

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 1624 OF 1998

Dilip Mahadev Thorat	...	Petitioner
V/S		
The State Of Maharashtra & Others		Respondents
...		
Mr. S.G.Kudle for the Petitioner.		
Mr.M.A.Utagikar for the Respondent No.4.		
Mr.S.B.Kalel, AGP for State.		

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

DATED : 28 JULY 2017

ORDER: (Per A.A.Sayed,J.)

The Petitioner by this Petition filed under Article 226 of the Constitution, seeks a declaration that he is entitled for the post of Assistant Head Master with effect from 01-05-1989 and as a Head Master with effect from 01-08-1994 in the school known as Gopalrao Deo Prashala at Malshiras run by the Respondent No.4-Management with retrospective effect with all consequential benefits. The Petitioner relies upon the Government Resolution dated 17-09-1980 and 50 Point Model Roster. During the pendency of Petition, the Petitioner attained the age of superannuation.

2. The Petitioner belongs to Schedule Caste category. He was working as Assistant Teacher in Secondary Section in Gopalrao Deo Prashala, Malshiras, District Solapur from 01-10-1984. The Petitioner has stated in the Petition that the Respondent No.5 was promoted as Assistant Head Master and thereafter as Head Master by the Respondent-Management and the Respondent No.6 came to be appointed as Head Master after the retirement of the Respondent No.5.

3. The Respondent No.4-Management was running two secondary Schools one at Malshiras and another at Medad. According to the Petitioner, rules of reservation in respect of two posts of Assistant Head Master and one post of Head Master have been violated. It is the Petitioner's case that he ought to have been appointed as Asst. Head Master with effect from 01-05-1989 and Head Master with effect from 01-08-1994 and the Respondents Nos.5 and 6 have been wrongly promoted and the Respondent No.4-Management has failed to apply the reservation policy as laid down in the GR dated 17-09-1980.

4. We have heard the learned Counsel for the Petitioner, the learned Counsel for the Respondent No.4-Management and the learned AGP for the State.

5. The promotions for the posts of Assistant Head Master and Head Master are governed by Rule 9(10)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 . The said Rule 9(10) (a) (as it then existed) is reproduced hereunder:

9. Appointment of staff.

(10) (a) The Management shall reserve 24 percent of the total number of posts (or vacancies) of Heads and Assistant Heads for the members of Scheduled Castes, Scheduled Castes converts to Buddhism, Scheduled Tribes, Denotified Tribes and Nomadic Tribes as follows, namely :

- | | | |
|-------|---|-----|
| (i) | Scheduled Castes and Scheduled Castes converts to Buddhism | 13% |
| (ii) | Scheduled Tribes including those living outside the specified areas | 7% |
| (iii) | Denotified Tribes and Nomadic Tribes | 4% |

(b)

The aforesaid Rule thus discloses that for the post of Head Master and Assistant Head Master, the statutory reservation is 24%, viz. 13% for Scheduled Castes, 7% for Scheduled Tribes and 4% for Denotified and Nomadic Tribes.

6. The controversy in the Petition is covered by the decision of the Full Bench of this Court (Nagpur Bench) in **New English High School Association Nagpur and anr. v/s. Baldev Fakira Ade and anr.**, 2007(1) All MR 381, which was delivered during the pendency of this Petition. The Full Bench has held that applicability of reservation to the post of Head Master and Assistant Head Master has to be with reference to number of posts. The Full Bench held that 24% reservation can be made applicable only in a case where there are four posts in a cadre and not otherwise and in case the cadre consists of three or less number of posts there cannot be any reservation and it would be only in case of four posts that one of those posts will have to be filled in by reserved category. The Full Bench has considered the very GR dated 17-09-1980 and held that the 50 Point roster can be made applicable only when its applicability would not result in implementation of policy in excess of percentage statutorily fixed for reserved category candidates.

7. In the present case, it is an admitted position that sofaras Assistant Head Master is concerned, there were two posts (i.e. less than four posts) and sofaras Head Master is concerned, there was one post (i.e. again less than four posts). In light of the judgment of the Full Bench in **New English High School** (supra) there could not be any reservation for

the two posts of Assistant Head Master and the post of Head Master in the schools run by the Respondent-Management. It is also not in dispute that the Petitioner's position on the seniority list was much below that of Respondents Nos.5 and Respondent No.6. In view of the judgment of the Full Bench in **New English High School** (supra) and on facts, the Government Resolution dated 17-09-1980 and 50 Point GR would not have application in the instant case. The judgment in the case **Y.V.Rangaiah: State of Andhra Pradesh v/s. J. Sreenivasa Rao**, 1983 DGLS(Soft.)97 relied upon by the learned Counsel for the Petitioner has no application in the facts of the present case.

8. In light of the above, we see no merit in the Petition. The Petition is accordingly dismissed. Rule is discharged. No order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)