

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15325 OF 2017

Pratibha Pravin Tribhuvan

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri S. N. Pagare, Advocate for the Petitioner.

Mrs. A. V. Gondhalekar, Addl. G. P. for Respondent Nos. 1, 2 and 4.

Respondent No. 3 served.

Shri Shivaji T. Shelke, Advocate for Respondent No. 5.

Shri P. G. Tambade, Advocate h/f Shri S. S. Jadhavar, Advocate for Respondent No. 6.

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

DATE : 11th April, 2018

PER COURT :

1. Mr. Pagare, learned counsel for the petitioner submits that the willingness of the petitioner was called to officiate as an Headmistress of the school at Wadala. The petitioner has given her willingness. All such persons senior to the petitioner had refused to act as an Headmaster / Headmistress. In light of that, only petitioner could have been considered for the post of Headmistress. According to the learned counsel, even respondent

no. 6 was wrongly appointed as an Headmaster, though he was junior to the petitioner. Once respondent no. 5 has refused to accept the post of Headmaster the respondent No. 5 could not have been appointed as an Headmaster. The respondent be directed to appoint the petitioner as an Headmistress.

2. Mr. Shelke, learned counsel for respondent no. 5 submits that Mr. Sable was senior to the petitioner, as such, Mr. Sable was appointed as an Headmaster. At the time when Mr. Sable was appointed as an Headmaster, respondent no. 5 did not accept the post of Headmaster, however, subsequently shown his willingness.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. The petitioner had never challenged the appointment of respondent no. 6 as an Headmaster at the relevant time. In May – 2017, respondent no. 6 retired as an Headmaster. As the petitioner did not challenge the appointment of respondent no. 6 as an Headmaster, the contention of the petitioner that

Mr. Sable, was wrongly appointed as an Headmaster cannot be considered.

5. Admittedly, respondent no. 5 is senior to the petitioner. Respondent no. 5 did not show his willingness to accept the post of Headmaster at the time when respondent no. 6 was appointed as an Headmaster. Explanation to Sub – rule 3 of Rule 3 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 reads thus -

“Explanation: For the purpose of this rule, the Management shall communicate any occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a

statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post:

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post;”

6. The said explanation specifically states that, the claim of the senior-most qualified teacher may be disregarded only if, he of his own free will, gives a statement in writing to the Education officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur.

7. Upon the retirement of respondent no. 6, vacancy arose and at that time respondent no. 5 had shown his willingness to accept the post of Headmaster. As respondent no. 5 is senior to the petitioner, the petitioner now does not have any room to make a grievance.

8. The writ petition as such stands dismissed. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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