

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5285 OF 2018

Shatrughna Shravan Kamble	...	Petitioner
Versus		
Mrs. Lata Haresh Mali And Others	...	Respondents

Mr. Shikur G. Kudle for the Petitioner.
Mr. Mandar Limaye for Respondent No.1.
Ms. Deepali Y. Deherkar for Respondent Nos.2 to 4.
Ms. Vaishali Nimbalkar, AGP for Respondent No.5.

CORAM : S.C.GUPTE, J.

DATE : 18 JUNE 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order passed by the School Tribunal in an
appeal filed by Respondent No.1 herein under Section 9 of the Maharashtra
Employees of Private Schools (Conditions of Service) Regulation Act, 1977
("the MEPS Rules").

3 The subject matter of challenge in the appeal related to the seniority of Respondent No.1. It is an admitted position that Respondent No.1, who is a Graduate with a Degree in Education (B.A., B.Ed.) was appointed on 11 July 1988. When she was appointed, the post was advertised for reserved category of S.C. As no S.C. candidate was available, she, as a candidate belonging to the O.B.C. category, was appointed in the post.

The post was in the scale of S.S.C., D.Ed. (Subsequently, by an order dated 15 October 1999, her appointment was approved with effect from 2 July 1990. The approval order also records that Respondent No.1 was an OBC.) By a resolution dated 21 July 1996, since there was a post of trained graduate, Respondent No.1, who was at that time working on the scale of SSC, D.Ed was promoted and appointed in the category of trained graduate teachers with effect from 13 June 1996. The Petitioner is admittedly appointed on 17 August 1995. The Petitioner is M.Sc. with B.Ed decree. When the School promoted the Petitioner over Respondent No.1 to the post of Supervisor on 1 June 2017, the promotion was challenged by the Petitioner before the School Tribunal. The objection before the School Tribunal on the part of the Petitioner herein was that though Respondent No.1 was appointed in S.C. category, she did not belong to S.C. category and accordingly, she could have been appointed only on a year to year basis temporarily. It is submitted that Respondent No.1 was granted pay scale of B.Ed only with effect from 13 June 1996 and that the Petitioner having been appointed in that pay scale on 17 August 1995, she must be treated as senior.

4 The School Tribunal rightly applied the principle of law enunciated by this Court in the case of **Secretary, Smt. Phundabi Shikshan Prasarak Mandal Sanchalit Janpir Vidyalaya Vs. Subash Tukaram Jadhavar**¹. In this case, the Court had occasion to interpret *inter alia* Rule 9(9)(a) of the MEPS Rules. Rule 9(9)(a) is relevant even for the purpose of the present case. The Rule, as was applicable at the relevant time, provided that the management had to fill up the vacancies of reserved category by publishing

1 2009(5) Bom.C.R 39

advertisement in newspaper and notify the vacancies to the Employment Exchange and District Social Welfare Office. In case any vacancy could not be filled in from candidates of the particular reserved category, it could be filled in by selecting a candidate from other remaining categories in the order specified in sub-rule (7) and only if no person from any of such categories is available, the post may be filled in temporarily on a year to year basis by appointing a candidate not belonging to backward class. It is an admitted position that Respondent No.1 belongs to the category of OBC and is within the categories specified in Sub-rule (9) of Rule 9 of the MEPS Rules, as it then existed; her appointment is in a permanent post and not temporary on a year to year basis. Accordingly, she is entitled to all benefits of seniority in the post. Admittedly, she was appointed on 11 July 1988, her appointment was even approved as from the year 1990. She was a trained graduate when appointed, though she worked in the scale of SSC, D.Ed. When there was a vacant post of trained graduate teacher available with the school, her appointment was confirmed in the category of trained graduate teachers.

5 Thus, in every respect, Respondent No.1 was senior to the Petitioner and accordingly, the School Tribunal was perfectly justified in allowing her appeal and promoting Respondent No.1 to the post of Supervisor over the Petitioner. No fault can be found with the impugned order.

6 Accordingly, the petition is dismissed.

7 Learned Counsel for Respondent No.1 agrees to extend his statement originally made on 27 April 2018 and continued till date for a further

period of four weeks from today.

8 Certified copy expedited.

(S.C. GUPTE, J.)