

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5747 OF 2005

Smt. Mandakini Nagesh Talbhandare ... Petitioner.
Age -45, Occp. Service, (Org.Resp.No.3)
R/at. C/o. Laxmibai Kirloskar Primary
School, 175, Goldfinch Peth, Solapur.

V/s.

- 1) Smt. Vijaya Ashok Khatdhare, ... Respondents.
Age 43, Occp. Service,
R/at F-2, Rajesh Apartment,
Bhairav Coloney, Laxmi Peth,
Damani Nagar, Solapur.
- 2) The President, Saraswati Mandir
Sanstha, C/o. Laxmibai Kirloskar
Primary School, 175, Goldfinch
Peth, Solapur.
- 3) Shri J. B. Surdikar, CEO (karywah)
Saraswati Mandir Sanstha, Solapur.
- 4) The Administrative Officer, ... Respondents.
Primary School Board, Mahanagar (Org.Appellant &
Palika, Solapur. Respondents).

Mr. A. S. Rao, Advocate for the Petitioner.
Mr. B. U. Tayade, Advocate for Respondent No. 1.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 07, 2019.

ORAL ORDER :

1 Heard Mr. A.S. Rao, learned counsel for the Petitioner and Mr. B. U. Tayade, learned counsel for Respondent No.1. None appears for Respondent Nos. 2, 3 & 4.

2 By filing this Petition under Article 227 of the Constitution of India, Petitioner has challenged legality and validity of order dated 14.07.2005 passed by the School Tribunal, Pune Region, Solapur in Appeal No.361 of 2004 filed by Respondent No.1.

3 Matter relates to inter-se seniority between Petitioner and Respondent No.1 and consequential promotion of Petitioner to the post of Headmistress of Laxmibai Kirloskar Primary School, Solapur (School) under management of Respondent Nos. 2 & 3, vide order dated 02.11.2003. Considering the subsequent developments which have over-taken the dispute between the contesting parties, it may not be necessary to advert to the facts in detail. Suffice it to say that both, Petitioner and Respondent No. 1, were selected and appointed as Assistant Teachers in the aforesaid School, following a due selection process pursuant to

advertisement dated 06.03.1985. While according to the Petitioner and Respondent Nos. 2 & 3 both Petitioner and Respondent No.1 had joined service on 20.06.1985, Respondent No. 1 on the other hand contended that she had joined orally on 10.06.1985 prior to the Petitioner and, therefore, was senior to Petitioner.

4 Taking the view that both Petitioner and Respondent No. 1 had joined on the same date, which therefore, required consideration of their dates of birth to determine their inter-se seniority, Respondent Nos. 2 and 3 had treated Petitioner to be senior to Respondent No. 1 since her date of birth was prior to that of Respondent No.1. On this basis, Petitioner was promoted as Headmistress of the School vide order dated 02.11.2003. This came to be challenged by Respondent No. 1 by filing Appeal No.361 of 2004 before the School Tribunal, Pune Region, Solapur (the Tribunal, hereinafter). The Appeal was duly contested by the parties, whereafter, the Tribunal allowed the Appeal vide order dated 14.07.2005, by setting aside the order of promotion of the Petitioner dated 02.11.2003. Further direction was given to Respondent Nos. 2 and 3 to promote Respondent No. 1 to the post

of Headmistress w.e.f. the date when the Petitioner was so promoted.

5 This came to be challenged by the Petitioner in the present proceeding. This court by order dated 02.09.2005 had issued notice and directed that status-quo as on 02.09.2005 should be maintained until further orders. From the order-sheet it appears that learned counsel for Respondent No. 1 was present when the said order was passed. Thereafter, by order dated 02.12.2005, the case was admitted for hearing.

6 Learned counsel for the Petitioner submits that by virtue of the status-quo order, Petitioner continued as Headmistress of the School. However, she retired from service on attaining the age of superannuation on 31.04.2019.

6.1 Learned counsel for Respondent No. 1 submits that after superannuation of the Petitioner, Respondent No. 1 has been appointed as the School Headmistress.

7 Considering the above, court is of the view that no live issue survives for adjudication in the case. At this stage, learned counsel for Respondent No. 1

submits that the Writ Petition should be adjudicated on merit and Respondent No. 1 should be given the benefit of the Tribunal order.

8 I am afraid such submission of learned counsel for Respondent No. 1 can be entertained. It is well settled that no direction can be issued to a Respondent in a Petition filed by the Petitioner. That apart, as already noticed, following superannuation of the Petitioner, who held the post of Headmistress of the School on the strength of the status-quo order no live issue survives for adjudication in this case.

9 Considering the above, this Writ Petition is closed as being infructuous.

(UJJAL BHUYAN, J.)

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