

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12029 OF 2016

Yogesh Vinayakrao Patil

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri R. I. Wakade, Advocate for the Petitioner.

Shri M. B. Bharaswadkar, A.G.P. for Respondent Nos. 1 and 2.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 3.

Shri V. G. Salgare, Advocate for the Respondent No. 4.

Shri B. L. Sagar Killarikar, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 26TH SEPTEMBER, 2017.

FINAL ORDER :

. Mr. Wakade, the learned counsel for the petitioner submits that, the petitioner was appointed on 11.06.1998 as an Assistant Teacher. In the year 2003 the post of Head Master became vacant. There were two teachers senior to the petitioner, however, present respondent No. 5 and another senior teacher Smt. Thorat gave their no objection in writing before the respondent/management and the Education Officer to appoint the present petitioner as Head Master. The petitioner was appointed as Head Master on 22.08.2003. The appointment of the petitioner as Head Master was also approved by the

Education Officer. The learned counsel submits that, erroneously the petitioner was reverted from the post of Head Master to the post of Assistant Teacher on 04.03.2015. The petitioner challenged the said order of reversion before the School Tribunal by filing appeal. On the basis of assurance given by the management, the petitioner withdrew the appeal. The management in August 2016 passed a resolution thereby revoking reversion order and reinstating the petitioner as Head Master. The proposal is submitted by the management to the Education Officer to approve the reinstatement of the petitioner as Head Master. By the impugned order the said proposal is rejected.

2. The learned counsel further submits that, the management by a subsequent resolution on 14.09.2016 revoked earlier resolution passed of revoking of reversion. The said resolution is illegal and does not stand to any reason. The respondent/management cannot again revert the petitioner. The learned counsel submits that, the person senior to the petitioner once having given no objection to the appointment of the petitioner as Head Master loses his right to claim the post of Head Master. The petitioner was not newly appointed as a Head Master, but was reinstated on his original post of Head Master. Rule 3 of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Rules (for short "M.E.P.S. Rules) clearly applies. According to the learned counsel act of the

Education Officer and the management is illegal. The petitioner being a permanent employee, he cannot be dis-engaged from the post of Head Master, unless a fresh order of reversion is passed. The petitioner is entitled to hold the post of head master.

3. Mr. Salgare, the learned counsel for the respondent/management submits that, considering the exigencies of the situation, resolutions are passed.

4. Mr. Bankar Patil, the learned counsel for the Education Officer submits that, the petitioner was reverted. The post of head master became vacant. The petitioner also joined as Assistant Teacher and in view of that, the respondent No. 5 being senior most teacher will have to be considered for the post of Head Master.

5. Mr. Sagar Killarikar, the learned counsel for the respondent No. 5 submits that, no objection was given by the respondent No. 5 before the management and not before the Education Officer. The said no objection of the year 2003 is not in consonance with Rule 3 of the M.E.P.S. Rules, as the same was never given before the Education Officer. The learned counsel submits that, after the petitioner was reverted, the respondent No. 5 got a fresh cause to claim the post of Head Master in view of proviso to the explanation of Rule 3 of the M. E. P. S. Rules.

6. We have considered the submissions canvassed by learned

counsel for respective parties.

7. It is not disputed that in the year 2003, when the petitioner was appointed as a Head Master, the respondent No. 5 had given his no objection. It would be too late in the day to say that no objection was not in consonance with Rule 3 of the M.E.P.S. Rules. The respondent No. 5 had accepted the appointment of the petitioner as Head Master in the year 2003 by his conduct also.

8. Be that as it may, in March 2015, the petitioner was reverted from the post of Head Master to that of Assistant Teacher after holding a departmental enquiry. In view of reversion of the petitioner, the petitioner joined as an Assistant Teacher. Once reversion has taken place, certainly earlier no objection given would be of no avail and in view of proviso to Explanation and Explanation to Rule 3 of the M.E.P.S. Rules, senior most teacher who had earlier given no objection can stake his fresh claim to the post of Head Master. In December 2015, the petitioner withdrew the appeal. The appeal stood dismissed as the petitioner withdrew the same. The petitioner withdrew the appeal on the assurance of the management, however fact remains that order of reversion stood confirmed on the withdrawal of appeal. The resolution is passed by the management eight months after withdrawal of appeal and after right accrued in favour of the respondent No. 5 to put forth his

claim to the post of Head master.

9. The respondent No. 5 had got a fresh right to claim the post of Head Master and was appointed as Head Master. His proposal was also submitted to the Education Officer for approval as Head Master. Resolution revoking reversion after eight months of withdrawal of appeal and same resolution being withdrawn after one more month shows casual approach of the management.

10. Be that as it may, the right which was already accrued in favour of the respondent No. 5 could not have been taken away after a long gap of one and half year that too without any judicial order in favour of either the management or the petitioner.

11. Considering the aforesaid conspectus of the matter, upon reversion of the petitioner, fresh right was accrued to the respondent No. 5 to claim the post of Head Master and that too when no judicial order was passed setting aside said reversion. The said claim of the petitioner now cannot be considered.

12. In the light of the above, no relief can be granted to the petitioner. The writ petition is dismissed No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]