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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 392 OF 2019

Mrs. Ranajana B. Powar,)
 nee Ranjana M. Shirodkar, Aged 46)
 years, Acting Headmistress, Rauji)
 Rane Memorial High School,)
 Maulinguem Bicholim – Goa ... **Petitioner**

Vs.

1. Shree Rauji Rane Memorial High)
 School, Maulinguem, Bicholim – Goa))
 through its Administrator)
 Shri R. W. Dhande)
2. Shree Mhalsa Education Society,)
 a Society registered under the)
 Societies Registration Act, through)
 its Chairman Shree Babasaheb Rane,)
 Maulinguem, Bicholim – Goa)
3. Mrs. Priya Pratap Parab, Asst. Teacher)
 Rauji Rane Memorial High School,)
 Maulinguem, Bicholim – Goa)
4. The Director of Education,)
 Directorate of Education, Government)
 of Goa, Panaji Goa)
5. State of Goa,)
 through the Chief Secretary,)
 Porvorim Bardez Goa ... **Respondent**

Mr. Vivek Rodrigues with Vithal Naik, for the Petitioner.

Mr. Nitin Sardesai, Sr. Counsel with Ms. Suzette Pereira, for
 Respondent Nos. 2 and 3.

Mr. Pravin Faldessai, Additional Government Advocate for Respondent Nos. 4 and 5.

CORAM : C. V. BHADANG, J.

RESERVED FOR JUDGMENT : JUNE 17, 2019

JUDGMENT PRONOUNCED ON: JUNE 19, 2020

(Pronounced via video conferencing)

JUDGMENT :

1. The challenge, in this petition under Article 226/227 of the Constitution of India, is to the judgment and order dated 29.3.2019 passed by the learned Principal District Judge at Panaji (“PDJ” for short) in Education Appeal No. 8 of 2016 and 3 of 2017. By the said judgment the learned PDJ has allowed the appeals filed by the respondent No. 3 and has consequently set aside order dated 13.12.2016 and 9.5.2017 passed by the Director of Education (respondent No. 4) on the issue of *inter se* seniority of the petitioner and the respondent No. 3.

2. The brief facts necessary for the disposal of the petition may be stated thus:

. The second respondent is a society, which is running the first respondent High School. In the year 1989 the third respondent was appointed as an untrained undergraduate teacher in the said school. The petitioner came to be appointed as a trained graduate

teacher in the said school in the year 1994. In the year 2002 the petitioner was appointed as an acting headmistress, being the senior most trained graduate teacher. The third respondent came to be appointed as a trained graduate teacher in the year 2007.

3. The petitioner approached this court in Writ Petition No. 92 of 2009, seeking a direction to fill the post of the headmistress on a regular basis. It appears that during the pendency of the said petition the Government, acting under section 20 of the Goa School Education Act 1984 (“Act” for short) took over the management of the school and appointed an administrator on 18.6.2009 as the management had *inter alia* failed to constitute a Departmental Promotion Committee (DPC) for appointment / promotion of a regular Headmistress. The administrator took charge on 19.6.2009.

4. After this, the DPC was constituted on 10.7.2009 which recommended the name of the petitioner for being promoted as a headmistress on regular basis. The DPC found that earlier DPC on 16.4.2009 had not considered the fresh seniority list prepared by the management as the petitioner had not signed / acknowledged the same. Be that as it may, in accordance with the recommendation dated 10.7.2009, the petitioner came to be promoted as a headmistress on

regular basis on 24.7.2009, with effect from 16.7.2009. In such circumstances, Writ Petition No. 92 of 2009 was disposed off on 3.11.2009 giving liberty to the petitioner to make a representation that she should be appointed from 1.5.2002.

5. The third respondent challenged the promotion of the petitioner before this court in Writ Petition No. 482 of 2009. This court found that the DPC while making its recommendations on 10.7.2009 had relied upon the seniority list of the year 2007. This court further found that the DPC ought to have considered the revised seniority list when admittedly there was no challenge to the same by any of the aggrieved parties. It was thus found that the recommendations of the DPC and the consequent order dated 24.7.2009 were vitiated. This court, by a judgment and order dated 29.8.2016 set aside the said order and directed constitution of a fresh DPC to consider the eligible candidates for promotion as a Headmistress of the concerned school. As a result of this, the petitioner came to be reverted to the post of a trained graduate teacher by order dated 21.10.2016. However, she was allowed to hold the charge of the post of a headmistress. This court has noted that in the meanwhile the management of the school was with the administrator.

6. It may be mentioned that the petitioner filed Civil Application (Review) No. 32 of 2016 for review of the judgment and order dated 29.8.2016, which has been disposed of as withdrawn on 16.11.2016. On the same day, the petitioner withdrew Writ Petition No. 1032 of 2016 challenging the revised seniority list dated 6.7.2009 in view of the availability of an alternate remedy.

7. The petitioner and the third respondent thereafter approached the Director of Education under Rule 87-A of the 1986 Rules. While the petitioner challenged the revised seniority list, the third respondent challenged the original seniority list for the year 2007-08. The director has disposed off the same respectively on 13.12.2016 and 9.5.2017. The director has allowed the appeal filed by the petitioner while dismissing the appeal filed by the third respondent. The net result was that the revised seniority list has been set aside as being prepared in breach of Rule 87-A of the 1986 Rules. Aggrieved by the same the third respondent approached the learned PDJ in Education Appeal No. 8 of 2016 and 3 of 2017. The learned PDJ has allowed the appeals by separate judgment and order dated 29.3.2019 and has set aside the orders dated 13.12.2016 and 9.5.2017 passed by the fourth respondent. Hence, this petition.

8. I have heard Mr Rodriques, the learned counsel for the petitioner and Mr. Sardessai the learned Senior Counsel for the respondent Nos. 2 and 3. I have also heard the learned AGA for the respondent Nos. 4 and 5.

9. Mr. Rodriques, the learned counsel for the petitioner has submitted that the first respondent was required to maintain separate seniority lists in respect of trained graduate and undergraduate teachers. It is submitted that as the third respondent was appointed as an under graduate teacher and continued as such till the year 2007 inasmuch as the promotion of the third respondent as a graduate teacher was approved by the Director of Education only on 13.2.2007, which was never challenged by the third respondent. It is submitted that the seniority of the third respondent in the trained graduate scale has to be reckoned from the year 2007. It is thus submitted that the third respondent cannot claim or be granted seniority from the year 1992, merely because she obtained the professional qualification i.e. B. Ed. in the year 1992.

10. It is submitted that the third respondent having obtained B. Ed. degree on 10.1.1992 was not a trained graduate teacher as on 24.1.1994 with required three years experience in the said grade, nor

she had ever availed of the said grade and thus was not eligible to be promoted as trained graduate teacher under Rule 78 of the Goa Education Rules 1986 (“said Rules” for short)

11. It is submitted that the learned PDJ has failed to see that the proviso to Rule 86 of the said Rules was inserted by virtue of an amendment dated 14.10.1994 which was after the direct recruitment of the petitioner on 24.1.1994 and as such as, on the date of the appointment of the petitioner, the third respondent was ineligible and could not have been granted seniority with retrospective effect. It is submitted that even assuming that the third respondent can claim the benefit of the proviso to Rule 86 for the academic year 1995-96, the said benefit cannot be extended, as the said proviso envisages that a specific claim has to be made, to take the benefit of the said proviso and the third respondent never made any such claim of the scale of a trained graduate teacher prior to the year 2005. It is submitted that promotion of an employee should not be disturbed after a long lapse of time.

12. Lastly, it is submitted that the director had passed order exercising powers under Rule 87(2) of the Rules, which is final and no appeal lay against the same. It is thus submitted that the appeal itself

was incompetent and consequently the impugned judgment is without jurisdiction.

13. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in ***K R Mudgal & Ors. Vs. R. P. Singh & Ors.***¹; and ***T. Nagappa Vs Y. R. Muralidhar***².

14. Mr. Sardesai, the learned senior counsel for the respondent Nos. 1 to 3 has supported the impugned judgment. It is submitted that the learned director after considering the facts in the light of the relevant provisions of the Goa Education Act, 1984 and the 1986 Rules framed thereunder, has rightly decided the issue of *inter se* seniority of the petitioner and the respondent No. 3. It is submitted that the management had corrected the error and had rightly shown the third respondent at Sr. No. 1 and senior to the petitioner in the revised seniority list. It is submitted that the director was in error in setting aside the revised seniority list and restoring the list for the year 2007-08, which error has been corrected by the learned PDJ. It is submitted that although the administrator had taken charge on 19.6.2009, the list was prepared and sent to the director prior thereto, as would be evident from the letter dated 8.6.2009. It is submitted that the mere circulation

1 (1986) 4 SCC 531

2 (2008) 5 SCC 633

of the revised list after the administrator took charge, would be of no consequence.

15. I have considered the rival circumstances and the submissions made. The material facts are mostly undisputed and in fact are matters of record. The third respondent Priya Parab (nee Miss Sunanda Naik) was appointed as an Assistant Teacher in the under graduate scale on 29.5.1989. At the relevant time, she was holding a degree in commerce. She acquired professional qualification viz. B. Ed in the year 1992. The petitioner Ranjana Powar (nee Miss Ranjana Shirodkar) on the contrary was appointed as trained undergraduate teacher on 24.1.1994. At the relevant time, she was holding a degree as M.A., B. Ed. Indisputably, she was appointed as an acting headmistress in the year 2002. It is only on 13.10.2005 that the third respondent made a claim for “promotion to the graduate post”. On 13.2.2007 the management issued a communication promoting the third respondent to the post of a trained graduate teacher. This was approved by the Deputy Director of Education on 23.3.2007. According to the third respondent, the letter to the extent it says that it has approved the “promotion” of the third respondent is not correct, as according to the third respondent, she ought to be in the trained

graduate scale from the time, she obtained professional qualification in the year 1992 inasmuch as, she was already holding a graduate degree at the time of her appointment. However, the management by a letter dated 25.5.2009 acknowledged that there was a mistake in the seniority list prepared earlier and confirmed the seniority of the third respondent in the graduate scale from 28.11.1992. It was said that the letter dated 13.2.2007 stands modified to that extent. It is necessary to note that it was only on 25.5.2009 that the management for the first time accepted that the third respondent was the senior most teacher in the trained graduate scale. Accordingly, the management wrote to the Director on 8.6.2009 with a copy of the revised seniority list. The list is stated to be circulated on 6.7.2009. The revised seniority list shows the third respondent at Sr No. 1 while the petitioner is shown at Sr. No. 2. Prior thereto, in the seniority list of 2007-08 the petitioner was shown at Sr. No. 1 while the third respondent was at Sr. No. 5. It is a matter of record that although the management had obtained a NOC in the year 2006, the post of headmistress was not filled up on a regular basis. It is further a matter of record that the Government in exercise of the powers conferred by Section 20 of the said Act had taken over the management of the school by order dated 18.6.2009 and the

administrator took charge on 19.6.2009.

16. The question in the present dispute essentially turns upon as to whether the original seniority list for the year 2007-08 or the revised list is valid. While the original list is in favour of the petitioner, in the revised list, it is the third respondent, who is shown to be senior to the petitioner. It is significant to note that, while the director has held that the revised seniority is not prepared in accordance with Rule 87-A, the learned PDJ has held that it is the original seniority list for the year 2007-08 which is not in accordance with the said provisions. It is true that this court in Writ Petition No. 482 of 2009 had held that the recommendation of the DPC dated 10.7.2009 could not be sustained as the DPC had considered the seniority list prepared in the year 2007 and not the revised list. However, at the same time it is necessary to note that this court found that the matter involves disputed questions of facts and the question, as to the validity of the revised list, as raised on behalf of the present petitioner (respondent No. 3 in the said petition) by way of defense cannot be examined in a petition under Article 226 of the Constitution of India. It is further significant to note that in order dated 16.11.2016 in Writ Petition No. 1032 of 2016, this court has kept all the rival contentions on the challenge to

the seniority list dated 6.7.2009 open.

17. The learned PDJ, while setting aside the seniority list of the year 2007-08, has not recorded a finding that the revised list is prepared in accordance with the provisions of Rule 87-A of the Rules. There is also an issue whether the erstwhile management could have circulated the revised list on 6.7.2009 when admittedly the administrator had taken charge on 19.6.2009. In my considered view, the learned PDJ has not appropriately dealt with these aspects, which are relevant for the purpose. The learned PDJ has principally gone on the fact that the third respondent who was a graduate on the date of her appointment in the year 1989 and she having obtained the professional qualification in the year 1992, ought to have been considered for the appointment in the trained graduate scale. The matter also involves the question about correct interpretation and application of the proviso to Rule 86 of the 1986 Rules, as introduced on 14.10.1994. There are several other aspects to the matter namely the third respondent staking such a claim for the first time in the year 2005 and the order and the approval granted by the director in the year 2007. In my considered view, therefore, it would be appropriate that the education appeals are remitted back to the file of the learned PDJ for deciding the same on

their own merits and in accordance with law. In the result, the petition is partly allowed. The impugned judgment and order is hereby set aside. Education Appeal Nos. 8 of 2016 and 3 of 2017 are restored to the file of the learned PDJ for deciding them afresh on their own merits and accordance with law. The parties to appear before the learned PDJ on at 10 a. m. on 10th July, 2020. Rival contentions of the parties are left open. In the circumstances, there shall be no order as to costs.

Vinayak
P.
Halemath

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by Vinayak P.
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Sd/-
C. V. BHADANG, J.