

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 292 OF 2016

Sadanand D. Parab

.. Petitioner

vs.

Chembur Education Society and ors.

.. Respondents

Mr. Chetan Mali for the Petitioner.

Mr. N. V. Bandivadekar i/b Mr. Sagar Mane for Respondent No.3.

Mr. A.R. Metkari, AGP for Respondent No.6.

CORAM : M. S. SONAK, J.

Date of Reserving the Order : 21 June 2016.

Date of Pronouncing the Order : 24 June 2016.

ORDER :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 21 July 2015 made by the School Tribunal, Mumbai in Appeal No. 21 of 2015, holding that it does not have jurisdiction to deal with the appeal instituted by the petitioner.

3] Mr. Chetan Mali, learned counsel for the petitioner has made the following submissions in support of the present petition:

a] That initially, the petitioner has instituted Writ petition No. 727 of 2009 in order to impugn the Education Officer's

order dated 16 October 2008, in the matter of determination of seniority and consequent supersession of the petitioner by respondent No.3 to the post of Supervisor. The petition was argued for considerable time and the same was ultimately withdrawn by the petitioner, in the light of availability of alternate remedy before the School Tribunal. Taking into consideration the decision of the Full Bench of this Court, in case of *St. Ulai High School Vs. Shri Devendraprasad Jagannath Singh and the Zilla Parishad- 2007 (1) Mh.L.J. 597*. Writ Petition No. 727 of 2009 was permitted to be withdrawn with liberty to institute appeal before the School Tribunal vide order dated 17 February 2015. At this stage, all parties, including in particular, respondent No.3 was duly heard. No objection was raised by and on behalf of respondent No.3 in the matter of maintainability of the appeal before the School Tribunal. Accordingly, it is urged that respondent No.3 was precluded from raising the issue of maintainability of the appeal and in any case, the School Tribunal was bound by the order dated 17 February 2015 made in Writ Petition No. 727 of 2009, in which, liberty was granted to the petitioner to institute appeal before the School Tribunal and further, even

directions were issued in the matter of condonation of delay, considering that the petition was pending before this Court;

b] That upon reading of the appeal memo in its entirety, it is quite clear that the petitioner was challenging the supersession or non-promotion to the post of Supervisor, based upon the incorrect determination of seniority vide order dated 16 October 2008 made by the Education Officer. An appeal therefore, was clearly maintainable before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) as interpreted by the Full Bench of this Court in case of *St. Ulai High School (supra)*; and

c] In this case, the respondent Nos.1 and 2 (School Management) have declined to furnish the order promoting respondent No.3 to the post of Supervisor. For this reason, the petitioner could not annex such copy to the appeal memo or seek specific relief to quash said promotion order. However, if the appeal memo is perused, it is quite clear that the petitioner has appealed against the promotion of respondent No.3 to the

post of Supervisor, in preference to the petitioner. This means that the petitioner had in fact appealed against the supersession. Mr. Mali submitted that if the provisions under Section 9 of the MEPS Act are perused and considered, then an appeal is maintainable before the School Tribunal against “*supersession*” , even though, there may not be any formal order of “*supersession*” as such. Mr. Mali submitted that the view taken by the School Tribunal is hyper-technical, pedantic and there is clear failure to exercise jurisdiction.

4] Mr. Bandivadekar, learned counsel for respondent No.3, at whose behest the impugned order came to be made by the School Tribunal, submitted that in the appeal memo there are no pleadings with regard to the petitioner's supersession, nor has the petitioner challenged any order made by the Management promoting the respondent No.3. Mr. Bandiwadekar submitted that if the provisions contained in Section 9 of the MEPS Act taken into consideration, it is quite clear that the challenge against an order made by the Education Officer determining seniority simplicitor, is not maintainable. The School Tribunal has, therefore, rightly declined to entertain the appeal and there is absolutely no jurisdictional error in

making the impugned order.

5] Mr. Bandiwadekar submitted that the petitioner did not even apply for any amendment of the appeal memo, so as to specifically include the challenge to his supersession. Mr. Bandiwadekar pointed out that in the meanwhile, respondent No.3 by order dated 30 September 2015 has been promoted to the post of Head Master. Mr. Bandiwadekar submitted that at the highest, the petitioner may be entitled to file a fresh appeal before the School Tribunal, in order to challenge the promotion of respondent No.3 to the post of Supervisor and Head Master and consequent, alleged supersession of the petitioner. Mr. Bandiwadekar submitted that the respondent No.3 will not have any objection in case, such a course of action is followed, so that even the respondent No.3 will have the opportunity of meeting with the precise case, that may be set out. Mr. Bandiwadekar submitted that the order dated 30 September 2015, by which, the respondent No.3 has been promoted to the post of Head Master, at the highest, affords the petitioner a separate cause of action and therefore, there is no question of either setting aside the impugned order, restoring the appeal and thereafter granting leave to amend the memo of appeal so as to challenge the order

dated 30 September 2015. For all these reasons, Mr. Bandiwadekar submitted that present petition is liable to be dismissed.

6] The rival contentions now fall for determination.

7] The record, indeed bears out the petitioner had instituted Writ Petition No. 727 of 2009 to question the Education Officer's order dated 16 October 2008 and the consequent promotions granted to respondent No.3, by the alleged supersession of the petitioner. However, upon noticing that in such a situation an appeal will lie under Section 9 of the MEPS Act to the School Tribunal, the petitioner applied for leave to withdraw the petition with liberty to institute appeal before the School Tribunal. Such leave to withdraw the petition with liberty to institute an appeal before the School Tribunal was granted by this Court, as is reflected in the order dated 17 February 2015. In fact, this Court directed the School Tribunal to endeavour to dispose of the proposed appeal within six months. Further, the Tribunal was directed to take into consideration the circumstances that pendency of the petition in this Court, in the matter of condonation of delay, in institution of the appeal. All this, at least indicates there was no serious dispute raised by any of the

respondents in Writ Petition No. 727 of 2009, in the matter of maintainability of the proposed appeal before the School Tribunal, in the facts and circumstances of the present case. Despite this, it is quite unfortunate that respondent No.3, objected to the maintainability of the appeal, once such appeal was instituted by the petitioner. No doubt, it is possible that such objection was prompted by the absence of challenge to the specific order by which respondent No.3 was promoted or by the absence of the word “*supersession*” in the memo of appeal, ultimately instituted by the petitioner. Further, Mr. Bandiwadekar may be right in his submission that there can be no estoppel against the statute and further, even consent does not confer any jurisdiction, if, in law, such jurisdiction, is not vested in an authority like School Tribunal. Therefore, much will not turn on the basis of order dated 17 February 2015 in Writ Petition No. 727 of 2009. The order and what is recorded therein, at the highest, is relevant for appreciating the conduct of the respondent No.3 herein, particularly as no objection was raised to the maintainability of the appeal, when, the petitioner applied for leave to withdraw the petition, with liberty to institute the appeal before the School Tribunal, in view of the decision of the Full Bench of this Court in case of *St. Ulai High School (supra)*.

8] The second contention raised by Mr. Mali, in support of the present petition, however, deserves acceptance. In order to appreciate this contention, reference is necessary with the provision contained in Section 9 of the MEPS Act, which reads thus:

“9. Right of appeal to the Tribunal to employees of private schools:

(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school,-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion,

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under Section 8:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.”

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) *Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.*

(4) *Every appeal shall be accompanied by a fee of (five hundred) rupees which shall not be refunded and shall be credited to the Consolidated Fund of the State.”*

(emphasis supplied)

9] From the scheme of the provisions contained in Section 9 of the MEPS Act, it is quite clear that an appeal lies to the School Tribunal under Section 9 of the MEPS Act, *inter alia*, at the behest of an employee in a private school, who is superseded by the Management while making an appointment to any post by promotion and who is aggrieved thereby. In fact, Section 9 of the MEPS Act, *inter alia*, provides that an employee in a private school, who is superseded by the Management while making an appointment to any post by promotion and who is aggrieved, shall have a right of appeal and may appeal against any such supersession to the Tribunal constituted under Section 8 of the MEPS Act. The right of appeal is also provided to an employee of a private school, who is dismissed, removed or whose services are otherwise terminated or who is reduced in rank, or by the order passed by the Management. Section 9 of the MEPS Act therefore, provides that an appeal will lie against an order of dismissal, removal etc. or against

“*supersession*”. Mr. Mali is right in his submission that Section 9 of the MEPS Act, makes no reference to any “*order of supersession*” but the reference is only to “*supersession*” . Thus construed, the School Tribunal was not right in making the impugned order merely because there did not exist in the present case, any formal “*order of supersession*” or that such order of supersession or promotion of respondent No.3, even if existent, was not formally challenged in the memo of appeal as shall be seen hereafter. The factum of '*supersession*' was very much under challenge and that was sufficient to enclothe the School Tribunal with jurisdiction to entertain the appeal.

10] From the perusal of memo of appeal, it is quite clear that the petitioner's appeal was directed against the supersession. The petitioner had even gone to the extent of challenging the orders made by the departmental authorities granting approval to the promotion of respondent No.3. Thus construed, the appeal instituted by the petitioner was clearly maintainable under Section 9 of the MEPS Act. The view taken by the School Tribunal, in the facts and circumstances of the present case, is indeed hyper-technical and pedantic. Besides, the view taken, is without adverting to the appeal

memo in its entirety and the averments made therein. This is therefore, a clear case of failure to exercise jurisdiction, even though, the same is clearly vested in the School Tribunal.

11] If the memo of appeal instituted by the petitioner is perused, then, it is clear that the petitioner had in fact questioned his supersession, as a consequence to the order dated 16 October 2008, by which, the Education Officer had determined *inter se* seniority. The Full Bench of this Court in case of ***St. Ulai High School (supra)***, has held that an employee against whom action is taken by the Management, on the basis of the decision of the Education Officer in the matter of *inter se* seniority, is entitled to challenge the action of the Management, where the action complained of falls within the description set out in clauses (a) and (b) of sub-section (1) of Section 9. Hence, if the Management, on the basis of 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 sub-section (1) of Section 9. The Tribunal while deciding the legality of an order of supersession is entitled to decide as an incidental question, the correctness of the determination made by

the Education Officer on a question of seniority. The jurisdiction of the Tribunal under sub-section (1) of Section 9 comprehends incidental and ancillary matters that would enable the Tribunal to render a full, final and effective adjudication of the matter in controversy. It would be manifestly unjust to require the employee to move two separate foras, the first in a challenge to the determination of the Education Officer under Rule 12 and the second in an action to challenge the consequential order of the management in the appeal under Section 9. The decision of the Full Bench, was clearly applicable to the facts and circumstances of the present case. The School Tribunal has committed an error apparent on the face of record in holding the appeal was not maintainable.

12] The discussion upon aforesaid aspect is contained in paras 11 and 12 of the Full Bench decision in case of *St. Ulai High School (supra)*, which read thus:

11. The determination of seniority by the Education Officer under Rule 12:

11.1 Rule 12 provides thus:

“12. Seniority List – Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule “F”. The seniority list so prepared shall be circulated amongst

the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.”

One of the issues canvassed before this Court is whether a determination by the Education Officer of a dispute in the matter of inter se seniority is final or whether the correctness of that determination can fall for determination before the Tribunal in an appeal under Section 9. Rule 12 is a part of subordinate legislation. Subordinate legislation cannot override the provisions of legislation made by the competent Legislature. Delegated legislation cannot rise above the source to which it owes its existence. Section 9(1) of the Act is prefaced by a non-obstante provision and the jurisdiction that has been conferred upon the Tribunal is notwithstanding anything contained in any law or contract for the time being in force. The non-obstante clause is wide enough to operate in relation to the Rules inasmuch as the rules constitute law for the time being in force. Moreover, Rule 12 in any event does not confer finality on the decision of the Education Officer. An employee against whom action is taken by the management on the basis of the decision of the Education Officer in the matter of inter se seniority, is entitled to challenge the action of the management, where the action complained of falls within the description set out in clauses (a) and (b) of Sub-section (1) of Section 9. Hence, 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 Sub-section (1) of Section 9. 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 a question of seniority. The jurisdiction of the Tribunal under Sub-section (1) of Section 9 comprehends incidental and ancillary matters that would enable the Tribunal to render a full, final and effective adjudication of the matter in controversy. It would be manifestly unjust to require the employee to move two separate forums, the first in a challenge to the determination of the Education Officer under Rule 12 and the second in an action to challenge the consequential order of the management in the appeal under Section 9. 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 – since the remedy under Section 9 is not available at that stage – to take recourse to the remedies available in law to challenge the decision of the Education Officer. The employee may seek to do so at that stage before consequential action is taken by the management. However, where action of the nature described in clauses (a) and (b) of Sub-section (1) of Section 9 is taken by the management, the employee who is aggrieved has recourse to the remedy of an appeal before the Tribunal and the Tribunal is entitled to decide upon the correctness of the determination made by the Education Officer under Rule 12 on the basis of which the management has taken consequential action. A decision on the correctness of the determination of the Education Officer under Rule 12 falls for adjudication before the Tribunal as an incidental question.

11.2 The position in law which we have enunciated finds acceptance in a judgment of the Division Bench of this Court in Umesh Balkishna Vispute vs. State of Maharashtra (supra). A Learned Single Judge of this Court had held in Lodghar's case (supra) that the Tribunal could not go into the question of inter se seniority between teachers since it was for the Education Officer to decide that issue under Rule 12. The Division Bench overruled the correctness of the view taken by the Learned Single Judge and held that the issue was settled by two unreported judgments of Division Benches of this Court at the Nagpur Bench. We affirm the correctness of the view taken by the Division Bench in Vispute (supra). The decisions of the Division Bench in Saramma Verghese

(supra) and *Atmaram Raghunath Pashte* (supra) do not lay down a proposition to the contrary. The judgment in *Saramma Verghese* holds that when he decides the issue of seniority under Rule 12, the Education Officer acts as a quasi judicial authority and his determination would be subject to the supervisory writ jurisdiction of this Court. In *Pashte's* case, the Division Bench noted that in pursuance of a determination of seniority by the Education Officer of the Zilla Parishad, consequential action had not been taken by the management at that stage. The Division Bench clarified that it was true that if in pursuance of the order of the Education Officer, consequential action was taken by the management and if the employee was aggrieved by that action, he could invoke the provisions of Section 9 of the Act and file an appeal. That however, did not mean that the action of the Education Officer could not be challenged in a petition under Article 226 of the Constitution. *Pashte's* case therefore, involves a situation where consequential action was yet to be taken by the management. Since in *Pashte's* case no consequential action had been taken by the management, the scope of the appellate remedy in a case where consequential action is taken did not fall for consideration. That issue has been decided in *Vispute*. The determination of inter se seniority by the Education Officer under Rule 12 is not final. An employee aggrieved by the determination under Rule 12 is at liberty to challenge that determination even before the management takes consequential action by seeking recourse to the writ jurisdiction, as was the case before the Court in *Pashte*. However, once consequential action falling under clauses (a) and (b) of Sub-section (1) of Section 9 is taken by the management on the basis of the determination, an appeal lies under Section 9 and while exercising its jurisdiction on an appeal, the Tribunal can as an incidental issue, decide the correctness of the determination of inter se seniority.

12. Enforcement of Orders of the Tribunal :

12.1 The submission that has been urged on behalf of the employee is that the MEPS Act, 1977 does not create a valid and effective procedure for the enforcement of orders of the Tribunal. Section 13 of the Act contains penal provisions where the management has failed without any reasonable excuse to comply with the order of the Tribunal. That apart, the question as to whether an order of the Tribunal is capable of being executed as a decree of a Civil Court has

been considered in a judgment of a Learned Single Judge of this Court (D.K. Deshmukh, J.) in *Mohammad Salam Anamul Haque vs. S.A. Azmi*, 2001(1) Mh. L.J. 249. Sub-section (1) of Section 10 of the Act provides that for the purposes of admission hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an appellate Court under the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of any order against which an appeal is made on such conditions as it may think fit to impose. Under Section 12 of the Act, the decision of the Tribunal is to be final and binding on the employee and the management and no suit, appeal or other legal proceedings shall lie in any Court in respect of a matter decided by the Tribunal. A Division Bench of this Court held in *Chandrakant Ganpat Shelar vs. Sophy Keely, Hill Garange High School*, Mh. L.J. 1012, that the Tribunal constituted under the Act is a Court within the meaning of the Contempt of Courts Act, 1971. Section 36 of the Code of Civil Procedure, 1908, lays down that the provisions of the Code relating to the execution of decrees shall so far as they are applicable, be deemed to apply to the execution of orders. The term “order” has been defined by Section 2(14) of the Code of Civil Procedure, 1908, to mean the formal expression of any decision of a Civil Court which is not a decree. In holding that the Tribunal constituted under the Act can be termed as a “Court”, the Learned Single Judge placed reliance on the judgment of the Supreme Court in *Brajnandan Sinha vs. Jyoti Narain*, AIR 1956 SC 66 where it was observed as follows :

“ it is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.”

The learned single judge held that the Tribunal is vested with the power to give a definitive judgment to which finality has been attached by the Act. The Tribunal has all the trappings of a Court. Under Section 10, the Tribunal has all the powers of an Appellate Court under the Code of Civil Procedure, 1908 for the purpose of admission hearing and disposal of appeals. The powers of an Appellate Court under Section 107 of the CPC are as follows :

“(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power -

- (a) to determine a case finally;*
 - (b) to remand a case;*
 - (c) to frame issues and refer them for trial;*
 - (d) to take additional evidence or to require such evidence to be taken.*
- (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.”*

The learned single judge, therefore, held that an Appellate Court is conferred with the same powers and duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. The Tribunal, the learned Single Judge held, is a Court and an order passed by the Tribunal would satisfy the description of that expression in Section 2(14) of the CPC. The learned single Judge held as follows :

“Therefore, when the School Tribunal makes an order for reinstatement and for payment of back wages, the Appellant in whose favour such an order is made can definitely approach the School Tribunal, which made the order for execution of that order in the same manner in which the decree under the provisions of the Civil Procedure Code is to be executed. In such situation either the tribunal may itself execute the decree or it may transfer the decree for execution to another Court in accordance with the provisions contained in the Civil Procedure Code. It is thus clear to my mind that an order made by the School Tribunal is an order which is executable under the provisions of the Civil Procedure Code.”

We affirm the correctness of these observations.”

13] Upon cumulative consideration of the averments in the memo of appeal, it is quite clear that the appeal was instituted by the petitioner questioning his supersession. In paragraph '2', the petitioner has stated that he is challenging the order of Education

Inspector dated 16 October 2008 refixing his seniority and the “*consequential denial of rights*”. In para 13, the petitioner has averred that the petitioner came to know about the promotions to the post of Supervisor and the fact that the departmental authorities have already granted approvals for such promotions. In para 13, the petitioner has specifically sought for leave to refer to and rely upon the promotion orders as and when produced. In para 14 of the appeal memo, the petitioner has made averments in the context of promotion to the post of Head Master, as, according to the petitioner, such post was soon become vacant. In para 15 of the appeal memo, the petitioner has made detailed averments in the context of the order dated 17 February 2015 made by this Court. In para 16 of the memo of appeal, which contains the grounds, there are specific grounds raised to the effect that the concerned respondent (respondent Nos.3 and 4 to the memo of appeal) ought not to have been granted promotion to the post of Supervisor “*prior to the appellant*”. This is the ground “*t*”. Similarly, in ground “*u*”, the petitioner has stated that the promotion of respondent Nos. 3 to 4 is based upon illegal and arbitrary seniority list and is bad-in-law, illegal and unlawful. These two grounds, very clearly raise the issue of supersession. The memo of appeal has to be read in its entirety.

The mere circumstance that there is no reference to the term “*supersession*” is not conclusive. Upon reading the appeal memo in its entirety, it is quite clear that the petitioner is aggrieved not merely by the determination of the seniority, but also his supersession on the basis of such determination of the seniority. The School Tribunal, does not appear to have adverted to the appeal memo in the its entirety including in particular the averments in paras 2,13, 16(t) and 16(u) of the appeal memo.

14] Similarly, if the prayer clause contained in para 36 of the appeal is perused, it is quite clear that the petitioner is challenging his supersession. The petitioner may not have actually annexed or challenged the promotion order, in terms of which the petitioner was actually superseded. However, the petitioner has explained that copy of such promotion order was not being delivered to the petitioner. Copy of such promotion order has not even been annexed to the reply in this petition. What is annexed is the subsequent promotion dated 30 September 2015 effected during the pendency of the present petition to the post of Head Master. Even, the authorities have raised an issue about non-production of the promotion order. In any case, in para 36(a), the petitioner has applied for setting aside of

approval orders marking as Exhibits K2 and K3 to the memo of appeal. The approval orders purported to approve the promotions granted. In that sense, therefore, there is a challenge to the supersession of the petitioner. In para 36(b), the relief applied for, is a direction to treat the petitioner as senior to respondent Nos.3 and 4(to the memo of appeal) and to grant him all consequential benefits including promotion with effect from 15 June 2007. Again, this is clearly a relief in the context of supersession. The impugned order, in the present case, is clearly a result of failure on the part of the School Tribunal to peruse the appeal memo or in any case, to peruse the appeal memo in its entirety. The School Tribunal, it appears, has concentrated on the form, rather than, the substance of the appeal memo. Considering that the petitioner is agitating the issue of his supersession right from the year 2007 and further even this Court had relegated the petitioner to avail the alternate remedy before the School Tribunal, the School Tribunal was not justified in adopting such a pedantic course and decline to exercise jurisdiction vested in it, on the basis of misreading and misconstruction of the averments in the memo of appeal as also the provisions contained in Section 9 of the MEPS Act. For these reasons, the impugned order is unsustainable and is required to be set aside.

15] It is not possible to accept the contention of Mr. Bandiwadekar that the petitioner ought to be relegated to institute a fresh appeal, thereby raising all such issues like supersession or challenges to the promotion orders. As noted earlier, the appeal memo makes it clear that the petitioner had challenged his supersession. The promotion order dated 30 September 2015, does not afford any fresh cause of action. Admittedly, the promotion has been effected during the pendency of the present petition. That apart, the promotion has nexus with the determination of seniority, which is squarely the subject matter of the memo of appeal. Therefore, there is no necessity to require the petitioner to institute a fresh appeal. The petitioner can always amend the existing memo of appeal, in order to specifically challenge the consequential order dated 30 September 2015. Since, Mr. Bandiwadekar was opposed to grant of such leave to amend the memo of appeal, in case, this Court were to remand the matter to the School Tribunal for decision on merits, Mr. Bandiwadekar was afforded full opportunity to make his submission on this aspect. Upon consideration of such submissions, i.e., order dated 30 September 2015, affords fresh cause of action, this Court is satisfied that there is no necessity to relegate the petitioner to institute a fresh appeal. The petitioner is accordingly, granted leave

to amend the appeal memo, now that the matter is being remanded to the School Tribunal. The memo of appeal may be amended by the petitioner within a period of four weeks from today.

16] In view of the aforesaid discussion, the impugned order dated 21 July 2015 is hereby set aside. Appeal No. 21 of 2015 is restored to the file of School Tribunal. The School Tribunal is directed to permit the petitioner to amend the memo of appeal, so as to raise a formal challenge to the order dated 30 September 2015, in the matter of promotion of the respondent No.3 to the post of Head Master. The School Tribunal to afford opportunity of hearing to all the parties and thereafter dispose of Appeal No. 21 of 2015 as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

17] It is made clear that all contentions of all parties on merits of their respective contentions in the matters of superssion and seniority are kept open to be decided by the School Tribunal in Appeal No. 21 of 2015, which is now restored to the file of School Tribunal.

18] The parties to appear before the School Tribunal on 4 July 2016 at 3.00 p.m. and produce an authenticated copy of this order.

19] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

20] All concerned to act on the authenticated copy of this order.

(M. S. SONAK, J.)