

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3878 OF 2016

Namdeo Waman Bangar

..... Petitioner

VERSUS

The Education Officer & Ors.

..... Respondents

Mr.Abhishek Yende for the Petitioner.

Mr.Mahendra Agavekar, i/b. Mr.Mandar Limaye for the Respondent no.1.

Mr.Sagar Mane for Respondent no. 3.

CORAM : R.D. DHANUKA, J.

DATE : 12th JULY, 2016

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 12th October, 2015 passed by the learned Presiding Officer, Additional School Tribunal, Navi Mumbai allowing the appeal filed by the respondent no.3 herein and setting aside the order of supersession dated 2nd September, 2003 and directing the management to promote the respondent no.3 herein to the post of headmistress within three months from the date of this order with salary and ancillary benefits from the date of her appointment as headmistress. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. It was the case of the respondent no.3 that she belongs to open category and was qualified as S.S.C.,D.Ed. and was eligible to be appointed as assistant teacher in the primary school. The respondent no.3 was appointed on 4th December, 1996 as assistant teacher for primary section on temporary basis. She was continued

thereafter in the respondent no.2 school on year to year basis till the year 2000. On 2nd March, 2000, the respondent no.2 management issued a letter whereby it was informed that the services of the respondent no.3 herein from the academic year 2000-01 was extended for that year. There is no dispute that the respondent school has been getting 100% grant-in-aid since 2003. Insofar as the petitioner is concerned, the petitioner was appointed as assistant teacher on 2nd September, 1998. The approval to the appointment of the petitioner was granted by the Education Officer in the same year. Insofar as respondent no.3 is concerned, the appointment of the respondent no.3 was approved by the Education Officer as assistant teacher in the year 1999 w.e.f. the date of the initial appointment i.e. w.e.f. 4th December, 1996.

3. Since the petitioner was promoted as headmaster in the year 2003, it was the case of the respondent no.3 that she being superseded by the management by promoting the petitioner, she filed an appeal before the school tribunal under section 9 of the M.E.P.S.Act.

4. The delay in filing the said appeal was condoned by the school tribunal which was impugned by the petitioner herein in the Writ Petition No.9367 of 2011. By an order dated 29th February, 2012, this court dismissed the said writ petition filed by the petitioner herein and did not interfere with the order passed by the school tribunal. It was however made clear that if the respondent no.3 herein succeeds in the appeal filed by her before the school tribunal, she would not be entitled to claim the difference in the salary for the period of delay.

5. The school tribunal thereafter heard the appeal filed by the respondent no.3 herein and allowed the said appeal on 12th October, 2015 thereby setting aside the

order of supersession dated 2nd September, 2003 and directing the management to promote the respondent no.3 herein to the post of headmistress within three months from the date of the said order with salary and ancillary benefits from the date of her appointment as headmistress.

6. Learned counsel appearing for the petitioner submits that the respondent no.3 was appointed on the temporary basis in the year 1996 and thereafter on year to year basis. He submits that the petitioner was already appointed on probation as assistant teacher on 2nd September, 1998. He submits that the approval to the appointment to the respondent no.3 was granted by the Education Officer in the year 1999. He submits that since the petitioner was appointed on probation as assistant teacher in the year 1998 much prior to the date of approval granted to the respondent no.3 as assistant teacher by the Education Officer and the petitioner being senior to the respondent no.3 was thus rightly granted promotion to the said post by the management. He submits that the school tribunal thus could not have held that there was supersession of the respondent no.3 by the management by promoting the petitioner to the post of headmaster. It is submitted by the learned counsel for the petitioner that the ex-employee of the school in collusion with the management had issued the second service book in the year 1999 thereby showing the appointment of the respondent no.3 as if made in the year 1996. He submits that the criminal complaint is pending against the said ex-employee for preparing such second service book. He submits that the respondent no.3 never disputed the seniority list prepared by the management showing the petitioner as senior to the respondent no.3.

7. Learned counsel appearing for the respondent no.3 on the other hand invited my attention to various documents annexed to the writ petition and would submit

that it was not in dispute that the respondent no.3 was appointed for the first time in the year 1996 which was prior to the date of appointment of the petitioner which was made in the year 1998. He submits that the Education Officer had granted approval to the appointment of the respondent no.3 in the year 1999 which was effective from the date of initial appointment of the respondent no.3 being continued since inception. He submits that the only break in the last three years was due to vacation which cannot be considered as break in service. In support of this contention, learned counsel invited my attention to the judgment of this court in case of ***Sumangala Manoharrao Sakharkar vs.State of Maharashtra and others***, 2010(1) Mh.L.J.63. Learned counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Punjab State Coop.Agricultural Development Bank vs.Gurnaib Singh***, (2003) 10 SCC 235.

8. Learned counsel for the respondent placed reliance on the judgment of Division Bench of this court in case of ***Anjali Jayant Khati vs. Bal Mandir Sanstha & Ors.***, 2009(1) Bom.C.R.206 in support of his submission that the break in summer vacation cannot be considered as break and would not effect the seniority of the respondent no.3.

9. It is submitted by the learned counsel that the petitioner had never disputed the fact that the respondent no.3 was appointed as assistant teacher on 4th December, 1996 and thereafter continuously till her appointment was approved by the Education Officer and continued to be in employment even till today. He submits that the fact that the respondent no.3 was qualified and was appointed in the clear and vacant post is also not disputed by the petitioner.

10. Learned counsel invited my attention to the findings of fact recorded by the

school tribunal in the impugned judgment and would submit that the school tribunal has considered all the documents and pleading filed by both the parties and has also dealt with the M.E.P.S.Act. He submits that findings of fact of the school tribunal not being perverse cannot be interfered with by this court under Article 227 of the Constitution of India.

11. A perusal of the order passed by the school tribunal clearly indicates that the appointment of the respondent no.3 as an assistant tribunal since 4th December, 1996 was not denied by the petitioner before the school tribunal. The respondent no.3 was granted approval by the Education Officer in the year 1999 w.e.f. the initial date of the appointment i.e. 4th December, 1996. The school tribunal has rendered a finding that there was continuity of service without a break. The school tribunal relied upon a judgment of this court holding that the dis-continuation of employee during vacation does not amount to break in service.

12. Insofar as judgment of Supreme Court in case of ***Punjab State Coop.Agricultural Development Bank*** (supra) relied upon by the learned counsel for the petitioner is concerned, it is held by the Supreme Court that the break period could not be counted for the purpose of seniority. There was no issue before the Supreme Court as to whether the break considered by the Supreme Court was a break due to the vacation. Judgment of Supreme Court in case of ***Punjab State Coop.Agricultural Development Bank*** (supra) therefore does not assist the case of the petitioner and is clearly distinguishable with the facts of this case.

13. In my view the order and judgment rendered by the learned Presiding Officer of the learned School Tribunal is well reasoned order and does not warrant

any interference. There is no infirmity in the order passed by the learned Presiding Officer of the school tribunal. Petition is devoid of merits and accordingly dismissed. No order as to costs.

14. It is made clear that the criminal proceedings filed by the petitioner against the ex employee can be decided on its own merits without being influenced by the order passed by this court.

[R.D. DHANUKA, J.]