

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6293 OF 2016

Shri Ashok S/o. Tukarm More,
Age. 54 years, Occ. Assistant Teacher,
In Shri Tukaram Vidyalaya, Shingi,
Tq. Gangapur, Dist. Aurangabad. ...Petitioner.

Versus

1. Secretary, Pandit Din Dayal Shiksan Sanstha,
At Warud, Having its Registered Office at
Dharamveer Sambhaji Vidyalaya,
At N-5, CIDCO,
Tq. and Dist. Aurangabad.
2. Shri Narayan Jeevanrao Babhulgaonkar,
The Head Master,
Dharamveer Sambhaji Vidyalaya,
At N-5, CIDCO,
Tq. and Dist. Aurangabad.
3. The Education Officer,
(Secondary),
Zilla Parishad,
Tq. and Dist. Aurangabad. ...Respondents.

Advocate for Petitioner : Shri S.R. Kolhare.
Advocate for Respondent No. 1 : Shri Y.V. Kadade.
Advocate for Respondent No. 2 : Shri Y.S. Choudhari.
AGP for Respondent No. 3 : Shri S.K. Tambe.
Shri V.D. Sapkal, Amicus Curiae.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 19th July, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment dated 04/03/2016, delivered by the School Tribunal, by which, the petitioner's Appeal No. 34/2015, alleging supercession, has been dismissed primarily on the following grounds :

(A) The petitioner was appointed as a Trained Assistant Teacher on 03/07/1991 for a period of one year. After the break on account of the summer vacation, he was again appointed for the academic year 1992-1993.

(B) Respondent No. 2, who is said to have superceeded the petitioner for becoming the Head Master, was appointed on 11/06/1992, though as a untrained assistant teacher as he did not have the qualifications of a trained teacher and he has acquired the said qualification on 09/06/1993, i.e. five days before the petitioner was appointed on probation.

(C) The petitioner was appointed on probation on 14/06/1993, and respondent No. 2 acquired the qualification required for a trained teacher on 09/06/1993.

3. I have considered the strenuous submissions of the learned advocates for the respective sides. Since I felt that this issue requires consideration and further assistance was required, I have called upon Shri V.D. Sapkal, learned advocate to assist the court as an amicus curiae.

4. It is apparent that there is no dispute as regards the dates of appointment and the acquiring of the qualifications of a trained teacher by respondent No. 2. The petitioner had approached the School Tribunal for challenging the promotion of respondent No. 2 as a Head Master, by order dated 01/08/2015. He had, therefore, invoked Section 9 (1) (b) of the Maharashtra Employees of Private School Act, 1977. It is also not disputed that till 2013, the petitioner was shown senior to respondent No. 2 in the seniority list, ever since, they were in employment.

5. Issue, therefore, is as to whether the breaks in service indicated by the Management, in so far as the petitioner is concerned, could be termed to be artificial breaks or whether

there is any sanctity to the said breaks.

6. As rightly pointed by Shri Sapkal, the learned Full Bench of this Court in the matter of Vaijanath Tatyarao Shinde Versus Secretary and others [2006 (6) BCR 804], has concluded that in order to render validity to the appointment of a primary school teacher, a person shall possess the educational qualifications as are prescribed for a trained teacher. Service rendered as an untrained teacher will not be reckoned with for determining the seniority. Paragraph Nos. 9 and 10 of the said judgment read as under :

“9. In this view of the matter, we hold that for a valid appointment of a primary school teacher, a person must possess educational so also the training / teaching qualification. No person can be legally appointed who does not hold training qualification. Hence, service rendered as an untrained teacher will not qualify for being counted to determine seniority.

10. Having recorded a finding that for appointment of a primary school teacher, the requisite eligibility criteria is possessing educational and training/teaching qualification, we are faced with a direct conflict in the

language used in sub-rule 3 (1)(a)(i) and 3(1)(a)(ii). Rule 3(1)(a)(i) categorically provides that for appointment to the post of Head of a primary school having an enrolment of students about 200 or having standards I to VII, shall be the seniormost trained teacher who has put in not less than 5 years service, whereas Rule 3(1)(a)(ii) lays down that a person to be appointed as a Head of any other primary school shall be the seniormost teacher in the school. A plain reading of sub-rule (a)(ii) gives an impression that not only the requirement of not less than 5 years service is dispensed with, but also it dispenses with the requirement of training qualification. The omission of the word “trained” occurring after the words seniormost and before the word teacher gives rise to an absurdity, inasmuch as for appointment of a teacher training qualification is pre-requisite and if Rule 3(1)(a)(ii) is literally construed, the same does not postulate that for appointment of a Head, the teacher should be a trained teacher. This anomaly has to be resolved by interpretative process.

It is a settled position in law, that a statute must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. A construction which avoid inconsistency

or repugnancy either within the rule or between the rule and other parts of the statute has to be preferred. It is incumbent on courts to avoid a head on clash between the provisions of the Rules. The rules need to be harmonized in furtherance of the object of the statute. One provision cannot be read so as to defeat those of another. Rules are required to be read as part of an integral whole as being interdependent. Any interpretation which results in repugnancy or absurdity will have to be avoided. For maintaining the unity of the statutory scheme, it is imperative to determine the hierarchy of the provisions so as to give effect to the purpose sought to be achieved by the statute. With a risk of repetition, it is reiterated that Section 5 mandates the management to fill in the vacancy, be it permanent or temporary, by appointing a person duly qualified to fill such vacancy. Rule 6 lays down that minimum qualifications for the post of teachers shall be as specified in Scheduled B and Schedule B in turn provides for minimum qualification for appointment to the post of primary school teachers and further prescribes the qualification of S.S.C. And D.Ed. or any other qualification equivalent to the same, as laid down in Clause 1 of Schedule B. If Rule 3(1)(a)(i) and (ii) is read in the light of provisions of Rule 6 and Schedule B, it is obvious that Rule 3(1)(a)(iii) only intended to relax the

requirement of an experience of not less than 5 years service which is specifically provided for in Rule 3(1)(a)(i). In the scheme of the Act, one cannot comprehend that the legislature had intended to do away with the requirement of the seniormost teacher being a trained teacher. It could not have been the intention of the legislature while framing Rule 3(1)(a)(ii) to deliberately omit the word “trained”. The omission of the word trained is an obvious drafting error and if the said word is not supplemented, the rule cannot be harmonized in tune with the scheme of the Act and the other Rules which are referred to herein above.”

7. The learned Single Judge of this Court in the matter of Sumangala Manoharrao Sakharkar Versus State of Maharashtra and others [2010 (1) Mh.L.J. 63], dealt with the similar issue of a claim made by the Management before the School Tribunal that the service of the appellant suffered a break at the end of the academic year. She was terminated for the whole month of the summer vacation and after the beginning of the new academic year, she was again appointed in service. There was no dispute about she being qualified to be appointed as a trained teacher.

8. Shri Sapkal, therefore, points out from paragraph Nos. 12 to 23 and 26 of the said judgment which read as under :

“12. It is not necessary to go into the question of occasion or necessity for fixation of seniority. Rather, it may be useful to consider the following aspects :

1) Whether discontinuation of appointment of the petitioner at the ends of academic sessions and her reappointment amounted to breaks which were required to be condoned ?

2) If yes, whether the management or Education Officer had the authority to condone such breaks ?

3) Whether such condonation could be only for the purpose of counting service for pensionary benefits and not for the purpose of seniority ?

13. On the first question the learned counsel for respondent Nos. 6 and 7 submitted that since the petitioner herself had not come up with the case that there were no breaks and that she merely claimed that breaks had been condoned, it may be impermissible to find for a party a case which is not pleaded. The learned counsel for the petitioner submitted that requirement of pleadings would limit an argument based on facts and not

an argument about legal consequences flowing from facts pleaded. He submitted that if a legal aspect of a matter is missed by the parties, or even the authorities, it could always be raised even in the course of a hearing.

14. Having considered the rival submission on this aspect, I would hold that absence of pleadings cannot prevent a party from pointing out the consequences flowing from a provision of law. Therefore, the basic question whether there was a factual break or not would have to be decided.

15. In (Punjab State Co-op. Agricultural Development Bank Vs. Gurnaib Singh) 1, reported at 2003(10) S.C.C. 235, on which the learned counsel for respondent No. 6 placed reliance, the plaintiff was appointed on 2.7.1971 for a period of six months and again on 4.1.1972 till 25.5.1972. He was not in service from 26.5.1972 till 5.3.1973. He was again appointed on 5.3.1973 w.e.f. 6.3.1973. The question was whether the service from 2.7.1971 till 6.3.1973 with breaks could be counted towards seniority of the plaintiff. The Supreme Court held that since the plaintiff himself, after the break period, subsequently made an application for appointment, earlier service could not be counted. It may be seen that the break was long one from 26.5.1972 to 5.3.1973 and

not on account of vacation or institution being closed. Therefore, this judgment would not help in resolving the case at hand.

16. The relevance of judgment of the Division Bench of this Court in (Yeshwant Vs. Director of Education, Pune)², reported at 1987 Lab.I.C. 1611 is not clear, since in that case the question was about transition of service conditions of the teachers and lecturers employed under the erstwhile Madhya Pradesh State after the State of Bombay and later State of Maharashtra was formed.

17. The learned counsel for the petitioner placed reliance on my order dated 25.2.2008 in Writ Petition No. 4645 of 2007, where I had held that discontinuation during vacations do not amount to breaks. He also pointed out that a Letters Patent Appeal by his client in that case is admitted (since his argument to the contrary was rejected) but submitted that till the judgment is set aside, it would bind me, unless it is shown that even when it was pronounced it ran counter to a view already taken by this or a Superior Court. All the learned counsel, however, agree that the question as to whether such discontinuation amounts to breaks has not been, to their knowledge, dealt with in any other pronouncement. The learned counsel for respondents No. 6 and 7

submitted that it would be open to them to show the view taken was not correct and therefore, urged that the question may be re-examined. I find that a fresh look at the finding in Writ Petition No. 4645/2007 may be appropriate.

18. The learned counsel for respondents No. 6 and 7 submitted that for fictionally holding that a break did not exist, it would be necessary to have a rule. They submitted that Rule 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules only provides for payment of vacation pay to a teacher who was serving before and after a vacation, and does not add that such teacher be fictionally deemed to have continued. Therefore, such a fiction could not be created. The learned counsel for the petitioner opposed this.

19. It may be useful to reproduce Rule 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 for ready reference in order to consider this argument :

13. Vacation and Vacation Pay -

(1) Subject to the provisions of this rule, all the employees on the teaching staff including Head

masters, Laboratory Assistants and Laboratory Attendants in a school shall be entitled to vacations as follows namely :

(i) a short vacation which may either commence in a month of October or November every year generally to cover Diwali Festival;

(ii) a Summer vacation which may ordinarily commence in the month of May every year. The dates of commencement and the periods of vacations shall be notified by the Educational Inspector, or as the case may be, the Education Officer in Zilla Parishad.

(2) Non-permanent employee shall be entitled to the salary for the period of vacation if he had served for a major part of respective term and the temporary vacancy such as vacancy on account of leave, deputation or post created for a specific period, in which he was originally appointed continues to exist beyond the period of vacation and that the employee continues to be in service after the vacation.

(3) If the Management terminates the services of a non-permanent employee soon before the commencement of Summer vacation, such non-permanent employee shall also be entitled, in addition to vacation salary, to pay and allowances for the gap between the date of termination of his service and the date of commencement of the vacation if the Education Officer is satisfied that the termination of his service was on the ground other than the possibility of reduction in establishment.

(4) If a permanent employee after due notice, resigns his post in the school on the last working day of the term, he shall be entitled to the vacation salary.

(5) If a permanent employee after due notice, resigns his post in the school in the middle of the term and if the school is required to appoint a substitute who would otherwise be entitled to vacation salary under sub-rule (2), the permanent employee who has resigned shall not be entitled to the vacation salary for the same period.

(6) Untrained teachers appointed in the Secondary Schools or Junior Colleges of Education

during the period from the 16th July, 1969 to 6th February 1974 (both days inclusive and allowed to get trained at their own cost (by sanctioning leave for the entire period of training) shall be entitled to the vacation salary during the vacation immediately falling after their resuming duties on completion of training.

20. A break is discontinuation in service. Such a break may be physical break where the employee concerned does not perform duties on account of several reasons. But an employee not performing duties on account of institution being closed for vacation cannot obviously be an incidence of break. Here, it is not that the employee is prevented from discharging his duties by any order, peculiar to him, or by any act personally on his part. He does not perform his duties simply because the institution is closed for vacation. Thus, vacation is not a break. Now, for this period if an employee is also directed to be paid salary under the Rules, it would be obviously so because the administration considers that, but for the vacation the employee would have continued to be in employment and therefore, is held entitled to the salary for vacation period.

21. Rule 13 covers situation of employees whose

employment got terminated at the commencement of vacation and began again at the completion of vacation. If an employee is held entitled to salary it may not be permissible to hold that though he drew salary he was not in employment, because ordinarily the salary comes with employment. Therefore, vacation cannot be treated as a break in service for two reasons : first, but for the school being closed for vacations, the employee would have continued, and secondly, as the employee is held entitled under Rule 13 to the salary for the said period and had actually drawn that salary. Therefore, termination at the commencement of vacation and reappointment on reopening of school could not at all be termed as a break. Therefore, even upon re-examination of the reasons given while deciding Writ Petition No. 4645 of 2007, I am not persuaded to take a different view.

22. The contention of the learned counsel for respondents No. 6 and 7 that, a fiction could not be created by a judgment, may not be correct. That apart, the judgment in Writ Petition No. 4645/2007 does not create a fiction. It merely restates the consequences of Rule 13, which recognizes the right of the employee, who had served the school till it closed for vacation and also recommenced service from reopening of the school, to receive salary for the period of vacation. He draws salary

because fictionally administration and the Government treat such a teacher to be in employment. Payment of salary for vacation period itself creates a fictional employment. Therefore, it has to be held that there were no breaks in the employment of the petitioner from the date she joined services of respondents No. 4 and 5 on 5-1-1981, which were required to be condoned.

23. Consequently, there would be strictly no occasion for examining whether the Education Officer or the Management had the Authority to condone such breaks and whether such breaks could be condoned only for pensionary benefits and not for the purpose of seniority. All the same, it may be useful to consider those questions also. In (D.P. Gupta Vs. Parsuram Tiwari)³, reported at 2004(13) S.C.C. 746 on which reliance was placed by the learned Counsel for the respondent, the Supreme Court was considering the question of condonation of break in service on account of the concerned teacher taking extraordinary leave without pay for surreptitiously taking up a job of Land Valuation Officer, somewhere else. The Supreme Court held that the High Court had correctly taken a view that the teacher concerned who had taken up job elsewhere has lost lien of his service with University and thus, there was a break in his service, which could not have been condoned by the Vice

Chancellor. The Court held that for the purpose of his seniority and eligibility for promotion, the service would be counted only from the date of rejoining. The learned counsel for the respondent submitted that case at hand is similar and just as Vice Chancellor in that case had no authority, the Education Officer in our case has no authority to condone break. The decision does not help since it is on facts peculiar to the case where the teacher had lost lien by surreptitiously taking up job elsewhere.

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26. I have carefully considered these contentions. It has to be noted that the petitioner is not serving a government school but a private institution. The Government comes into picture only because it pays salary as well as pension to the teachers. Therefore, where financial implications are involved it would be proper for the Government to control such action and to provide that the Deputy Director of Education alone would be entitled to condone the breaks for the purpose of pension. However, such may not be the case in respect of condoning the breaks for the purpose of seniority. This does not have any financial implications and it is only a matter between different teachers who are serving under the same management. As an employer, unless prevented

from deciding the question of seniority of its teachers, the management would be entitled to do so. Rule 12 of the MEPS Rules, provides that the objections to seniority have to be considered by the management in the first place. It would be for the management to decide whether the breaks for the purpose of computation of seniority could be condoned by it. Sub-rule (3) of Rule 12 provides that the disputes in the matter of inter se seniority shall be referred to the Education Officer for his decision. Therefore, his concurrence in the condonation of breaks by the management should be conclusive of the matter. Thus the Education Officer gets the authority to approve condonation of break for seniority.”

9. The learned Division Bench of this Court (to which I am a party), in the matter of Rajendraprasad Vidyaprasad Tiwari Versus Secretary & others [2014 (2) B.C.R. 204], dealt with a similar case in Letters Patent Appeal. The learned Single Judge had held that as a candidate has acquired a trained qualification and was in regular employment, he was shown senior to the appellant. After considering the qualifications of both the candidates and upon considering the MEPS Rules, 1981, it was observed in paragraph Nos. 14 to 17 as under :

“14. That, so far as respondent No. 4 is concerned, there is no dispute that he has been appointed on 16.6.1986 and on the date of his appointment, he was holding training qualification. The Tribunal as well as the School Tribunal proceeded to hold that the appellant became trained teacher from 16.6.1986 when his date of appointment is shown as 15.6.1986 and that respondent No.4 was appointed on 10.6.1986 with effect from 16.6.1986 as trained teacher. It is recorded by the learned Single Judge that considering the fact that respondent No.4 is senior in age, he is rightly considered to be senior than the appellant.

15. It is a matter of record that the appellant was appointed as an Assistant teacher from 15.6.1985 as untrained teacher. After acquisition of training qualification i.e. since 21.5.1986, he became a trained teacher. As has been recorded above, the appellant has been held eligible to received pay scale prescribed for trained teacher since 1.6.1986 i.e. prior to appointment of respondent No. 4.

16. In this context, guidelines, prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 in respect of fixation of seniority of teachers in the Schools, are required to be taken into

consideration. A graduate or post graduate degree holder having training qualification is included in category "C", whereas, untrained Graduate or holder of equivalent qualification is included in category "F". Note 4 of Schedule "F" provides that the categories mentioned in the Schedule represent the ladder of seniority and have been mentioned in descending order. Thus, a teacher included in category "C" shall obviously be senior to a teacher classified in category "F". The appellant, at the time of his appointment, since holding training qualification, was liable to be included in category "F" and on acquisition of the training qualification, that is on 21.5.1986, he moves upwards in category "C". In the instant matter, as date of appointment of respondent No. 4 is 16.6.1986, much later than that of acquisition of training qualification and inclusion of appellant in category "C", respondent No. 4 could not have been considered as senior to the appellant.

17. It was contended before the Tribunal as well as before the learned Single Judge that the appellant was issued order of appointment appointing him as trained teacher since 15.6.1986 and as a result of issuance of order appointing him as trained teacher on 15.6.1986, his seniority has to be reckoned from the date of his appointment. The submission made on behalf of

respondent No. 4 is devoid of substance for the reason that on perusal of the Service Book of the appellant, it transpires that service rendered by the appellant is continuous without there being any break in the service. The Service Book of the appellant, which has been verified by the Competent Authority i.e. Accounts Officer of the Education Department, records that the appellant has acquired training qualification on 21.5.1986 and his pay has been fixed as trained teacher in the pay scale of Rs. 1400 to 2600/- on 1.6.1986. Thus, the contention of respondent No. 4 that there is order appointing respondent No. 4 a trained teacher since 15.6.1986 and that his seniority shall be reckoned from that date, is devoid of substance. The services rendered by the appellant are continuous one and theory of issuance of fresh appointment order appears to have been evolved to defeat claim of the appellant.”

10. Thereafter, the controversy was put to rest by the observations in paragraph Nos. 19 to 21, in the said judgment by placing reliance upon the Full Bench judgment in the matter of *Vaijnath Tatyrao Shinde (Supra)*. Paragraph Nos. 19 to 21 read as under :

“19. The learned single Judge overlooked the fact that

respondent No. 4 has entered service only on 16.6.1986 and his acquisition of training qualification along with appellant on 21.5.1986 is of no consequence. The question of reckoning seniority of an employee arises only after issuance of order of appointment in favour of such employee. The seniority of an employee has to be reckoned with reference to his date of appointment and only the factum of date of acquisition of training qualification, overlooking the date of appointment, cannot be taken into consideration. In our considered view, interpretation put by the learned Single Judge in respect of ratio laid down by the Full Bench, in the judgment cited *supra*, is erroneous. The issue referred for consideration before the Full Bench, was thus :

For promotion to the post of Head Master of a Primary School whether seniority of the teacher is to be counted from the date of initial appointment, or from the date of acquisition of educational and training qualification ?

20. While answering the issue, it has been observed by the Full Bench, in paragraph No. 9, thus :

“9. In this view of the matter, we hold that for a valid appointment of a primary school teacher,

a person must possess educational so also the training/teaching qualification. No person can be legally appointed who does not hold training qualification. Hence, service rendered as an untrained teacher will not qualify for being counted to determine seniority.”

The Full Bench proceeded to conclude that for appointment to the post of Head Master (by promotion) of a primary school, the seniority of the teacher is to be counted from the date he acquires educational and training qualifications as prescribed under Schedule-B of the M.E.P.S. Rules. The seniority cannot be counted from the date of initial appointment and continuous officiation devoid of requisite qualification as prescribed in Schedule-B.

21. Applying the ratio laid down by the Full Bench to the case in hand, services rendered by the appellant from 10.6.1985 as untrained teacher till the date of acquisition of training qualification by him i.e. 21.5.1986, cannot be reckoned. However, his services are to be reckoned from the date of acquisition of training qualification i.e. 21.5.1986 onwards. Considering the fact that appellant is deemed to be trained teacher from the date of acquisition of training qualification by him as well as by extending

the pay scale prescribed for trained teacher in the pay scale of Rs. 1400 to 2600/- from 1.6.1986, he ought to be considered as senior to respondent No. 4 since respondent No. 4 has entered services only on 16.6.1986. The learned Single Judge has committed serious error in considering the period of acquisition of training Single Judge has committed serious error in considering the period of acquisition of training qualification by him i.e. respondent No. 4 prior to the date of his appointment (respondent No. 4's appointment). In the nutshell, although both – appellant and respondent No. 4 have acquired training qualification on 21.5.1986, having regard to the date of entry of respondent No. 4 in service i.e. 16.6.1986, the appellant ought to be considered as senior to respondent No. 4.”

11. The School Tribunal has dismissed the appeal of the petitioner by concluding that though undisputedly he was appointed on 03/07/1991, he was not in regular employment. He was appointed for one academic year and was given a break after the end of the academic session 1991-1992, in May, 1992. He was re-inducted in service in June, 1992 for the academic year 1992-1993. He was again given a break for the summer of

1993 in the month of May and was issued with an appointment order indicating that he was on probation, on 14/06/1993. Respondent No. 2, for reasons best known to the Management, was given an order of appointment on probation on 11/06/1992 and he acquired trained teacher's qualification so as to be eligible to be confirmed in employment on 09/06/1993. Apparently, considering the settled law in the judgments referred to herein above, the employment of respondent No. 2 till 09/06/1993, is inconsequential and insignificant. So also, it is not the case of the Management that the appointment of the petitioner was illegally made or that it suffered from procedural defects. His appointment is not under challenge.

12. The issue is, as to whether the breaks shown in the service of the petitioner would have any sanctity. Considering the law laid down in Sumangala's Case (Supra), and by the learned Full Bench of this Court in Rajendra Prasad's case (Supra), such breaks are only to be considered as being artificial breaks and meant only to disrupt the service of an employee who has been legally appointed. In cantena of judgments, this

Court has concluded that an employee cannot be appointed for an academic year if he is otherwise eligible to be appointed.

13. Contention of the Management is that there was no post on which the petitioner could have been appointed. It is, however, conceded by the Management that in the year 1991, the school was not on full grant-in aid basis and as such it appears that there was no issue about the staffing pattern. It also does not emerge from the impugned judgment that the issue of staffing pattern was ever raised, keeping in view that the said school was not on 100 % grant-in-aid basis. Even otherwise, when it came to deciding the seniority between the petitioner and respondent No. 2, the petitioner was shown to be senior all throughout until 2013 when the Management surreptitiously changed the seniority, as if it was on account of the training qualification acquired by respondent No. 2, twenty years ago on 09/06/1993. This was apparently done to pave the way for appointment of respondent No. 2 as the Head Master.

14. The learned Full Bench in Vajinath Tatyrao Shinde (Supra), considering similar peculiar facts, placed reliance upon the observations of Denning L.J., in the case of Seaford Court Estates Ltd. Versus Asher [1994 (2) All E.R. 155]. It would be apposite to reproduce those observations of Lord Denning, in so far as the roll of a judge in seeing a defect, as under :

“When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give force and life to the intention of the Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron cut the creases.

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We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.”

15. Considering the factual matrix and the law, I have no

hesitation in concluding that the seniority of the petitioner would be with effect from the date of his joining as a trained teacher. Consequentially, he would be senior to Respondent No. 2 and legitimately would be entitled to the post of Head Master.

16. Considering the above, though the petitioner has lost valuable two years during which he could have performed his duty as a Head Master from 01/08/2015, I find that the injustice caused to the petitioner could be largely done away with. In the result, this petition is allowed. The impugned judgment dated 04/03/2016, passed by the School Tribunal is quashed and set aside and Appeal No. 34/2015 is allowed.

17. Consequentially, the appointment of respondent No. 2, as a Head Master shall stand set aside and the petitioner shall stand appointed as the Head Master of the respondent No. 2/School. The petitioner shall be entitled to all the monetary benefits with effect from 01/08/2015, to be paid by the respondent No. 1/Management, within a period of eight weeks from today, failing which the said amounts shall carry interest at the rate of 6 % per annum from the date of the judgment of School Tribunal.

18. Rule is made absolute in the above terms.

19. Before parting with this matter, I find it appropriate to express my gratitude to Shri Sapkal, learned advocate for having rendered able assistance in this matter.

(RAVINDRA V. GHUGE, J.)

S.P.C.