

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

Writ Petition No.8420/2018

**(Bahu-uddeshiya Dnyan Vikas Shikshan Sanstha, Khadipar, through its
Secretary and another .vs. Narendrakumar Shrawan Bunde and another)**

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

Mr. A.Z. Jibhakate, Advocate for Petitioners.
 Mr. S.R. Charpe, Advocate for Respondent No.1.
 Ms. Ritu Kalia, AGP for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : January 17, 2019.

By this writ petition, the petitioners have challenged order dated 03.11.2018 passed by the School Tribunal, Nagpur, whereby application for grant of interim order passed by the respondent no.1 has been allowed and the order of promotion granted in favour of petitioner no.2 has been stayed till the final conclusion of the appeal before the School Tribunal.

2. The facts leading up to the filing of the writ petition are that on 30.06.2017, the person holding the post of regular Headmaster in the school run by petitioner no.1 -Management was to fall vacant due to superannuation of the said regularly appointed Headmaster. In this situation, a question arose who was to be promoted on the post of Headmaster. It is undisputed that the respondent no.1 is the senior most teacher and that the petitioner no.2 is next below him in seniority. The provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,

1977 and the Rules framed therein, cast an obligation upon the management to promote the senior most amongst the teachers to the post of Headmaster. Despite the aforesaid mandate, on 26.06.2017, the petitioner no.1 Management passed a resolution to appoint petitioner no.2 as Headmaster upon the post falling vacant after 30.06.2017. Accordingly, on 01.07.2017, an order was passed by the petitioner no.1 Management granting appointment by promotion to the petitioner no.2 as Headmaster of the said school. But, since the respondent no.1 was the senior most teacher, there was dispute and controversy as regards the above decision of the petitioner no.1 Management, which led to administrative paralysis and the salary bills of the employees were not being forwarded to the respondent no.2- Education Officer for further processing, leading to the employees in the school being deprived of their salaries.

3. In this backdrop on 31.08.2017 the respondent no.2- Education Officer passed an order granting financial and administrative powers to the respondent no.1. Thereafter, again on 28.09.2017, the Education Officer passed an order granting the aforesaid powers to the petitioner no.2.

4. It has been brought on record that a number of complaints were submitted by the staff of the school and certain guardians of the students studying in the said school against the actions and behaviour of the respondent no.1. On 24.11.2017, the respondent no.2-

Education Officer conducted a hearing in the school wherein he heard the petitioners, respondent no.1 and the teachers as well as certain guardians of students of the said school. Upon conclusion of the hearing, the respondent no.2 -Education Officer passed an order to the effect that the resolution dated 26.06.2017 passed by the petitioner no.1 denying promotion to the respondent no.1 was correct and that there was no interference required in the same. Thereafter, pursuant to the said decision, the respondent no.2-Education Officer passed an order on 27.11.2017 granting approval to the appointment of petitioner no.2 as Headmaster by promotion. In the said order, it was noted that if the respondent no.1 approaches any Court raising claim in the said post on the basis of seniority, the approval granted to the appointment of petitioner no.2 shall be subject to the decision in such claim raised by the respondent no.1.

5. On 26.12.2017, the respondent no.1 filed appeal before the School Tribunal at Nagpur under Section 9 of the aforesaid Act, seeking quashing and setting aside of the order dated 01.07.2017 whereby the petitioner no.2 was promoted to the post of Headmaster and a further direction to the petitioner no.1 Management to promote the respondent no.1 to the said post with effect from 01.07.2017 and to pay salary and other consequential benefits to him from the said date. Along with the said appeal, the respondent no.1 filed an application for stay before the Tribunal. The petitioners opposed grant of interim order by the

Tribunal. By the impugned order dated 03.11.2018, the School Tribunal allowed the application for stay filed by the respondent no.1 and consequently stayed the order of promotion granted in favour of petitioner no.2. The said order is subject matter of challenge in the present writ petition.

6. Mr. A.Z. Jibhkate, learned counsel for the petitioners, submitted that the impugned order passed by the Tribunal was unsustainable, firstly on the ground that the nature of interim order was such that it amounted to grant of final relief at interim stage and that such an interim order could not be passed by the Tribunal. Secondly, the learned counsel relied upon the number of complaints from the staff of the school and the guardians of certain students of the school leading to the hearing and decision of the Education Officer dated 24.11.2017, to contend that there was sufficient material on record that respondent no.1 did not deserve to be promoted to the post of Headmaster, despite the fact that he was at the top of the seniority. It was submitted that in the face of such material, to grant an interim order in favour of respondent no.1 would be counter productive and that the functioning of the school would suffer during the pendency of the appeal. It was contended that the past record of the respondent no.1 was also not good and that, therefore, there was sufficient material before the Tribunal to deny the interim relief claimed by the respondent no.1 in the appeal.

7. On the other hand Mr. Sanket Charpe, learned counsel appearing on behalf of respondent no.1 submitted that the grant of interim order by the Tribunal did not amount to grant of final relief in the present case because by the interim order only the promotion granted to the petitioner no.2 was stayed while a perusal of the prayer clause in the appeal filed by the respondent no.1 before the Tribunal would show that the respondent no.1 is not only seeking quashing and setting aside of the promotion of the petitioner no.2 but that he is seeking an order granting him promotion on the basis that he is undisputedly the senior most teacher in the school. It is further submitted that the nature of hearing conducted and decision rendered by the Education Officer on 24.11.2017 is not an exercise contemplated under the provisions of the aforesaid Act and the Rules and that, therefore, any such material relied upon by the petitioners at a prima facie stage cannot lead to any conclusion against the respondent no.1. It was pointed out that a proper interpretation of Rules 3 and 15 of the aforesaid Rules would show that if the Headmaster of the School had failed to prepare confidential report and further failed to communicate any adverse remarks to the respondent no.1, it was to be deemed that his performance as a Teacher in the school, was satisfactory and that in the absence of any adverse material, the petitioners were not justified in relying upon the alleged complaints made by the staff members and the guardians of certain students. It was further pointed out that the Tribunal had correctly concluded in the impugned order that there were no

such complaints by either the staff members or the guardians of the students any time in the past and that the complaints had certainly cropped up when the question of appointment of Headmaster in the school had arisen. On this basis, it was contended that the writ petition deserves to be dismissed.

8. Ms. Ritu Kalia, learned AGP appeared for the respondent no.2-Education Officer.

9. Heard counsel for the parties.

10. The subject matter of challenge in the present writ petition is an interim order passed by the Tribunal. The principal contention raised on behalf of the petitioners is that the nature of the interim order is such that it amounts to grant of final relief at interim stage. In support of the said contention, the learned counsel appearing for the petitioners has relied upon judgment of Division Bench of this Court in the case of **Maharashtra Shikshan Sanstha, Nagpur .vs. Education Officer, Zilla Parishad, Nagpur - 1995(1) Mh.L.J.875** and orders of the Hon'ble Supreme Court in the case of **State of Haryana .vs. Suman Dutta - (2000) 10 Supreme Court Cases 311** and **Chimur Education Society, Chimur .vs. Dilip Mahadeorao Chahande in Civil Appeal No(s). 2433-2434 of 2005.**

11. A perusal of the judgment and orders relied upon by the learned counsel appearing for the

petitioners shows that the facts in those cases are distinguishable from the facts of the present case. In the said cases, by way of interim order, a person terminated from service, was directed to be reinstated by way of interim order. In such a situation, it was held that grant of interim relief amounted to grant of final relief to the employee. In the case of **Maharashtra Shikshan Sanstha .vs. Education Officer** (supra), while holding that the interim order in the facts of that case was not sustainable, the Division Bench of this Court did record that it could not be said that in a given case the School Tribunal while exercising powers under the aforesaid Act and the Rules, did not have any power at all to direct reinstatement of an employee during the pendency of the appeal. Therefore, the power to grant an interim order in the facts of a particular case, has been clearly recognized. Apart from this, the learned counsel appearing for the petitioners has placed reliance on the penultimate paragraph of the aforesaid judgment in the case of **Maharashtra Shikshan Sanstha .vs. Education Officer** (supra) to emphasize that an interim order could be granted only in compelling circumstances and where extreme hardships were pointed out by the person approaching the Tribunal for grant of interim order and that merely because prima facie case was made out or that balance of convenience was demonstrated to be in favour of such a person, an interim order amounting to grant of final relief could not be sustained.

12. In order to examine the said contention raised

on behalf of the petitioner, it would be appropriate to quote the prayer clause of the appeal filed by the respondent no.1:-

"A) To quash and set aside the Promotion Order dated 01-07-2017, of the Respondent no.2, to the post of Headmaster, issued by the respondent no.1, thereby superseding the Legal claim of the promotion of the appellant.

B) To direct the Respondent no.1, to promote the Appellant to the promotional post of Headmistress, w.e.f. 01-07-2017, along with difference of arrears of Salary and other consequential benefits, w.e.f. 01-07-2017.

C) Saddle the cost of instant appeal on the respondents;

D) To pass any other appropriate order as this Hon'ble Tribunal deems fit and proper in the premises."

13. The nature of interim relief granted by the impugned order is as follows:-

"1. Present application is allowed.

2. The promotion order of respondent no.2 issued by respondent no.1 on 01/11/2017 is stayed till the final conclusion of present appeal.

3. Dictated on computer and pronounced in open Court."

14. A perusal of the aforesaid prayer clause and the operative portion of the impugned order passed by the Tribunal would show that grant of interim relief by the Tribunal in favour of respondent no.1 cannot be said

to be grant of final relief claimed by him in the appeal filed before the Tribunal. The respondent no.1 has challenged his supersession for appointment to the post of Headmaster. Accordingly, he has challenged not only promotion granted to the petitioner no.2, which according to him is wholly illegal and unsustainable, but he has also sought a direction to promote him as Headmaster, in view of the fact that he being the senior most teacher in the school and he is entitled to the post of Headmaster under Rule 3 of the aforesaid Rules. Therefore, merely because promotion granted to petitioner no.2 has been stayed by the Tribunal, would not mean that final relief claimed by the respondent no.1 in his appeal has been granted at interim stage. Therefore, the aforesaid contention raised on behalf of the petitioner is rejected.

15. The petitioners have contended that the staff of the school and the guardians of certain students of the school, had submitted representation/complaints before the petitioner no.1 Management as well as the Education Officer against the behaviour of the respondent no.1 and that, therefore, the Education Officer was required to conduct a hearing on 24/11/2017. After hearing all the complainants, the Education Officer rendered a decision that there was sufficient material to show that the resolution passed by the petitioner no.1 Management to deprive the respondent no.1 of promotion to the post of Headmaster was justified. It was submitted that the aforesaid material that had come on record before the Education

Officer and a perusal of the proceedings of the hearing and the decision of the Education Officer dated 24.11.2017 demonstrated that the respondent no.1 was not fit to be Headmaster of the school and that, therefore, the Tribunal had erred in passing the interim order. On a specific query put to the learned counsel appearing for the petitioners as to under what provision of the aforesaid Act and the Rules, the Education Officer entertained the complaints in question and conducted a hearing and passed a decision/order in the nature of the order dated 24/11/2017, the learned counsel for the petitioner fairly submitted that no such provision existed in the Act or the Rules. The petitioners could also not place on record any material to show that there were any such representations/complaints against the respondent no.1 prior to the period when the question of appointment to the post of Headmaster arose upon superannuation of the earlier regularly appointed Headmaster on 30.06.2017. This fact was specifically taken note of by the Tribunal while passing the impugned order and in the facts and circumstances of the present case this assumes significance. At a prima facie stage, it appears that the process of complaints/representations suddenly cropped up when the aforesaid question of appointment to the post of Headmaster arose. It cannot be said that the Tribunal committed an error in emphasising on the said fact while dealing with the aforesaid contention raised on behalf of the petitioners.

16. As regards the contention raised on behalf of

the petitioners that the record of the respondent no.1 in the past was also not satisfactory, the learned counsel for the petitioners could not place on record any material regarding unsatisfactory performance of respondent no.1 in the past. There were no confidential reports and adverse remarks in any confidential reports that could be placed on record. In such a situation, the learned counsel for the respondent no.1 was justified in relying upon Rules 3 and 15 of the aforesaid Rules, to contend that in the absence of any material placed on record by the petitioner, it was to be deemed that the performance of the respondent no.1 was satisfactory. The relevant portions of the said Rules read as under:-

“3. Qualifications and appointment of Head

(1).....

(2).....

(3).....

(4).....

(5).....

(6) *The Education Officer or the Deputy Director shall direct the Management to cancel the appointments made without following the procedure laid down in this rule.*

Explanation- *For the purposes of this rule the record of service shall be deemed to be satisfactory if there is nothing adverse in the annual confidential reports of the teacher concerned during the previous five years. Adverse remarks not duly communicated in writing to the teacher concerned, shall be disregarded for this purpose.”*

15. Writing of confidential reports etc.

(1).....

(2).....

(3).....

(4).....

(5) *Failure to write and maintain confidential reports and to communicate adverse remarks to the employees within the period prescribed in sub-rule (3) shall have the effect that the work of the employee concerned was satisfactory during the period under report."*

17. To counter the aforesaid submission raised on behalf of the respondent no.1, the learned counsel for the petitioners submitted that when the respondent no.1 had not submitted his self assessment as required under Rule 14 of the said Rules, failure in writing confidential reports on the part of the Headmaster/Management could not be held against them and Rule 3(6) Explanation and Rule 15(5) of the said Rules would not operate in favour of respondent no.1. In this regard, reference was also made to Schedule G to the aforesaid Rules. The said Schedule provides the forms for self assessment to be made by the employee and the confidential report to be prepared by the Headmaster/Management. The said submission raised on behalf of the petitioners would be open to be contested and argued before the Tribunal in the pending appeal and any observation made by this Court would not be appropriate. Yet, prima facie, it appears that the respondent no.1 is justified in claiming that in the absence of any adverse remark communicated to him in any confidential report, by operation of the said rules, it had to be deemed that the his performance was satisfactory. Therefore, while analysing the contentions

of respondent no.1, prima facie it becomes clear that the petitioners have failed to show any adverse material in the service record of the respondent no.1. Thus, there were compelling circumstances before the Tribunal to pass the impugned interim order in favour of the respondent no.1.

18. In this backdrop, it cannot be said that the Tribunal erred in passing the impugned interim order in favour of respondent no.1. The learned counsel for the petitioners expressed anxiety about there being difficulty in administration of the school with the respondent no.1 being in-charge. It is relevant to note that after the impugned order was passed by the Tribunal, by order dated 26.11.2018, the respondent no.2- Education Officer has granted approval to the respondent no.1 for exercising financial and administrative powers in respect of the said school. The said order passed by the respondent no.2- Education Officer read with paragraph 10 of the written submissions placed on record on behalf of respondent no.1 show that the salary and pay-bills of the employees of the school are being submitted for clearance by the respondent no.1 to the concerned authorities and that there has not been any difficulty in that regard. Therefore, the anxiety of the petitioner is addressed. Additionally, it is directed that the respondent no.1 shall not create any obstruction in forwarding of salary bills of the employees of the school during the pendency of the appeal before the Tribunal.

19. In the facts of the present case, considering the fact that the petitioner no.1 Management has shown concern about the record and the behaviour of respondent no.1 and it is claimed that despite he being senior most teacher in the school he does not deserve to hold the post of the Headmaster, it would be appropriate that the School Tribunal decides the pending appeal at the earliest.

20. It is informed that the petitioners have not yet filed their reply in the appeal before the Tribunal. Therefore, to facilitate expeditious disposal of the appeal pending before the Tribunal, it would be necessary to give certain directions while disposing of this writ petition.

21. In the light of the above, the present writ petition is dismissed, but the following directions are given:-

(i) The petitioners shall file reply to the appeal filed by the respondent no.1 before the Tribunal within a period of two weeks from today.

(ii) The Tribunal shall decide the pending appeal i.e. Appeal No. STN No.43 of 2017 filed by respondent no.1 expeditiously and in any case within a period of six weeks from today.

22. Needless to say, the observations made by this Court in the present order, were only to decide the correctness or otherwise of the impugned interim order passed by the Tribunal and that the Tribunal shall decide

the appeal filed by the respondent no.1 on its own merits without being influenced by the observations made by this Court in the present order.

JUDGE

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