. Be that as it may, a perusal of the Government Resolution dated 25th November 1988 clearly indicates that even under the said resolution, for the purpose of entry in Category 'C' of Schedule 'F,' a teacher was required to possess a degree of recognised University and Art Master Diploma. The respondent no.4 admittedly did not have both these qualifications when he was appointed to the post of Assistant Teacher. In my view, even if the said resolution was applicable, the respondent no.4 was not even eligible to get such relaxation, if any, made by the government in the said Government Resolution dated 25th November 1988.

79. In so far as the judgment of the Supreme Court in the case of **Viman**

Vaman Awale (supra) relied upon by the learned counsel for the respondent no.1 is concerned, a perusal of the said judgment clearly indicates that the Supreme Court in the said judgment had considered the qualification required for appointment of a head in the primary school under Rule 2 of Schedule 'B' and not the qualification required for head of the secondary school. A perusal of the said provision clearly indicates that the qualifications as required for appointment of a Head of the primary school and that for a Head of the secondary school are totally different. Reliance placed on the said judgment by the learned counsel for the respondent no.1 and the respondent no.4 and by the school tribunal while dismissing the appeal filed by the petitioner is totally misplaced. In my view, the entire order and judgment rendered by the school tribunal dismissing the appeal filed by the petitioner under Section 9(1)(b) of M.E.P.S. Act challenging the impugned order of supersession dated 10th August 2015 thereby promoting the respondent no.4 on the post of Head Master is ex facie contrary to the provisions of the M.E.P.S. Act, M.E.P.S. Rule and the law laid down in various judgments of the Supreme Court and this court referred to aforesaid and thus deserves to be set aside.

80. I therefore pass the following order :-

- (a) The impugned order and judgment dated 4th March 2016 passed by the learned Presiding Officer, Additional School Tribunal, New Mumbai is set aside;
- (b) Appeal No.8 of 2014 (Exhibit-29) filed by the petitioner is allowed;
- (c) Rule is made absolute in terms of prayer clauses (b)

and (c) of the petition;

(d) Writ petition is disposed of in aforesaid terms;

(e) There shall be no order as to costs.

81. Parties to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]

Learned counsel appearing for the respondent no.4 applies for stay of the operation of this order for a period of four weeks. The operation of this order is stayed for a period of four weeks from today.

[R.D. DHANUKA, J.]