

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3386 OF 2001**

Panhala Education Society & Anr. ... Petitioners

.Vs.

Ramchandra Sambhaji Aundhkar
and others ... Respondents

Mr. Saurabh M. Railkar, Advocate for Petitioners
Mr. K. S. Bapat, Advocate for Respondent No. 1

**CORAM : M. S. SONAK, J.
DATE : 21st JUNE, 2016**

P.C.

1. The challenge in this petition is to the Judgment and Order dated 5th March, 2001 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No. 1 of 1999 instituted by the Respondent No.1.

2. By the impugned Judgment and Order dated 5th March, 2001, the School Tribunal, Kolhapur has granted the following reliefs to the Respondent No. 1.

- “1. The order of promotion of Asstt. Head Master given to the Respondent No. 5 Shri B. H. Kambale is set aside.*
- 2. Respondent No. 1 to 4 are directed to promote the appellant to the post of Asstt. Head Master which fell vacant after retirement of Shri J. A. Patil on 30.11.97 along with all the incidental benefits thereof.*
- 3. Respondent No. 1 to 4 are directed to implement this order within six weeks after getting copy of the Judgment.*
- 4. Parties to bear their respective cost.”*

3. This Court, issued rule on 14th September, 2001 and granted interim relief in terms of prayer clause (c) of the Petition. As against the said order, the Respondent No. 1 instituted Letters Patent Appeal No. 101 of 2003, however, by the order dated 11th September, 2003, Letters Patent Appeal was dismissed, as the order granting interim relief was made after afford of liberty to hearing to the Respondent No. 1 and further, the interim order was in operation for almost two years. Liberty was, however, granted to the Respondent no. 1 to apply for expeditious hearing in the matter, since the Respondent No. 1 was due to retire after three to four months.

4. The Respondent No. 1 has ultimately retired on 31st December, 2003. The Petitioner No. 2, whose promotion was set aside by the impugned order dated 5th March, 2001, has also retired on 31st May, 2012. In these circumstances, the issue, which survives is, the grant of deemed promotion and incidental benefits on the basis thereof.

5. The record indicates that the Petitioner No. 1 Management operate two schools at Panhala, District Kolhapur. On 30.11.1997 there was a vacancy in the position of Assistant Head Master in one of the schools. The same was filled in by promotion of the Petitioner No. 2 Mr. Kamble w.e.f. 1st January, 1998. The record indicates that the Respondent No. 1 was senior to the Petitioner No. 2 – Mr. Kamble, however, Mr. Kamble was promoted to the post of Assistant Head Master on the basis that he belongs to reserved category and the post of Assistant Head Master was a reserved post.

6. The Respondent No. 1 instituted Appeal No. 1 of 1999 before the School Tribunal, Kolhapur complaining about the promotion of the Petitioner No. 2 – Mr. Kamble and the consequent supersession of the Respondent No. 1. By the impugned order, the School Tribunal has

allowed the appeal, set aside the promotion of the Petitioner No. 2 and directed the promotion of the Respondent No. 1 to the post of Assistant Head Master w.e.f. 30th November, 1997 along with all incidental benefits. The impugned order also records that during the pendency of the appeal, yet another post of Assistant Head Master in the second school became vacant on account of the retirement of Shri Inamdar. The Petitioner No. 2 – Mr. Kamble was then shifted to the said post of Assistant Head Master and the Respondent No. 1 was promoted to the post of Assistant Head Master, sometime in the year 1999. The Respondent No.1 accepted such promotion without prejudice to his rights and contentions in the then pending appeal. In view of this development, the question really is not about actual promotion of the Respondent No.1 to the post of Assistant Head Master, but the question is of deemed promotion, at least from the date when the Petitioner No. 2 was promoted to the said post w.e.f. 1st January, 1998 and the consequential benefits arising therefrom.

7. Mr. Saurabh Railkar, learned Counsel for the Petitioner has submitted that the promotion of the Petitioner No. 2 to the post of Assistant Head Master w.e.f. 1st January, 1998 was on the basis of the

decision of the Hon'ble Supreme Court in the case of ***R. K. Sabarwal V/s State of Punjab, (1995) 2 SCC 745*** and the Government Resolution issued by the State Government to the effect that there can be reservation even to an isolated post and that such reservation has to be implemented on rotational basis. Mr. Railkar, learned Counsel for the Petitioner accepted that the Constitution Bench of the Hon'ble Apex Court in the case of ***Post Graduate Institute of Medical Education & Research, Chandigarh V/s Faculty Association and others, (1998) 4 SCC 1*** has taken the view that there can be no reservation to an isolated post. Mr. Railkar, however, submitted that this decision was delivered only on 17th April, 1998 and even the Government Resolution dated 21st September, 1998 which takes cognizance of this position makes it clear that this principle will apply prospectively and not retrospectively. Mr. Railkar, thus, submitted that there was no default or illegality on the part of the management in awarding promotion to the Petitioner No. 2 w.e.f. 1st January, 1998 and further such promotion was protected by the Government Resolution dated 21st September, 1998, which has made it clear that the law laid down in the case of Post Graduate Institute of Medical Education & Research, Chandigarh (*supra*) will apply only prospectively.

8. Mr. Bapat, learned Counsel for Respondent No. 1 joined issue with the contentions raised by and on behalf of the Petitioner. He submitted that the School Tribunal has correctly analyzed the position in Paragraph 6 of the impugned order. He submitted that the Hon'ble Apex Court, in the case of Post Graduate Institute of Medical Education & Research, Chandigarh (*Supra*) has not directed that the law will apply only prospectively. Mr. Bapat submitted that there is nothing in the Government Resolution dated 21st September, 1998, which supports the construction that the decision of the Hon'ble Supreme Court is to be made applicable prospectively. Mr. Bapat has submitted that in any case, on the basis of the Government Resolution, even the State Government has no right or authority to either deviate from or dilute the decision rendered by the Constitution Bench of the Hon'ble Supreme Court. In these circumstances, Mr. Bapat submitted that there is no case made out to interfere with the impugned order.

9. Rival contentions now call for determination.

10. The Constitution Bench of the Hon'ble Supreme Court in the case of Post Graduate Institute of Medical Education & Research,

Chandigarh (*supra*) has categorically ruled against reservation to an isolated post. In this regard, reference can be made to the observations made in Paragraph 34 to 37 of the decision, which read thus :

“34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

36. Mr. Kapil Sibal has contended that in some higher echelons of service in educational and technical institutions where special expertise is necessary to hold superior posts like Professors and Readers, there should not be reservation even if there is plurality of posts in such cadre as indicated in the majority view in Indra Sawhney case¹. It is, however, not necessary for us to decide the said contention for the purpose

of disposal of these matters, where the question of reservation in single cadre post calls for decision.

37. We, therefore, approve the view taken in Chakradhar case⁶ that there cannot be any reservation in a single post cadre and we do not approve the reasonings in Madhav case², Brij Lal Thakur Case¹² and Bhageshwari Prasad Case¹⁰ upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of Post Graduate Institute of Medical Education & Research¹³ cannot also be sustained. The review petition made in Civil Appeal No. 3175 of 1997 in the case of Post Graduate Institute of Medical Education & Research, Chandigarh¹³, is therefore allowed and the judgment dated 2-5-1997¹³ passed in Civil Appeal No. 3175 of 1997 is set aside.”

11. There is no indication in the Judgment of the Constitution Bench that the same was to apply only prospectively. In any case, that issue, does not really arise in the present case, particularly in view of the discussion in Paragraph 6 of the impugned order, wherein, it has been set out that even the earlier Government Resolution, which provided rotational reservation to an isolated post, was ultimately, made to apply only from a later date. By then, as noted by the Tribunal, the decision of the Constitution Bench in the case of Post Graduate Institute of Medical Education & Research, Chandigarh (*supra*) had already been delivered and held the field. On the basis of Government Resolutions, it is

impermissible to either deviate from or dilute the effect of the decisions rendered by the Courts. Constitution Bench, has declared the law and such declaration was binding, not only upon the School Tribunal, but also the Petitioners and the State Government. The impugned order made by the School Tribunal is quite consistent with the decision of the Constitution Bench. Thus construed, there is no reason to interfere in the impugned order. Impugned order is neither vitiated by any jurisdictional error nor can it be said, that the School Tribunal, in making the impugned order, has failed to take into consideration any relevant or applicable Government Resolution or provision of law. Accordingly, no case is made out to interfere with the impugned order.

12. As noted earlier, during the pendency of the appeal itself, the Respondent No. 1 was promoted to the post of Assistant Head Master w.e.f. 2nd September, 1999. Thus, in this petition, we are really concerned about the period between the date of promotion of Petitioner No. 2 to the post of Assistant Head Master, i.e., 1st January, 1998 and the date of promotion of Respondent No. 1 to the post of Assistant Head Master i.e. 2nd September, 1999. The adverse effect of supersession has been felt by the Respondent No. 1, only during the said period. Both,

Petitioner No. 2 as well as Respondent No. 1 have seem retired from their services. The operative portion of the impugned order may, therefore, requires some modification, taking into consideration these aspects.

13. Since the impugned order does not warrant interference in principle, it is likely that the Petitioner No. 2, whose promotion to the post of Assistant Head Master has been set aside, may be called upon to refund the benefits availed by him on account of his promotion. In the facts and circumstances of the present case, such a consequence will be harsh and inequitable. As noted earlier, even the Respondent No. 1 was ultimately promoted to the post of Assistant Head Master on 2nd September, 1999. This means that the adverse effects of supersession by the Petitioner No. 2 were felt by the Respondent No. 1, only during the period between 1st January, 1998 and 2nd September, 1999. Thus construed, there was really no serious objections to the promotion or the continuance of the promotion of the Petitioner No. 2 from 2nd September, 1999 onwards. For the period between 1st January, 1998 and 2nd September, 1999, the Petitioner No. 2 has actually discharged duties as Assistant Head Master. Petitioner No. 2 has also retired from

the services. In these circumstances, even though, the impugned order is not being interfered with, it is made clear that Petitioner No. 2 will not be required to refund any benefits availed by him on account of his promotion to the post of Assistant Head Master w.e.f. 1st January, 1998. However, as and by way of compliance with the directions contained in the impugned order, the Respondent No. 1 will be deemed to have been promoted to the post of Assistant Head Master w.e.f. 1st January, 1998 and will therefore, be entitled to all consequential benefits, i.e., salary, reworking of retiral benefits etc. upon the said basis. The directions to this effect are therefore issued accordingly. The concerned Petitioners and Respondents are directed to comply with this process within three months from today.

14. Save and except, the aforesaid modification, the impugned order is not interfered with. Rule is disposed off in the aforesaid terms. Interim relief is vacated. There shall be no order as to costs.

15. All concerned to act upon the authenticated copy of this order.

(M. S. SONAK, J)