

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1356 OF 2019

(SANTOSH UDAYBHAN HEDAU...VS.. THE EDUCATION OFFICER, Z.P. YAVATMAL & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Rohit Joshi, Advocate for Petitioner.
Ms Tajwar Khan, A.G.P. for Respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 22, 2019.

Heard.

The post of Headmaster in the school administered by the respondent No.2-Society fell vacant. The respondent No.2-society promoted the respondent No.4 as Headmaster of the respondent No.2-School. The petitioner had challenged the promotion of the respondent No.4 by filing appeal before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 contending that the post of Headmaster was reserved for Special Backward Class candidate and the petitioner belongs to that category and therefore, was entitled to be promoted as Headmaster of the school.

The claim of the petitioner is rejected by the School Tribunal on the ground that on 1st August 2015 i.e. when the respondent No.4 was promoted as Headmaster of the school, the petitioner was not eligible to be appointed/promoted as Headmaster of the school. The School Tribunal has held that as per Rule 3(1)(b) of the

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, to be eligible for appointment / promotion on the post of Headmaster of the school, the candidate should possess a Bachelor's degree in teaching or education, of a statutory university or any other qualification recognised by the Government as equivalent thereto and possess not less than five years' total full-time teaching experience after graduation, out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education, and on 1st August 2015 the petitioner had teaching experience of about one year after obtaining Bachelor's degree in teaching.

The submission on behalf of the petitioner is that as per Schedule F clause (2) category 'C' item 4, a candidate having Diploma in Teaching (one year's course) with ten years' service after acquiring Diploma in Teaching is on par with a candidate having Bachelor's degree in teaching and as the petitioner was appointed on 1st November 2001 and was having Diploma at the time of his appointment, it has to be treated that on completion of ten years i.e. on 1st November 2011 the petitioner was on par with the candidate having Bachelors degree in teaching and if so considered, after 1st November 2011 the petitioner had teaching experience of about 3 years and 9 months and was therefore, eligible to be promoted as Headmaster of the school. The submission cannot be accepted. Schedule F of the Rules of 1981 provides for the guidelines for fixation of seniority of teachers. These provisions cannot be read into the provisions of Rule 3(1) of the Rules of 1981. Rule 3(1)(b) of the Rules of 1981 lays down that the candidate is eligible for appointment on the post of Headmaster of the school if he has five years' teaching

experience and out it at least two years' experience should be after acquiring Bachelor's degree in teaching or education. Thus, as per rule 3(1)(b) of the Rules of 1981, the candidate has to possess Bachelor's degree in teaching or education and in addition should have five years' teaching experience out of which two years' experience should be after acquiring Bachelor's degree. Undisputedly, at the relevant time, the petitioner was not having two years' teaching experience after acquiring Bachelor's degree in education.

The alternate submission on behalf of the petitioner is that the provisions of Rule 3(1)(b) of the Rules of 1981 are directory and for this submission, the provisions of Rule 3(2) are referred. This submission also cannot be accepted. Rule 3(2) of the Rules of 1981 enables the Deputy Director to relax the requirement of teaching experience as required by Rule 3(1)(b) of the Rules of 1981 in particular situation. There is nothing on record to show that the respondent No.2-society (Management) requested Deputy Director to grant relaxation and permit the management to promote the petitioner on the post of Headmaster of the school.

Hence, in my view, the School Tribunal has not committed any error by dismissing the appeal filed by the petitioner. I see no reason to interfere with the impugned order.

The petition is **dismissed**. No costs.

JUDGE