

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.184 OF 2007
IN
WRIT PETITION NO.4407 OF 1993**

Shri Suresh Pundalik Tharkar)
Residing at Village -Kaulage)
Taluka-Gadhinglaj, District Kolhapur) **..Appellant**

Versus

1 Chairman/Secretary)
Shikshan Prasarak Mandal)
Village-Nool, Taluka-Gadhinglaj)
District Kolhapur)

2 Mulyapa Rama Mane)
Residing at Village – Nool)
Taluka Gadhinglaj, District Kolhapur)

3 R. R. Bhavsar)
or his successor in office)
Presiding Officer, School Tribunal)
Pune Region, Pune)

4 State of Maharashtra)
Through Education Officer (Secondary))
Zilla Parishad Kolhapur) **..Respondents**

**WITH
LETTERS PATENT APPEAL NO.64 OF 2008
IN
WRIT PETITION NO.4407 OF 1993**

Shikshan Prasarak Mandal)
Village-Nool, Taluka-Gadhinglaj)
District Kolhapur)
Through Chairman/Secretary) **..Appellant**

Versus

1 Shri Suresh Pundalik Tharkar)
Age 51 years, Occupation Service)

Residing at Village -Kaulage)
Taluka-Gadhinglaj, District Kolhapur)

2 Mulyapa Rama Mane)
Age 55 years, Occupation Service)
Residing at Village – Nool)
Taluka Gadhinglaj, District Kolhapur)

3 Presiding Officer, School Tribunal)
Pune Region, Pune)

4 State of Maharashtra)
Through Education Officer (Secondary))
Zilla Parishad Kolhapur)

..Respondents

Mr. Sandesh Shukla a/w Mr. Santosh Sawant i/b M/s. Abhay Nevagi & Associates for the Appellant in LPA No.184 of 2007 and for the Respondent No.1 in LPA No.64 of 2008

Mr. B. V. Bukhari for the Respondent No.2

MR. N. V. Bandiwadekar i/b Mr. S. C. Prabhu for the Respondent No.1 in LPA No.184 of 2007 and for the Appellant in LPA No.64 of 2008

Mrs. R. A. Salunkhe AGP for the Respondent State

CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 28th NOVEMBER, 2017

ORAL JUDGMENT (PER R. M. SAVANT J.)

1 The above Letters Patent Appeals have given rise to a piquant situation whereby two persons are vying for the post of Head Master in the school run by the Appellant in Letters Patent Appeal No.64 of 2008 which is a public trust registered under the Maharashtra Public Trust Act 1950. The facts giving rise to the said piquant situation can in brief be stated thus:-

The Shikshan Prasarak Mandal i.e. the Appellant in LPA No.64 of 2008 was running two aided secondary schools. In each of the said schools a

post of Head Master was sanctioned, hence there were two posts of Head Master which were available in the schools run by the said trust. The Appellant in Letters Patent Appeal No.184 of 2007 Mr. Suresh Tharkar is B.A.B.Ed. and was appointed as an Assistant Teacher in one of the schools on 7-9-1979. The said Mr. Tharkar claimed that he belonged to the Schedule Caste category (for short SC Category). The Respondent No.2 Mr. Mulyapa Mane in the above Letters Patent Appeal No.184 of 2007 was also appointed as an Assistant Teacher in one of the schools on 8-9-1979. The Respondent No.2 is M.A.B.Ed. and belongs to the SC category.

2 In so far as the schools run by the said trust are concerned, one post of Head Master became available on account of a vacancy which had arisen because of superannuation, the management was therefore required to fill up the said post by promoting a reserved category candidate. Since in the other schools the post of Head Master was occupied by open category candidate Mr. Vilas Vishnu Desai, the management on the basis of the seniority amongst the Assistant Teachers promoted Mr. Tharkar as Head Master w.e.f. 1-11-1990. Since the Respondent No.2 also belongs to the SC category, being aggrieved by the said promotion of Mr. Tharkar filed Appeal No.163 of 1992 in September 1992 before the School Tribunal, Pune and the principal relief claimed was that he should be promoted as Head Master instead of Mr. Tharkar. In the said Appeal the management and Mr.Tharkar filed their

Written Statements to oppose the Appeal. In view of the fact that there was no interim order operating in the said Appeal, Mr. Tharkar continued to work as Head Master. The Education Officer granted approval to the said promotion of Mr. Tharkar. The school in question being aided Mr. Tharkar received salary of the post of Head Master through the grant in aid which was sanctioned and released by the Education Officer.

3 The School Tribunal considered the said Appeal and by judgment and order dated 28-9-1993 allowed the Appeal and thereby set aside the order dated 1-11-1990 promoting Mr. Tharkar to the post of Head Master. The School Tribunal in turn directed the management to promote Mr. Mane as Head Master with retrospective effect from 1-11-1990 with continuity of service and all the consequential benefits. This was on the basis that Mr. Tharkar was promoted on 1-11-1990. The gist of the reasoning of the Tribunal as can be seen from its order was that both Mr. Tharkar and Mr. Mane belong to the S.C. category and Mr. Tharkar was Senior to Mr. Mane, however, the Tribunal held that in view of the judgment of the Apex Court in the matter of **Marrichandra Shekhar Rao Vs. Dean Seth G.S. Medical College & Ors.**¹. Since Mr. Tharkar was born in Village Kadaklat, Taluka Chikodi, District Belgaum in the State of Karnataka and since Mr. Tharkar migrated from Karnataka to Maharashtra, he would not be entitled to the benefits available to the SC category in the migrated State. The Tribunal therefore held that Mr.

¹ (1990) 3 SCC 138

Tharkar would not be entitled to the benefits of reservation in the State of Maharashtra. The Tribunal further held that since Mr. Mane was the only candidate belonging to the SC category, he was entitled to be promoted to the post of Head Master on the basis of the post being available for the SC category. The Tribunal accordingly allowed and set aside the promotion of Mr. Tharkar to the post of Head Master.

4 Being aggrieved by the judgment and order dated 28-9-1993 passed by the School Tribunal, Mr. Tharkar filed a Writ Petition in this Court being No.4407 of 1993. The said Writ Petition came to be admitted by a Learned Single Judge of this Court on 21-3-1993 and the order of the School Tribunal was stayed. In view thereof Mr. Tharkar continued to work as Head Master, drawing salary and allowance of that post through the grant in aid received from the Education Department. The said Writ Petition came up for hearing before a Learned Single Judge of this Court on 3-5-2007. The Learned Single Judge dismissed the said Petition filed by Mr. Tharkar and resultantly confirmed the order passed by the School Tribunal. In so doing, the Learned Single Judge relied upon the judgment of the Division Bench of this Court in the case of **Bankimchandra Mankanbhai Patel Vs. State of Maharashtra & Anr**² and held that a person belonging to a caste or tribe which is notified in that State is entitled to the benefit only in that State and not in the State where he or she migrates. The Learned Single Judge further

2 2006(2) MhL.J. 664

held that even if the caste is notified as schedule caste in both the States, benefits cannot be claimed in the migrated State but can only be claimed in the State of origin. The Learned Single Judge has also referred to the Judgment of the Apex Court in the case of Marrichandra (supra).

5 Aggrieved by the dismissal of the Petition by the Learned Single Judge, Mr. Tharkar filed the instant Letters Patent Appeal No.184 of 2007 before the Division Bench in July 2007. The management also filed its own Letters Patent Appeal being No.64 of 2008. The said Letters Patent Appeals were placed for admission after the delay in filing the said Appeals was condoned. The Letters Patent Appeals came to be admitted by a Division Bench of this Court on 26-8-2008 and the interim stay was granted to the impugned order i.e. the order passed by the Learned Single Judge. The result of the interim stay being granted was that Mr. Tharkar continued in the post of Head Master and was being paid the salary and allowances of the said post through the grant in aid paid by the Education Department. It is required to be noted that whilst the above Letters Patent Appeals were pending, the Respondent No.2 Mr. Mane also came to be promoted as Head Master in one of the schools of the Management w.e.f. 1-5-2009 and he has retired as Head Master on 31-5-2010. Mr. Tharkar has also retired on 31-10-2014 . At present both Mr. Tharkar and Mr. Mane are receiving pension of the post of the Head Master. The amount received by Mr. Mane is less in view of the fact that he

was promoted on 1-5-2009 and has retired on 31-5-2010, whereas Mr. Tharkar has occupied the post of Head Master from 1-9-1990 till 31-10-2014 i.e. till his superannuation.

6 It is in the background of the aforesaid facts that we ventured to adjudicate upon the above Letters Patent Appeals. Undoubtedly the legality or otherwise of the promotion to the post of Head Master of Mr. Tharkar is in contention. However, what stares us in the fact is that Mr. Tharkar has continued in the said post of Head Master from 1-11-1990 till the date of his superannuation i.e. 31-10-2014, albeit on account of the interim orders passed firstly in the Writ Petition and thereafter in the above Letters Patent Appeals. He worked as Head Master till his superannuation. In so far as the Respondent No.2 Mr. Mane is concerned, no fault can be found with him. He is a party who succeeded before the School Tribunal and thereafter the Learned Single Judge, however he could not enjoy the benefits of the said post of Head Master on account of the situation arising out of the interim orders passed in the Writ Petition as well as the above Letters Patent Appeals as a result of which he could not be appointed as Head Master. He was ultimately appointed as Head Master in another school of the same management on 1-5-2009 though as per the order of the School Tribunal he was entitled to be appointed in place of Mr. Tharkar.

7 It is in the aforesaid conspectus of facts that we endeavoured to find a solution which would be just and equitable to both Mr. Tharkar and Mr. Mane. The adjudication of the above Letters Patent Appeals one way or the other would only result in heart burning either for Mr. Tharkar or Mr. Mane, which would be contingent upon the decision that we would render. We are however of the view that both Mr. Tharkar and Mr. Mane can be meted out justice if they are both directed to be paid pension of the post of Head Master which in so far as Mr. Tharkar is concerned he is already receiving, but in so far as Mr. Mane is concerned, the same can be done by directing the calculation of his pension on the basis that he is deemed to have been promoted on 1-11-1990 and taking into consideration the date of his superannuation i.e. 31-5-2010. Towards this end we had directed the Learned AGP to get the calculations done in so far as Mr. Mane is concerned on the basis that he is notionally promoted on 1-11-1990 and he has retired on 31-5-2010. The Education Officer has on the last date produced a statement which indicates that Mr. Tharkar is getting a total pension of Rs.32,245/- whereas Mr. Mane is getting a total pension of Rs.28,477/- and hence the difference in pension to the extent of Rs.3768/- as on date. In our view without going into the merits of the challenge in the above Letters Patent Appeals which on account of the supervening event of both Mr. Mane and Mr. Tharkar retiring is only academic, the above Letters Patent Appeal can be conveniently disposed of by issuing appropriate directions. We are conscious of the fact that some financial

liability would be imposed on the State Government as a consequence of the directions we propose to issue, but we are constrained to adopt the course of action which we proposed to adopt in view of the piquant situation which has arisen in the instant Letters Patent Appeals and so as to do justice to the parties. We have therefore endeavoured to keep the liability of the State Government to the minimal. Hence the following directions:-

(i) The pension payable to the Respondent No.2 Mr. Mane is directed to be calculated on the basis that he is notionally promoted from 1-11-1990 and that he has retired on 31-5-2010. The same to be done within 12 weeks from date.

(ii) The Respondent No.2 Mr. Mane would not be entitled to any arrears of pension on account of the difference between the pension that he is being paid and he is entitled to on the basis that he is notionally promoted on 1-11-1990. The pension as directed would be payable to the Respondent No.2 Mr. Mane from December 2017.

(iii) The Learned Counsel Mr. Bukhari appearing for the Respondent No.2 Mr. Mane on instructions is agreeable to the aforesaid course of action being followed and further states that the Respondent No.2 would not make any claim for arrears to be paid on account of the difference in pension.

(iv) The Learned Counsel Mr. Bandiwadekar appearing for the Appellant in Letters Patent Appeal No.64 of 2008 i.e. the Management has also no objection to the aforesaid course of action being followed.

(v) Needless to state that Mr. Tharkar would continue to be paid pension which is being paid to him, since his superannuation and that no action would be taken against Mr. Tharkar in respect of his pension.

7 The above Letters Patent Appeals are accordingly disposed of in terms of the aforesaid directions.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]