

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

WRIT PETITION NO. 8442 OF 2017

Vithal Ambadas Shingade .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Shri. Vivek J. Dhage, Advocate for Petitioner.

Shri. A. V. Deshmukh, A.G.P. for Respondent Nos. 1 and 2.

Shri Pushkar S. Shendurnikar, Advocate for Respondent No. 4.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATED : 08th February, 2018

PER COURT:

. The petitioner assails the promotion order of Respondent No. 4 as Assistant Headmaster of Anandibai Bankat Girls High School, Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon.

2. The case of the petitioner is that the Respondent No.4 is senior to the petitioner but the petitioner belongs to Nomadic Tribe (C) category and as per roster the post of Assistant Headmaster would go to the person

from N.T. (C) category and on that count states that the petitioner ought to have been promoted as Assistant Headmaster as against present Respondent No.4.

3. Mr. Shendurnikar, learned advocate for the Respondent No.4 raises a preliminary objection that the petitioner has a remedy of appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977 (*hereinafter referred to as M.E.P.S. Act*).

4. Mr. Dhage, learned advocate for the petitioner submits that the question of supersession would arise only if a junior person is promoted denying the right of a senior. In the present case, the petitioner admits that Respondent No. 4 is senior but in view of the roster point the post should go to person from N.T. (C) category and as the petitioner belongs to N.T. (C) category he ought have promoted. In strict sense it is not a case of supersession but assertion of a right of the petitioner to be permitted as a Assistant Headmaster on the basis of roster point. The same would not tantamount to supersession. It is further submitted that there is difference between supersession of right and supersession of a person. The learned advocate relies on the Judgment of the learned Single Judge of this court in a case of **Secretary, Jamnadas Adukia Charity Trust,**

Bombay and another Vs. Chintamani Birjaprasad Dubey and others, report in **2000 (2) Mh. L. J. 267**. The learned advocate also relies on the another Judgment of the learned Single Judge of this court in a case of **Secretary, Shiorai Education Society, Wani Vs. Presiding Officer, School Tribunal, Aurangabad and others** reported in **2000 (2) Mh.L.J. 752**, to submit that when words of the statute are clear, plain and unambiguous the courts must give effect to that meaning irrespective of consequences.

5. According to Mr. Shendurnikar, learned advocate for the Respondent No. 4, the case of the petitioner as put forth would come within the meaning of the term supersession.

6. Section 9 (1) of M.E.P.S. Act, reads thus;

“ 9. (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 of appeal and may appeal against any such order supersession to the 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.”

7. As per section 9 of the M.E.P.S. Act, if a person is superseded while making an appointment to any post by promotion the aggrieved person shall have a right of appeal against such order or supersession to the Tribunal constituted under Section 8 of the M.E.P.S Act. The term supersession is the subject matter of interpretation before us. As per *Black's Law Dictionary* to supersede means *to obliterate, annul, make*

void or repeal, by taking the place of. The term supersession has a definite connotation and has also its due jurisprudential affect. The term supersession will have to be interpreted in the context in which it is used in section 9 of the M.E.P.S Act. While making promotion a rightful claim of a person is denied and in his place some other person is promoted would mean supersession and or the person whose right is denied to be promoted is superseded by promoting another person.

8. The petitioner claims that, it is his right to be promoted to the post of an Assistant Headmaster in view of the roster point and the said right is eroded by promoting the Respondent No.4. The right of the petitioner to be promoted as claimed is abrogated and abridged. In view of that, the petitioner is superseded by the respondent. To contend that there would be distinction between supersession of right and supersession of person in the context of Section 9 of M.E.P.S. Act would be entering into verbal jugglery. The case of the petitioner is that the Respondent No. 4 could not have been promoted in view of the roster point and it was only the petitioner who ought to have been promoted. The petitioner certainly stands superseded by the Respondent No. 4, as per the case put forth by the petitioner. The act complained of would come within the ambit and purview of the terminology “supersession”, as is envisaged in section 9 (1)

(b) of the M.E.P.S. Act.

9. To say that, it is only if a junior person is promoted in place of a senior then only supersession would take place, would be construing the phraseology supersession in a very narrow compass and would tantamount to not giving full effect to the term supersession. Supersession would take place if the right of a person is ignored while promoting another person to the promotional post.

10. In a case of **Secretary, Jamnadas Adukia Charity Trust, Bombay and another Vs. Chintamani Birjaprasad Dubey and others** (*supra*), the learned Single Judge of this court held that it is not a case of supersession, as the post was filled in by nomination and not by promoting the employee therein. In that context, it was held that as the post was not filled in by promotion but by direct nomination, it is not a case of supersession.

11. In the present case, the post of Assistant Headmaster is filled in by promoting Respondent No. 4. The petitioner is aggrieved on the ground that he is not promoted on the post of Assistant Headmaster as the post of

Assistant Headmaster should have been filled in from N.T. (C) category and he was the eligible person to be promoted to the said post and not the Respondent No.4.

12. The case would come within the ambit and purview of phraseology supersession. The petitioner has a remedy of appeal before the School Tribunal.

13. The preliminary objection of the respondent is upheld. The writ petition is disposed of with liberty to the petitioner to file an appeal before the appropriate forum. All contentions of respective parties are kept open. If such an appeal is filed, the forum where the appeal is filed shall consider the time spent in prosecuting the present writ petition. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]