

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

WRIT PETITION NO. 6161 OF 2016

Ramesh s/o. Babu Rathod .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.N.P. Patil-Jamalpurkar, Advocate for the petitioner.
Mr.S.B. Joshi, AGP for respondent Nos.1 to 3.
Mr.D.V. Tele, Advocate for respondent No.4.
Mr.V.D. Salunke, Advocate for respondent No.5.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

**RESERVED ON : 28.08.2018
PRONOUNCED ON : 28.09.2018**

ORDER [PER : S.M. GAVHANE,J.] :-

1. By this petition under Article 226 of the Constitution of India, the petitioner has claimed following reliefs :-

(B) The respondent Nos.2 to 4 may please be directed to continue the petitioner on the post of Headmaster of Sudarshan Secondary Ashram School, Sattadharwadi, Tq. Ausa, Dist. Latur and to forthwith sanction and release the pay scale admissible to the post of Headmaster w.e.f. academic year 2008-2009, by issuing writ of mandamus or any other appropriate writ, order or

direction in the nature of writ of mandamus.

(C) The order dated 02.05.2016 issued by the respondent No.4 appointing the respondent No.5 on the post of Headmaster of Sudarshan Secondary Ashram School, Sattadharwadi, Tq. Ausa, Dist. Latur, may please be quashed and set aside, by issuing writ of certiorari or any other appropriate writ, order or direction in the nature of writ of certiorari.

(C-1)To quash and set aside the impugned order dated 03.03.2015 issued by respondent No.2 [Exh.I].

2. Mr. Patil, learned Advocate for the petitioner submitted that by the Government Resolution dated 27.01.2004 permission was granted to start and run secondary Ashram schools in favour of the educational societies already running primary Ashram school and by the said GR, respondent No.4 was also granted permission to start and run secondary Ashram school at Sattadharwadi, Tq. Ausa, Dist. Latur. Accordingly, secondary Ashram school, i.e. classes from 8th standard were started from the academic year 2004-2005.

3. Learned Advocate for the petitioner further

submitted that respondent No.4 issued an advertisement on 20.04.2004 for filling various posts of teaching and non-teaching staff, including the post of Headmaster. In pursuance of the advertisement, the petitioner applied for appointment to the post of Headmaster by making application to respondent No.4 on or about 14.06.2004. The management received total four applications for the post of Headmaster including that of the petitioner. The Selection Committee selected the petitioner the most suitable and qualified candidate for the post of Headmaster. Accordingly, the order of appointment was issued in favour of the petitioner on 14.06.2004 for the post of Headmaster, as per Exh."C". It is submitted that in pursuance of said appointment order, the petitioner joined duty as Headmaster in Sudarshan Secondary Ashram School at Sattadharwadi (hereinafter referred to as the said school) on 15.06.2004 and since then he is serving as Headmaster in the said school continuously. The approval was granted to the appointment of all staff members serving in the said school including approval to

the appointment of the petitioner as In-charge Headmaster on 21.08.2006. Moreover, the Special Welfare Officer, Latur granted approval to the appointment of the petitioner on the post of Headmaster for the academic year 2006-2007. Thereafter, the Special Social Welfare Officer, Latur, vide order dated 23.10.2007 granted permanent approval to the appointment of the petitioner as Headmaster for the academic year 2007-2008 as per Exh. "E". Thereafter, on 25.09.2012, the petitioner made application to respondent No.3-Asstt. Commissioner of Social Welfare, Latur requesting to grant him pay-scale admissible to the post of Headmaster. Respondent No.3 on 03.01.2013 made recommendation to respondent No.2-Dy. Divisional Commissioner to grant pay-scale of Headmaster to the petitioner. On 29.05.2013 also respondent No.3 made recommendation to respondent No.2 to grant pay-scale of Headmaster to the petitioner and respondent No.5 has given an undertaking stating that he will not claim post of Headmaster. However, respondent No.2 vide impugned order dated 03.03.2015 (Exh.I) directed respondent No.4

to submit a fresh proposal for grant of approval to the appointment of the petitioner and sanction of pay-scale.

4. It is further submitted by the learned Advocate for the petitioner that the seniority list is prepared and maintained by the said school from the academic year 2004-05 to 2014-15 and the name of the petitioner appears at Sr.No.1. In spite of above facts, in view of the impugned order dated 03.03.2015 respondent No.2 – Management changed the seniority list of employees serving in the said school and the name of respondent No.5 is shown at Sr.No.1, because of the political pressure exerted by respondent No.5 and president of respondent No.4 forwarded proposal to respondent Nos. 2 and 3 seeking permission to appoint respondent No.5 to the post of Headmaster, ignoring the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 and all of a sudden respondent No.4 issued an order dated 02.05.2016 appointing respondent No.5 as a Head Master of the said school. Immediately,

respondent No.4 directed the petitioner to handover charge of the post of Headmaster to respondent No.5 and forwarded the proposal to respondent No.3 for grant of approval to the appointment of respondent No.5 as Headmaster. However, the petitioner did not hand over charge of the post of Headmaster and immediately approached this Court. It is submitted that by way of interim relief, order of maintaining status-quo as on the date of 20.06.2016 in respect of holding post of Headmaster was passed by this Court. Learned Advocate lastly prayed that writ petition be allowed for the reliefs sought by the petitioner.

5. Learned Counsel for the petitioner to support his submissions, relied upon following decisions:-

(1) Kalpana Narayanrao Kadam Vs. Godavari Manar Charitable Trust, Khatgaon & Ors., 2011(4) Mh.L.J.745,

(2) Vyankatesh Shikshan Sanstha Vs. The State of Maharashtra & Ors. (WP No.166 of 2015) decided on 16.04.2015

(3) Sidramappa and ors. Vs. State of Maharashtra

(Writ Petition No.1829 of 1991) decided on
26.09.2002.

6. Mr.Joshi, learned AGP appearing for respondent Nos.1 to 3 referring to the affidavit of respondent No.3- Social Welfare Officer submitted that initially though there was no sanctioned post available in the said school, respondent No.4 - Management issued an advertisement and appointed the petitioner as Headmaster, which itself is illegal as said post came in existence with the said school in the year 2007-08 only i.e. after full establishment of secondary Ashram school. Therefore, the petitioner cannot claim any right on the basis of appointment as Headmaster made by the management and provisional approval granted by the Social Welfare Officer, Latur. The office of respondent No.3 recommended claim of the petitioner for pay-scale for the post of Headmaster by letter dated 03.01.2012, however, office of respondent No.2 remanded the proposal back raising some queries. On 26.03.2014 respondent No.5 made representation to respondent No.2 and pointed out that he

is senior most teacher in the said school, in pursuance of his appointment and age. He also pointed out that the management illegally appointed the petitioner on the post of Headmaster. It is submitted that on hearing the petitioner and respondent No.5, respondent No.2 directed the management to prepare seniority list of the teachers and submit proposal of senior most teacher of the school, who is having more than five years experience of teaching, for approval to the office of respondent No.2. Further, it is submitted that the petitioner and respondent No.5 came to be appointed on the same day. Birth date of the petitioner is 29.04.1975 and birth date of respondent No.5 is 01.01.1970. In pursuance of Rule 15 Note 3 of MEPS Rules, if two teachers are appointed on the same day, the teacher who is senior in age, will get preference in the seniority list and therefore after considering the legal provision, respondent No.2 has rightly directed to prepare seniority list of teachers and submit proposal of senior most teacher for the post of Headmaster.

7. Mr. Tele, learned Advocate appearing for respondent No.4- Management referring to the affidavit of the President submitted that the petitioner has made several false and misleading statements in the petition and he has suppressed the material facts. The petitioner has used false documents and succeeded to obtain interim order of status-quo. There is alternate remedy available to the petitioner to file statutory appeal under section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "the MEPS Act") as his grievance is that his claim for the post of Headmaster is denied by appointing respondent No.5 and thereby reducing him in rank, as the petitioner claims that he is entitled for the post of Headmaster, but no appointment is given to him. Thus, according to the learned advocate, for both these cases, the appeal is maintainable under section 9 of the MEPS Act and there is no reason to invoke extra ordinary jurisdiction of this Court. Learned Advocate further submitted that the

petitioner was never appointed as Headmaster nor he was promoted on the post of Headmaster of the school. Only charge of the post of Headmaster was given to him and as he was in-charge Headmaster, he cannot claim right over the said post. It is submitted that the petitioner has annexed document at page No.38 stating that respondent No.5 has given no objection for his appointment. It is submitted that said document is forged document. The signature of the President on the said document is totally forged by the petitioner. The Management has directed the petitioner to handover record to respondent No.5, but the petitioner is avoiding the orders in this respect and he has illegally retained the record. The petitioner is not eligible and entitled for the post of Headmaster. He cannot claim said post. Respondent No.5 is legally appointed. If the petitioner feels that he is demoted, he can establish his claim before the School Tribunal and hence the writ petition is not maintainable.

8. Mr.Salunke, learned Advocate appearing for

respondent No.5 referring to the affidavit of respondent No.5 submitted that being a senior most teacher in the school, respondent No.5 was only eligible and entitled to be promoted on the post of Headmaster as per law and rules. If the petitioner feels that his claim is denied and he is reduced in rank, then there is statutory remedy available by way of appeal under section 9 of the MEPS Act, to the petitioner and therefore this petition challenging promotion of respondent No.5 is not maintainable and it deserves to be dismissed in limine. Learned Advocate further submitted that the petitioner was never appointed as Headmaster of the school, nor he is legally promoted on the post of Headmaster of the school. However, the charge of the post of Headmaster was given to him and accordingly he was In-charge Headmaster. Therefore, he had no right to claim said post permanently. Only by holding charge for the post of Headmaster, the petitioner will not get any right to continue on the said post. It is submitted that both the petitioner and respondent No.5 were appointed on the

same date i.e. 15.06.2004 as Assistant teacher in the school. However, respondent No.5 is senior to the petitioner. It is submitted that the birth date of the petitioner is 29.04.1975 and birth date of respondent No.5 is 01.01.1970. Therefore, respondent No.5 being senior, is eligible to be appointed as Headmaster as per Rule 3 r/w Schedule F(2) Note 3 of the MEPS Rules, 1981. The petitioner was not directly appointed as Headmaster at any point of time. On the contrary, he was appointed as Assistant Teacher on 15.06.2004. The documents at Exh. "A", "B" and "C" are bogus. In the year 2004 there was only one class i.e. 8th standard and there was no question to appoint Headmaster. Moreover, for the post of Headmaster, five years experience is required for direct appointment as Headmaster. Admittedly, the petitioner never worked as teacher or Headmaster before 2004 and hence he cannot be appointed as Headmaster. However, the list prepared shows that subsequently he was acting as in-charge Headmaster and he cannot claim continuation on the said post. It is further submitted

that the Management has considered the claim of respondent No.5 being senior most Assistant Teacher entitled for the post of Headmaster. Accordingly, by way of promotion, he was appointed as Headmaster by order dated 02.05.2016 and he has assumed the charge of the said post and started functioning from 02.05.2016 and he is working since then. Respondent No.5 is legally appointed and the petitioner can establish his claim before the School Tribunal, if he feels that he is demoted. Thus, the learned advocate has prayed to dismiss the petition.

9. Mr. Salunke, learned Advocate to support his submission, relied upon the ratio laid down in the case of **Laxman Baburao Awale etc. Vs. The State of Maharashtra & Ors., 2003(4) Mh.L.R. 267.**

10. The petitioner filed rejoinder affidavit dated 29.01.2018 and contended that respondent No.3-Assistant Commissioner (Social Welfare), latur by letter dated

14.10.2016 directed the President of respondent No.4 – Education Society to allow the petitioner to continue on the post of Headmaster and to discharge the duties including that of submission of pay-bills under his signatures. He is continuously working on the post of Headmaster since last more than 12 years. Respondent Nos.2 and 3 by joining hands with respondent Nos.4 and 5 issued directions to the management to submit fresh proposal of senior most teacher, which is absolutely illegal action on the part of respondents authorities. It is not the case of supersession or demotion and therefore no remedy is available for the petitioner under section 9 of the MEPS Act.

11. Considering the contentions of the contesting respondents that present petition is not maintainable as the petitioner is having alternate remedy under section 9 of the MEPS Act, it is necessary to refer the said provision, which runs as under :-

"9. Right of appeal to Tribunal to employees of a private school.

- (1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school,-
 - (a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or
 - (b) who is superseded by the management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to be Tribunal constituted under section 8:]

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

- (2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

- (3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the

case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

- (4) Every appeal shall be accompanied by a fee of [Five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

. Considering the reliefs claimed by the petitioner and the above provision under section 9 of the MEPS Act, it is clear that the petitioner has made grievance about his supersession and giving promotion to respondent No.5 as Headmaster. Therefore, he has alternate remedy of appeal under section 9 of the MEPS Act before the Tribunal and therefore present petition is not maintainable.

12. Once it is held that present petition is not maintainable, it is not necessary to consider other contentions of the petitioner. Therefore, we are not inclined to consider the contentions raised in this petition by the petitioner. We, therefore, grant liberty to the petitioner to avail the remedy of appeal. All the

contentions of the parties are kept open. The time spent by the petitioner in prosecuting this petition, shall be considered by the Tribunal before whom the appeal lies.

13. Accordingly, we dismiss the writ petition with no order as to costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]