

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5139 OF 1999

Shri Chandrakant Dajiram Chaugule

Age about 42 years,

Occupation – Service

R/at : 10-B, Shahane Plot,

Nandikeshawar Society,

Dahitne Road, Shelgi,

North Solapur

Dist. Solapur

.. Petitioner

Vs.

1. Karanjkar Shikshan Prasarak Mandal,
2, East Mangalwar Peth,
Solapur – 413 002.
(Through its President)

2. The Head Master,
Karanjkar Vidyalaya,
2, East Mangalwar Peth,
Solapur, 413 002.

3. Shri Sunil Sangappa Chaugule
Age – 32 years,
Occ : Service,
C/o Karanjkar Vidyalaya,
2, East Mangalwar Peth,
Solapur – 413 002.

4. The Administrative Officer,
Primary School Board,
Solapur Municipal Corpn,
Navi Peth, Solapur,

5. The Dy. Director of
Education, Pune region,

17, Dr.Ambedkar Road,
Pune – 411 001.

6. the Presiding Officer,
Addl. School Tribunal,
Pune Region at Solapur

.. Respondents

Mr.M.S.Lagu, for the Petitioner.
Mr.V.K.Bodhare i/b Mr.A.M. Joshi, for Respondents No. 1 & 2.
Mr.Yuvaraj Gharal i/b Mr.Vijay Killedar, for Respondent No.4.
Ms.K.R. Kulkarni, AGP for Respondent No.5.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

**RESERVED ON : 14th JULY, 2017
PRONOUNCED ON : 21st JULY, 2017**

JUDGMENT (PER M.S.KARNIK, J) :

. The petitioner is qualified as B.A.B.Ed and belongs to O.B.C. Respondent No.1 – School is a Society which runs and manages the primary school in Solapur by name 'Karanjkar Vidyalaya' having classes from I to VII standards. In response to an advertisement dated 15/05/1993, the petitioner applied for the post of Assistant Teacher and he came to be appointed as an Assistant Teacher with effect from 02/06/1993. The resolution was passed by respondent No.1 – Institution that in view of the previous experience of the petitioner and his good style of teaching, he has been appointed to teach the English subject. The petitioner had 6 years

experience of teaching to his credit prior to joining services of the respondent No.1 – Institution.

2. The proposal for age relaxation was sent by respondent No.1 – Institution to the office of Deputy Director of the Education i.e. respondent No.5 and the same was decided by respondent No.5. On 08/06/1995, the Administrative Officer - respondent No.4 informed the Head Master of the School in question stating that over age of the petitioner cannot be condoned.

3. On 05/07/1995, the petitioner and the respondent No.1 – Institution jointly made a request to the respondent No.5 pointing out the circumstances under which the petitioner came to be appointed and submitted that he may be granted age relaxation. The services of the petitioner came to be discontinued by an order of termination dated 29/09/1997. Against the order of termination, the petitioner filed an Appeal before the School Tribunal, Pune region at Solapur being Appeal No. 69 of 1997. The School Tribunal by its order dated 20/04/1999 dismissed the Appeal filed by the petitioner.

4. The petitioner has thus challenged the order passed by

the School Tribunal. He has also challenged the letters/orders passed by respondent No.5 dated 07/04/1995 and 20/06/1997 and letters of respondent No.4 dated 08/06/1995 and 05/07/1997 refusing age relaxation.

5. Learned Counsel for the petitioner submits that respondent No.5 was not justified in rejecting the proposal submitted by respondent No.1 on his behalf for age relaxation. He contends that even prior to the joining the services of respondent No.1, the petitioner has good teaching experience at his credit. The petitioner was working as an Assistant Teacher and therefore, the Deputy Director of Education has ample power to grant age relaxation in certain circumstances as provided under Rule 9 (4)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules' for short). Learned Counsel for the petitioner contends that no hearing was given by respondent No.5 before rejecting the proposal of the petitioner for age relaxation and therefore the order passed is in breach of principles of natural justice. Learned Counsel submits that there are several cases in which respondent No.5 had granted age relaxation and the petitioner is thus discriminated in the matter of grant of age

relaxation. Learned Counsel submits that though at the time of regular appointment the petitioner was over age but as he had teaching experience before he joined the Institution, his experience should have been taken consideration for granting age relaxation. Though the petitioner's age was 38 years when he joined the Institution, but the petitioner was around 30 years 5 months of age when he started teaching. He was therefore not over age at the time of initial appointment. Learned Counsel further submits that the respondent No.5 was further not justified in rejecting the proposal on the ground that the petitioner is not qualified. In his submission, the petitioner is B.A.B.Ed and the School is having classes from I to VII standards and therefore, the petitioner is duly qualified. In the submission of the learned Counsel the School Tribunal ought to have interfered with the orders passed by the respondent No.5 and after granting him age relaxation, the termination ought to have been set aside.

6. Learned AGP on behalf of the respondent No.5 justified the orders passed by respondent No.5. Learned AGP invited our attention to the affidavit-in-reply filed on behalf of respondent No.5. In the submission of learned AGP the post of Assistant Teacher was

required to be filled up by promotion but respondent No.1 – Institution appointed the petitioner directly. Learned AGP further submits that the Institution appointed the petitioner as a trained teacher, but as per rules and regulations, the post was required to be filled up by promotion as per the seniority list. The petitioner was not possessing the educational qualification of D.Ed at that time, therefore, his age could not be relaxed. At the time of appointment the petitioner's age was 38 years and this fact was known to the Institution. The petitioner was thus clearly age barred. According to the learned AGP the approval to the petitioner cannot be given as his age was 38 years at the time of appointment and the previous experience of the petitioner cannot be considered to approve the appointment of the petitioner on the post of Assistant Teacher. Learned AGP submits that respondent No.5 passed the order in accordance with the provisions of M.E.P.S. Act 1977 and rules framed thereunder and it is the discretion of the Deputy Director to condone the age depending on the facts and circumstances of each case.

7. We have considered the submissions made by the learned Counsel for the parties. Admittedly, on the date when the petitioner was appointed as an Assistant Teacher with the respondent No.1 on

15/05/1993, the petitioner was over aged. Rule 9(4)(a) of the Rules provides that in case of candidate belonging to Backward Classes for an appointment to be made to any post in a primary school, a candidate shall not be more than 33 years of age. The upper age limit may be relaxed in case of persons having previous experience with the previous permission of the Deputy Director. At the time of petitioner's appointment, his age was 38 years. The School Tribunal observed that the Deputy Director of Education has discretion to relax the upper age limit in case of persons having previous experience with the permission of the Deputy Director, but in this matter previous permission of the Deputy Director was not sought before appointment of the petitioner as Assistant Teacher. The proposal for age relaxation was submitted to the respondent No.5 to relax upper age limits of the petitioner.

8. Before the School Tribunal, the petitioner contended that respondent No.5 has not relaxed upper age limit with malafide intention. The School Tribunal also took into consideration the order dated 29/08/1991 produced by the petitioner to show that the upper age limit of 3 teachers was relaxed by the Deputy Director of Education. The School Tribunal was of the opinion that the

School Tribunal cannot direct the Deputy Director of Education to use discretion in favour of the petitioner to relax upper age limit because after all it is discretion of respondent No.5 and he can exercise discretion after considering all the facts and circumstances which were before him. In these circumstances, the School Tribunal refused to interfere with the discretion exercised by respondent No.5 - the Deputy Director of Education. We do not find that view taken by the School Tribunal is perverse or unreasonable so as to warrant interference in the exercise of writ jurisdiction.

9. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of **Lakhan Lal Tripathi Vs. Commandant General and anr. (2000) 10 Supreme Court Cases 184** to contend that whether the appellant was over age and whether he was entitled to any relaxation in age are the questions which could not have been decided by the respondents by taking one sided decision without giving any opportunity to the appellant to indicate that the opinion of the respondent that he was over age was not correct. The appellant before the Apex Court case was admittedly not over age and despite that he was terminated for the reasons that he was found over age at the time of appointment. In our opinion,

the said decision of the Apex Court is not applicable to the facts of the present case as admittedly, in the present case, the petitioner was over age on the date of initial appointment.

10. Learned Counsel for the petitioner also relied upon the decision of this Court in the case of **Rekha Damodar Joshi Vs. State of Maharashtra 2011 (2) Mah. L.J. 786**. In our opinion, the said decision does not aid the petitioner as in the present case apart from the petitioner's proposal being rejected on the ground of he being over age, the same was rejected also on the ground of petitioner was not duly qualified at the time of his initial appointment.

11. We do not find any merit in the present Petition. The view taken by the Tribunal cannot be said to be perverse or unreasonable so as to warrant interference in exercise of writ jurisdiction. The Petition is therefore dismissed with no order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)