

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3780 OF 1997

Sambhu Sadashiv Patil
Assistant Teacher,
Survoday Vidya Mandir,
PRAKASHA, Tq. Shahada,
District Dhule.

..Petitioner

Versus

1. Presiding Officer,
School Tribunal, Nashik.

2. The Shahada Taluka Cooperative
Educational Society Ltd., Shahada,
Tq. Shahada, Dist. Dhule by its
Chairman.

3. Education Officer
Zilla Parishad, Dhule.

4. The Dy. Director of Education,
Nashik Division, Nashik.

..Respondents

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Advocate for Petitioner : Shri S.P.Shah
AGP for Respondents 3 & 4 : Shri S.N.Kendre
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CORAM : RAVINDRA V. GHUGE, J.
Dated : January 19, 2017
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ORAL JUDGMENT :-

1. Respondent No.1 being the School Tribunal stands deleted from the proceedings. The learned AGP appearing on behalf of respondent Nos.3 and 4 supports the impugned judgment. Despite the appearance of three Advocates on behalf of respondent No.2 -

Society, none are present.

2. The petitioner is aggrieved by the judgment of the School Tribunal, dated 22.9.1995 by which his appeal No.3 of 1988 has been dismissed.

3. Though this petition was admitted on 26.2.1998, interim relief was not granted to the petitioner. It is informed that the petitioner has retired from service in 1993. The petitioner is 80 years of age today.

4. I have considered the submissions of the learned Advocate for the petitioner.

5. The petitioner had approached this Court in Writ Petition No. 1293 of 1988, making a grievance of his purported supersession as the Head Master of the Sarvodaya Vidya Mandir. By order dated 12.4.1988, the learned Division Bench of this Court disposed off the Writ Petition by passing the following order:-

“Allowed to be withdrawn as proper remedy is to file Appeal before Tribunal, where the question of promotion would be examined and incidentally claim of seniority”

6. The petitioner, therefore, filed his appeal before the School

Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“the said Act” for short)

7. After considering the submissions of the petitioner and the learned AGP and upon going through the petition paper book and the record available, there is no dispute about the date of joining of the petitioner which is 6.8.1959. He worked till 15.6.1968. He left the employment of respondent No.2 from 16.6.1968 and worked with another institution till 14.6.1970. He was again appointed as a permanent Assistant Teacher by the same respondent No.2 management w.e.f. 15.6.1970, by condoning the break and by reckoning his earlier tenure of 9 years. It is based on these facts that the School Tribunal applied Note No.9 under Schedule F under Rule 12 of the said Rules and concluded that he had got the benefit of Note 9 as he was confirmed on the permanent post, condoning the break of two years.

8. It is concluded in paragraph 8 that as per Note 9 the petitioner is entitled to get condonation of break not exceeding three years. These conclusions of the School Tribunal have not been assailed by the respondent No.2 management before this Court and which means that the said conclusion has attained finality.

9. The only issue that remains to be adjudicated upon is that the Tribunal has interpreted the last sentence of Note 9 in a different context. Note 9 reads as under:-

“Note 9. - In the case of permanent teachers having a break or breaks in service (physical or otherwise i.e. owing to part time service interposed between two spans of full time service under the same management, after being made permanent but prior to the 1st July 1970 and who may not have changed the cadre after the period of break, the management shall condone the period of break, the Management shall condone the break(s) for period(s) not exceeding three years for the purpose of seniority by communicating retrospectively the period of absence. If the period exceeds three years and if the teachers had worked on part time basis, the Management shall also give credit for period(s) of part time service to the extent of half the total period, for the purpose of seniority only. Each type of such breaks shall not exceed three in number during the career of a teacher and seniority so gained shall not entitle the teacher for retrospective promotion.”

10. The claim of the petitioner to the post of Head Master relates to 1986, when the earlier Head Master Shri R.V.Patil retired in 1986. The School Tribunal has interpreted the last sentence of Note 9 as

being a bar on any teacher to claim promotion with retrospective effect on the basis of having acquired the benefit under Note 9 vide which the break in service of less than three years has been condoned. The School Tribunal, therefore, concluded that since the petitioner has benefited of Note 9, by which, his break in service is condoned, he would not be entitled to seek promotion with retrospective effect since the appeal is filed in 1988.

11. I do not find that the conclusion drawn by the School Tribunal on this count could be sustained. Based on the benefit of Note 9, the petitioner was not claiming the benefit of promotion with retrospective effect, since by the time Shri R.V.Patil retired in 1986, the petitioner had already acquired the benefit of Note 9 and would have been entitled to promotion effective from 1986. His representations dated 3.9.1986 and 16.6.1987 clearly indicate that he had claimed his promotion immediately upon the retirement of Shri R.V.Patil. Since his break in service was condoned by the management, while appointing him on permanent basis from 15.6.1970, the opportunity of being promoted came his way only in 1986. Such a claim for promotion cannot be termed as being a claim with retrospective effect. It was under the orders of this Court that the petitioner preferred his Appeal in 1988 before the Tribunal.

12. The Tribunal has dismissed the appeal of the petitioner, purely

on the ground that though this Court had expressed the view that the question of promotion could be dealt with as being incidental to the claim of seniority, the Tribunal declined to exercise its jurisdiction concluding that it did not have the power to decide the seniority of the petitioner under Rule 12 of the Rules.

13. The petitioner is about 80 years of age today. It would be a travesty of justice to remit the matter back to the School Tribunal for reconsideration of this aspect and more so in the light of the fact that the Tribunal has concluded that the petitioner had already benefited of Note 9 and his break of two years was deemed to be condoned.

14. Considering the above, this petition is partly allowed. Respondent No.2 / management is directed to prepare a proposal of the petitioner by notionally granting him the promotion from 1986 post retirement of Shri R.V.Patil and refer the proposal to the respondent Nos.3 and 4 for granting approval to the same. Based on the said notional promotion the petitioner would be entitled to monetary benefits as are prescribed by law.

15. Respondent No.2 shall forward the proposal within eight weeks from today and respondent Nos.3 and 4 shall decide the same within twelve weeks from the date of the receipt of the proposal.

Consequently, the impugned order dated 22.9.1995 stands quashed and set aside only to the extent of the Tribunal having declined the prayers put forth by the petitioner. The conclusion that the petitioner has got the benefit of Note 9 is sustained.

16. Shri Shah, learned Advocate submits that in the recent past the petitioner is not in touch with him. He makes a request that in the event the petitioner is not in a position to meet him or if unfortunately, he is not available or has passed away, the benefits be extended to his legal heirs. The said request is accepted and respondents 3 and 4 shall, therefore, make the said benefits available to the legal heirs of the petitioner, if the situation so occurs.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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