

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4708/2016

Lok Shikshan Sanstha, Warud (Rajura Bazar) Tah – Warud Dist- Amravati,
through its Secretary B.A. Bahurupi and another

...Versus...

The State of Maharashtra, through its Secretary, Department of Education,
Mantralaya, Mumbai – 32 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Anand Parchure, Advocate with Shri P.P. Thakare, Advocate for petitioners
Shri A.S. Fulzele, Addl. G.P. for respondent nos.1 and 2
Shri Sachin S. Joshi, Advocate for respondent no.3

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 15.12.2016

By this petition, the petitioners have challenged the order of the Education Officer (Secondary), Zilla Parishad, Amravati, dated 29.7.2016, cancelling the approval to the promotion of the petitioner no.2 on the post of Headmaster and directing the petitioner no.1 – Management to promote the respondent no.3 on the said post.

According to the petitioners, since the petitioner no.2 was the senior most teacher working in the School run by the petitioner no.1 – Society, the petitioner no.2 was promoted to the post of Headmaster on 1.5.2015. The proposal for grant of approval to the promotion of the petitioner no.2 on the post of Headmaster was sent to the Education Officer. The Education

Officer granted approval to the promotion of the petitioner no.2 as a regular Headmaster. On a complaint made by the respondent no.3 to the Education Officer, the Education Officer cancelled the approval to the promotion of the petitioner no.2 on the post of Headmaster and directed the petitioner no.1 to promote the respondent no.3 on the said post.

Shri Parchure, the learned Counsel for the petitioners submitted that if the respondent no.3 was aggrieved by the promotion of the petitioner no.2 to the post of Headmaster, it was necessary for the respondent no.3 to file an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal. It is stated that instead of filing an appeal before the School Tribunal, the respondent no.3 approached the Education Officer, who in turn, cancelled the approval to the promotion of the petitioner no.2 by holding that the respondent no.3 is senior to the petitioner no.2. It is stated that the issue of seniority vis-a-vis the petitioner no.2 and the respondent no.3 could have been decided only by the Tribunal after the petitioner no.2 was regularly promoted to the post of Headmaster and after approval was granted to his promotion. The learned Counsel relied on the judgment of the Full Bench, reported in **2007 (1) Mh. L.J. 597**.

On hearing the learned Counsel for the parties and on a perusal of the impugned order, it appears that the Education Officer could not have entertained the complaint made by the respondent no.3 after the petitioner no.2 was promoted to the post of Headmaster and the Education Officer had granted approval to his promotion. If the respondent no.3 was aggrieved

by the promotion of the petitioner no.2, it was necessary for the respondent no.3 to have filed an appeal under Section 9 of the Act before the School Tribunal. The issue of seniority could have been decided by the Tribunal in the said appeal. The Education Officer, however, wrongly entertained the complaint of the respondent no.3 and cancelled the approval to the appointment of the petitioner no.2. The case of the petitioner no.2 is supported by the judgment of the Full Bench, reported in **2007 (1) Mh.L.J. 597.**

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The respondent no.3 is free to take up appropriate proceedings before the School Tribunal, if so advised.

Order accordingly. No costs.

JUDGE

JUDGE

Wadkar