

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 2177 OF 2016

Shri. Govind Manikrao Sarolkar ...Petitioner
Versus
Samaj Seva Mitra Mandal Karmala
And Ors. ...Respondents

With
Civil Application No.220 of 2017
In
Writ Petition NO. 2177 OF 2016

....
Mr.N.V. Bandiwadekar, Advocate for the Petitioner.
Mr.Ajay A. Joshi, Advocate for Respondent No.1.
Ms.K.R. Kulkarni, A.G.P. for respondents No.2 and 4-State.
Mr. P.B. Shah i/b. A.B. Tajane, Advocate for Respondent No.3.
Mr. Rahul Kadam, Advocate for intervenor in CAW/220/2017.
....

CORAM : R. G. KETKAR, J.

DATE : 20th JUNE, 2017

P.C.

1. Heard Mr.N.V. Bandiwadekar, learned Counsel for the Petitioner, Mr.Ajay A. Joshi, learned Counsel for Respondent No.1, Ms.K.R. Kulkarni, learned A.G.P. for respondents No.2 and 4-State and Mr. P.B. Shah, learned Counsel for Respondent No.3, at length.

2. By this Petition under Articles 226 and 227 of the

Constitution of India, the petitioner has challenged the judgment and order dated 3.10.2015 passed by the learned Presiding Officer, School Tribunal, Solapur (for short, 'Tribunal') in Appeal No.16/2012. By that order, the Tribunal dismissed the appeal preferred by the petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'Act') challenging the promotion of respondent No.3 as Assistant Headmaster w.e.f. 10.5.2007. The petitioner also sought direction against respondent No.1 Management to promote him as Assistant Headmaster w.e.f. 10.5.2007 and pay him differences of salary from the date of promotion of the third respondent till the date of his promotion as Assistant Headmaster.

3. Mr.Bandiwadekar submitted that by appointment letter dated 31.8.1986 the petitioner was appointed as a Physical Teacher w.e.f. 1.9.1986. Respondent No.3 was appointed as Assistant Teacher w.e.f. 20.7.1989. He, therefore, submitted that the petitioner is senior to third respondent. He submitted that Headmaster had prepared seniority list in the year 1999-2000. In that seniority list, the petitioner was shown at Sr. No.14 and third respondent was shown at Sr. No.18. He submitted that in

the seniority list of the year 2006-07, the petitioner was shown at Sr. No.12 and third respondent was shown at Sr. No.16. Respondent No.3 did not raise objections to the seniority lists of the years 1999-2000 and 2006-07.

4. Mr. Bandiwadekar submitted that Shri N.G. Bobe, who was working as Headmaster retired on 31.5.2006. Respondent No.1 wanted to appoint one Mr. Ramesh Kavade as Headmaster and obtained no objection letters from 22 teachers. Ramesh Kavade was promoted as Headmaster and third respondent was promoted as Assistant Headmaster on 10.5.2007. In the seniority list prepared of the year 2009 by respondent No.1, the petitioner was shown at Sr. No.8 and third respondent was shown at Sr. No.2. All the teachers, save and except Shri Ramesh Kavade and respondent No.3, raised objections and did not accept the seniority list. On 31.6.2009 Ramesh Kavade retired. Respondent No.3 was promoted as Headmaster on 1.8.2009. One Mrs. Rohini Shahane objected to the appointment of third respondent as Headmaster before respondent No.2 on 10.8.2009. On the same day, the Education Officer rejected the proposal of respondent No.1 and granted authority to Mrs.Rohini Shahane to sign as Headmistress.

Respondent No.1 Institution raised objection / filed appeal on 29.8.2009 before the Deputy Director of Education, Pune Region, Pune. By a detailed order dated 17.11.2009, the Deputy Director of Education held that Rohini Shahane was the senior most teacher and as such was entitled to work as Headmistress. The appeal / objection preferred by the first respondent was rejected. Neither respondent No.1 nor respondent No.3 challenged that order.

5. Mr. Bandiwadekar submitted that Rohini Shahane retired on 31.1.2011. Though Ashok Katule was the senior most teacher, respondent No.1 appointed respondent No.3 on the post of Headmaster. Ashok Katule raised objection before second respondent. By order dated 15.2.2011, the Education Officer granted approval in favour of Mr.Katule. Aggrieved by that order, respondent No.1 filed appeal before the Deputy Director of Education which was dismissed on 19.3.2011. However, the Deputy Director of Education reversed his own order on 16.5.2011. Subsequently by letter dated 9.6.2011, the Director of Education directed to empower the senior most teacher to act as Headmaster. In pursuance thereof, by order dated 20.6.2011, the Education Officer directed Ashok Katule to look after day to

day administration of the school. Respondent No.3 instituted Writ Petition on 17.5.2011 in this Court against respondent No.1. Though Rohini Shahane retired on 31.1.2011, she was impleaded as respondent No.4. Ashok Katule who was an affected person was deliberately not implemented in that Petition. Writ Petition was disposed of on 24.8.2011 by this Court. This Court directed respondent No.1 to pass resolution regarding appointment of Headmaster and submit same to Education Officer for approval within four weeks. He submitted that said Petition was instituted by first respondent and third respondent in collusion and by suppressing the material facts and misleading this Court by contending that third respondent is the senior most teacher. Respondent No.1 passed resolution on 30.8.2011 appointing third respondent as Headmaster. Katule filed Civil Application No.2064/2011 in that petition *inter alia* contending that he is senior most teacher and was appointed as in-charge Headmaster. By order dated 28.9.2011 this Court clarified that the order dated 24.8.2011 passed in Writ Petition No.1715/2011 does not take away the right of first respondent to consider the seniority list of eligible teachers for passing resolution so as to appoint Headmaster from amongst

them as per rules. The petitioner instituted Appeal No.14/2012 before the Tribunal under Section 9 of the Act *inter alia* praying for direction to the first respondent to promote him as Headmaster. Appeal No.12/2012 was instituted by Ashok Katule. The petitioner also instituted Appeal No.16/2012 challenging the appointment of third respondent as Assistant Headmaster on 10.5.2007. By the impugned order, the Tribunal dismissed the appeal principally on the ground that the appeal preferred in the year 2012 challenging the appointment of 10.5.2007 suffers from gross delay and laches.

6. Mr. Bandiwadekar submitted that Section 9(1)(b) of the Act lays down that any employee in a private school who is superseded by the Management while making an appointment to any post by promotion, has a right to appeal against any such order or supersession to the Tribunal constituted under Section 8 of the Act. He submitted that the period of 30 days is prescribed for filing an appeal against the order of dismissal, removal or otherwise termination of service or reduction in rank as contemplated under Section 9(1)(a). However, no period of limitation is prescribed for challenging the order of supersession under Section 9(1)(b) of the Act. He submitted that the

Tribunal relied upon the decision of Apex Court in the case of ***Londhe Prakash Bhagwan v Dattatraya Eknath Mane and others, 2013(10) SCC 627*** and held that even if the statute does not prescribe the period of limitation, the applicant has to come before the Court within a reasonable time. He submitted that said decision is not applicable to the facts of the present case as there was delay of 9 years and 11 months in that case. He, therefore, submitted that the Tribunal was not justified in dismissing the appeal only on the ground of limitation and ought to have decided the appeal on merits.

7. On the other hand Mr. Shah supported the impugned order. He has invited my attention to the appeal preferred by the petitioner wherein there is no explanation for filing appeal in the year 2012 challenging the order of appointment of third respondent as Assistant Headmaster w.e.f. 10.5.2007. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the petitioner

was appointed initially as a Physical Teacher w.e.f. 1.9.1986. Respondent No.3 was appointed on the post of Assistant Teacher w.e.f. 20.7.1989. Undoubtedly at this stage the petitioner was senior to third respondent. Respondent No.3 was promoted to the post of Assistant Headmaster on 10.5.2007. Mr. Bandiwadekar submitted that as the appointment of third respondent to the post of Headmaster was challenged by Ms. Shahane, the petitioner did not file appeal challenging appointment of third respondent as Assistant Headmaster.

9. It is not possible to accept this submission. Admittedly respondent No.3 was promoted as Assistant Headmaster on 10.5.2007. The cause of action accrued to the persons who were senior to third respondent on 10.5.2007. Not only that in the seniority list prepared in the year 2009 by respondent No.1, respondent No.3 was shown at Sr.No.2 and the petitioner was shown at Sr. No.8. Nothing is produced on record by the petitioner to indicate that he made representation or filed appeal challenging the seniority of third respondent. If that be so, the petitioner cannot claim that he is senior to the third respondent. A perusal of the appeal memo also does not indicate that any reason much less any sufficient cause is made out by the

petitioner for filing appeal in the year 2012.

10. Mr. Bandiwadekar submitted that Rohini Shahane raised objections on 10.8.2009 to the appointment of third respondent as Headmaster before the second respondent. On the same day, the Education Officer rejected the proposal submitted by respondent No.1 and granted authority to Rohini Shahane to sign as Headmistress. Respondent No.1 raised objection/filed appeal on 29.8.2009 before the Deputy Director of Education, Pune Region, Pune. By order dated 17.11.2009, the Deputy Director of Education held that Rohini Shahane was the senior most teacher and as such was entitled to work as Headmistress. The Appeal/objection preferred by the first respondent was rejected. Neither respondent No.1 nor respondent No.3 challenged that order.

11. Mr. Bandiwadekar submitted that Rohini Shahane retired on 31.1.2011. Though Ashok Katule was the senior most teacher, respondent No.1 appointed respondent No.3 on the post of Headmaster. Ashok Katule raised objection before the second respondent. By order dated 15.2.2011, the Education Officer granted approval in favour of Ashok Katule. Appeal preferred by

respondent No.1 before the Deputy Director of Education was dismissed on 19.3.2011. Deputy Director of Education, however, reversed his own order on 16.5.2011. By letter dated 9.6.2011, the Director of Education directed to empower the senior most teacher to act as a Headmaster. In pursuance thereof, by order dated 20.6.2011 the Education Officer directed Ashok Katule to look after the day to day administration of the school. Respondent No.3 instituted Writ Petition in this Court against respondent No.1. Though Rohini Shahane retired on 31.1.2011 she was impleaded as respondent No.4. Ashok Katule who was an affected person was deliberately not impleaded in that petition. This Court disposed of the Writ Petition on 24.8.2011 by directing respondent No.1 to pass resolution regarding appointment of Headmaster and submit same to Education Officer for approval within four weeks. Civil Application No.2064/2011 was taken out by Ashok Katule in that petition *inter alia* contending that he is senior most teacher and was appointed as in-charge Headmaster. By order dated 28.9.2011 this Court clarified that the order dated 24.8.2011 passed in Writ Petition No.1715/2011 does not take away the right of first respondent to consider the seniority list of eligible teachers for

passing resolution so as to appoint Headmaster amongst them as per the Rules. Mr. Bandiwadekar submitted that thus right from 2009, there were litigations amongst the parties and ultimately in the year 2012 the petitioner preferred appeal challenging the appointment of third respondent as Assistant Headmaster on 10.5.2007. In other words he submitted that as the litigations were pending on the issue of seniority right from 2009, the appeal preferred by the petitioner in the year 2012 cannot be dismissed on the ground of delay and laches. The fact that right from 2009 the litigation was going on between the parties, constitutes sufficient cause in filing the appeal in the year 2012. He, therefore, submitted that the Tribunal was not justified in dismissing the appeal mainly on the ground of gross delay and laches.

12. I do not find merit in any of the submissions. A perusal of sequence of events shows that third respondent was promoted as Assistant Headmaster on 10.5.2007. In the year 2009, respondent No.1 published the seniority list. The petitioner was shown at Sr. No.8 and third respondent was shown at Sr. No.2. No material is produced on record to indicate that the petitioner raised objections to this seniority list. Apart from that

the reliance placed by Mr.Bandiwadekar on the proceedings between Rohini Shahane on one hand and respondents No.2 and 3 on the other as also the proceedings initiated by Ashok Katule on one hand and first respondent and third respondent on the other were in relation to the appointment of the third respondent as Headmaster. We are concerned with the appeal preferred by the petitioner challenging the appointment of third respondent as Assistant Headmaster on 10.5.2007. In view thereof, the litigation from the year 2009 onwards in relation to appointment of third respondent as Headmaster will not constitute sufficient cause while challenging appointment of third respondent as Assistant Headmaster on 10.5.2007.

13. In the case of **Londhe Bhagwan** (supra), Apex Court has observed in paragraph-7 thus:

“7. We have noticed from the language of the said Section that the right of appeal is given to an employee of a private school who is aggrieved by an order of the Management in respect of dismissal, removal, termination, reduction in rank or supersession. In all these cases, the aggrieved person shall have a right to approach the Tribunal. Now, the sole question which falls for our consideration is: when an aggrieved person can apply before the Court, if no limitation is prescribed in the statute for filing an appeal before the appropriate forum. We have duly considered the said question. Even if we assume that no limitation is prescribed in any statute to file an

application before the court in that case, can an aggrieved person come before the court at his sweet will at any point of time ? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a person and **without submitting any cogent reason therefor**. The court has no power to condone the same in such case. (See: Cicily Kallarackal v. Vehicle Factory : 2012 (8) SCC 524, State of Orissa v. Mamata Mohanty : 2011 (3) SCC 436 and K.R. Mudgal v. R.P. Singh : 1986 (4) SCC 531. **In these cases, it has been held that the application should be rejected on the ground of inordinate delay. Furthermore, it is to be noted that appointment of the Appellant was within the knowledge of Respondent No. 1 from day one but he did not take any steps for such a long time."**

(emphasis supplied)

14. The above decision applies on all fours to the present case. In view thereof, I do not find that the Tribunal committed any error in dismissing the appeal. Hence, Petition fails and the same is dismissed. In view of dismissal of Writ Petition, C.A. No.220/2017 for intervention does not survive and the same is also disposed of. Order accordingly.

(R. G. KETKAR, J.)