

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST.) NO.183 OF 2020
IN
WRIT PETITION NO.5747 OF 2005

Vijaya Ashok Khadatare ... Petitioner
Vs.
Mandakini Nagesh Talbhandare and others ... Respondents

Mr. Bhushan U. Tayade for Review Petitioner.

Mr. Prashant Kamble i/b. Mr. A. S. Rao for Respondent No.1 / Orig.
Petitioner.

CORAM : UJJAL BHUYAN, J.

DATE : MARCH 03, 2020
(In Chamber)

P.C. :

Heard Mr. Bhushan Tayade, learned counsel for the review petitioner and Mr. Kamble, learned counsel for the opposite party / original petitioner.

2. This petition has been filed seeking review of final order dated 07.11.2019 passed by this Court disposing of the related writ petition being Writ Petition No.5747 of 2005 as being infructuous.

2.1. In the writ petition, review petitioner was respondent No.1.

3. Relevant portion of order dated 07.11.2019 is extracted hereunder:

“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.”

4. As would be evident from the aforesaid order, it is seen that matter relates to *inter se* seniority dispute between the review petitioner and the opposite party. The concerned school authority had treated the opposite party to be senior to the review petitioner and thereafter issued consequential order of promotion to the post of Headmistress. This came to be challenged by the review petitioner by filing appeal before the School Tribunal. School Tribunal allowed the appeal of the review petitioner interfering with the consequential order of promotion of the opposite party with further direction to the school authority to promote the review petitioner to the post of Headmistress with effect from the date the opposite party was so promoted.

5. In the course of hearing on 07.11.2019, Court was informed that opposite party had continued as Headmistress of the school by virtue of the *status-quo* order passed in the writ petition. However, she retired from service on attaining the age of superannuation on 31.04.2019. Court was further informed that following superannuation of the opposite party, review petitioner was appointed as the Headmistress.

6. Writ Court took the view that following superannuation of the opposite party, no live issue survives for adjudication in the writ petition. When learned counsel for the review petitioner insisted on adjudication of the writ petition on merit so that review petitioner could get benefit of the order of the School Tribunal, Writ Court declined such contention on the ground that no direction could be issued in favour of the review petitioner being the respondent in a writ petition filed by the petitioner.

7. On the same ground, review petitioner has preferred the present review petition. In the hearing today, learned counsel for the review petitioner has placed reliance on a decision of this Court of Nagpur Bench being Writ Petition No.1391 of 2016 [*Chagan Vs. Education Officer (Secondary)*] decided on March 25, 2019 to contend that seniority of his client should be restored as was decided by the school authority.

8. I am afraid such direction can be issued in the review petition. If the review petitioner seeks any positive direction, it is always open to the review petitioner to file appropriate proceeding before the appropriate authority.

9. Subject to the observation made above, Court finds no good ground to review the order dated 07.11.2019.

10. Review Petition is dismissed.

(UJJAL BHUYAN, J.)

Minal Parab