

Mr. Prashant Bhavake for the Petitioner.

Mr. N. V. Bandiwadekar i/b. Mr. Mandar G. Bagkar for Respondent no. 1.

Ms. M. S. Bane, AGP for Respondent no.2

CORAM : A.K. MENON, J.

DATED : 14th JANUARY, 2019.

P.C. :

1. By this Writ Petition the petitioner seeks to challenge an order dated 8th February, 2017 passed in Appeal No. 63 of 2014 by the School Tribunal, Kolhapur by which the appeal was allowed and the order promoting petitioner nos. 4 and 5 as Head Master and Vice Head Master were set aside. Respondent no. 1 was directed to be posted as Head Master and the management was directed to rectify the seniority list. The prayer for back wages was however rejected.

The brief factual background is as follows :

2. The petitioner no. 1 is an educational institution running two schools. One at Kurla, Mumbai and the other at Kudal, Sindhudurg. Respondent no. 1 was appointed as Instructor in the Vocational Section of petitioner no. 3- Kudal High School and Junior College with effect from 1st August, 1983. He has obtained his M.Com degree in 1985 and with effect from 10th June, 1985 he was appointed as Assistant teacher. According to the petitioner the respondent no. 1 was an untrained teacher on the date of his appointment. Thereafter he obtained a Diploma in Higher Education ("DHE") on or about 22nd June, 1986 and a B.Ed. qualification in 1991.

3. The petition proceeds on the basis that DHE is not equivalent to B.Ed and respondent no. 1 entered "C" category of Schedule "F" of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 only upon obtaining the B.Ed. Qualification in 1991. It was contended that even otherwise by virtue of State recognition given to DHE being equivalent to B.Ed it is submitted that such equivalence was valid upto to 1988. He had not obtained a B.Ed. degree prior to the year 1988. Petitioner no.4 had completed B.Sc. in 1983 and B.Ed. in 1986 and was appointed as Assistant Teacher from 11th June, 1984 as untrained graduate teacher. He completed B.Ed. on 10th June, 1986 and accordingly entered Category "C" of Schedule "F" on 11th June, 1986. Petitioner no. 4 is said to have been entered category "C" prior to said respondent no. 1 and therefore Senior to respondent no. 1.

4. Petitioner no. 5 completed B.A. in 1985 and B.Ed. on or about 20th May, 1986. Petitioner no. 5 is also said to be senior to respondent no. 1 and accordingly in the seniority list which was signed by both the petitioner nos. 4 and 5 and the respondent no.1, on the basis of which petitioner nos. 4 and 5 were promoted as Head Master and Vice Head Master. According to Respondent no. 1 he had signed the list under protest. Respondent no. 1 being aggrieved by the said promotion had challenged the same in the Appeal and the promotion of petitioner nos. 4 and 5 were set aside and the school was directed to promote respondent no. 1 leading to this petition.

5. According to Mr. Bhavake, the learned counsel for the petitioner, the impugned order is bad in law since the School Tribunal had only relied upon the decision of the Apex Court in *Viman Vaman Awale vs. Gangadhar Makhariya Trust*¹ but the said decision is not applicable in the instant case. He submitted that the respondent no. 1 entered “C” category of Schedule “F” in 1991 after the petitioner nos. 4 and 5 who were senior to respondent no. 1, but the School Tribunal failed to take this into consideration. It was further also contended that the DHE is not equivalent to B.Ed. and for that reason also, the respondent no. 1 was junior to the petitioner. On that basis it was contended that impugned order is bad and be set aside.

6. Mr. Bhavake also relied upon decision of the Supreme Court in Civil Appeal No.11934 of 2018 in the case of *Ku.Bhawana vs.State of Maharashtra and Ors.*² In that case also the petitioner was an untrained teacher and the Court held that appellant entered into service as untrained teacher falling in Category “F” whereas respondent no. 5 was initially appointed as trained teacher in Category “C”. The appellant became trained teacher on qualifying with a B.Ed. degree on 19th September, 1997 after the entry of respondent no. 5 into service on 13th August, 1997.

7. Respondent no. 5 was in Category “C” from the inception whereas the appellant entered category “C” only after acquiring the B.Ed qualification

¹ All Mr 2015(2) 472

² 2018 (11) JT 377

after entry of the Respondent no. 5 into service and hence did not get a promotion. He therefore submitted that the facts of the present case are akin to the case of *Bhawana (supra)* and therefore interference would be is justified.

8. Mr. Bhavake also relied upon decision of this Court in *Smt. Pushpanjali Subodha Shenvi vs. Nagrik Seva Mandal & Ors.*³ in support of his contentions. That the respondent no. 1 could not claim to be senior to the petitioner for the reasons set out above.

9. On behalf of the respondent Mr. Bandiwadekar has opposed the petition on the basis that the impugned order clearly records the status of seniority. According to the impugned order a common seniority list was required to be maintained in respect of both schools and admittedly during that period when the respondent no. 1 entered services DHE was treated equivalent to B.Ed as per Government Resolution. It was also a matter of record that the respondent no. 1 had applied for preparation of a common seniority list but no steps were taken in that behalf by the petitioners. That in June, 2014 when the respondent no. 1 learnt that petitioner nos. 4 and 5 were working as Head Master and Vice Head Master, he had been informed that his application for preparation of common seniority list was under consideration. That the petitioner nos. 4 and 5 are junior to the appellant but

³ 2017(5) ALL MR 72

were still appointed after obtaining approvals in that behalf.

10. On behalf of the petitioners it was urged before the School Tribunal that the appellant was aware of his seniority in the year 2013 since he had signed the seniority list under protest and hence cause of action arose. When he signed seniority list and therefore appeal is not maintainable. It is further submitted that although respondent no. 1 obtained DHE in 1986, petitioner nos. 4 and 5 were senior to him. It is in view of these rival contentions that four issues were framed. The Tribunal held that respondent no.1 was senior to petitioner nos. 4 and 5 and was eligible to be appointed Head Master and that the promotion of petitioner nos. 4 and 5 was illegal. The impugned order has proceeded on the basis of the decision of the Supreme Court in *Viman Vaman (supra)*. There is no dispute about the fact that where the management runs more than one school, the seniority list has to be combined. In the instant case this has apparently not been done.

11. The impugned order also records that reading of Note 1 to Schedule "F" and Section 2(24) establishing vocational institution is also covered there under. The impugned order also holds that there is nothing on record to show that common seniority list rule could be deviated from. Although respondent argued that the date of achieving professional qualification is immaterial as against initial appointment in the case of *Viman Vaman Awale*

(*supra*) the court upheld the rule continuing officiation. It is on this basis that the tribunal proceeded. In paragraph 33 to 37 the defence of the petitioner had been dealt with and considered in detail. Nothing has been shown to me that is perverse. In these circumstances, I am of the view that the impugned judgment does not call for any interference. Accordingly, I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)