

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6459 OF 2020

1. Vidhayak Samiti Pimpalner's
Late N.S.Patil Secondary and
Higher Secondary School, Pimpalner
Tq.Sakri, District Dhule,
Through its Secretary,
Mahendra S/o Ramrao Gangurde,
Age-58 years, Occu-Agriculture,
R/o Patil Line, Pimpalner,
Tq.Sakri, District Dhule,

2. Harendrakumar Pandharinath Shete,
Age-55 years, Occu-Service,
R/o Behind Mahajan Lodge,
Satana Road, Pimpalner,
Tq.Sakri, District Dhule

-- PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary for
High Education Department,
Mantralaya, Mumbai
2. The Deputy Director of Education,
Nashik Division, Nashik,
3. The Education Officer (Secondary)
Zilla Parishad, Dhule,
District Dhule,
4. Bhalchandra Lala Chavan,
Age-54 years, Occu-Service,
R/o Alankar Nagri, Chikse Road,
Pimpalner, Tq.Sakri,
District : Dhule

-- RESPONDENTS

Mr.VD.Hon, Sr. Counsel h/f Mr.A.V.Hon, Advocate for the petitioners.
Mr.S.R.Yadav, AGP for respondent Nos.1 to 3.
Mr.S.S.Deshmukh, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : SEPTEMBER 22, 2021

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties

2. The issue that falls for our consideration in this petition is as to [a] whether a teacher who has resigned as the Head Master, can again rise and put forth a claim that he again desires to become the Head Master, [b] Whether such a teacher can be permitted to reclaim the position of a Head Master once he has resigned ?

3. This petition has been filed by petitioner No.1, an Educational Institution, through it's secretary and petitioner No.2, a teacher at Sr.No.3 in the seniority list, prior to the retirement of the senior teachers Shri.K.B.Bhamre on 31/05/2019 and Shri.PA.Bhat on

30/09/2020.

4. The petitioner has put forth prayer clause "B" and 'C' as under :-

"B. Issue a writ of certiorari or writ in the nature of certiorari to quash and set aside the order dated 19.08.2020 passed by the respondent No.2 the Deputy Director of Education, Nashik Division, Nashik.

C. Issue a writ of mandamus or writ in the nature of mandamus to the respondent Nos. 2 and 3 the Deputy Director of Education, Nashik Division, Nashik and the Education Officer (Secondary), Zilla Parishad, Dhule, respectively, to consider the proposal submitted by petitioner No.1 for appointment of petitioner No.2 Harendrakumar Pandharinath Shete, senior most teacher as regular Head Master of the School viz N.S.Patil Secondary and Higher Secondary School, Pimpalner, Tq. Sakri, Dist.Dhule."

5. We have considered the strenuous submissions of the learned Sr.Advocate on behalf of the petitioners, the learned AGP on behalf of respondent Nos. 1 to 3 and Shri. Deshmukh, learned Advocate on behalf of respondent No.4.

6. The facts of the case are that respondent No.4 was before this Court in WP No.4999/2019 making a grievance that he should be

appointed as a Head Master as Shri Bhamre (Sr.No.1) and Shri Sawle (Sr.No.2) had retired, Shri Bhat (Sr.No.3) was not interested in becoming the Head Master and Shri Shete, petitioner No.2 herein, had resigned as the Head Master. This Court, vide order dated 20/08/2019, directed the Educational Institution to submit a proposal of the senior most teacher, apart from those who have declined to work as Head Master, to the Education Officer for a decision.

7. Pursuant to the above directions, the Education Officer considered the prevailing fact situation of Shri Bhamre having superannuated, Shri Bhat having declined and Shri Shete having resigned as Head Master and then proceeded to appoint respondent No.4 Shri B.L.Chavan, who was then an immediate senior candidate eligible to be appointed as Head Master. However, the approval granted to Mr.Chavan was suddenly cancelled vide order dated 16/10/2019 passed by the same Education Officer who, in turn, granted approval to officiate as Incharge Head Master to Mr.Umesh Jayram Patil, who was down below at Sr.No.6 in the seniority list for the year 2019-2020.

8. Shri Chavan, therefore, approached this Court in WP No.110/2020 raising a grievance that he could not have been dislodged, in as much as, there is another teacher namely Mr.M.Y.Thingle below him and Shri Umesh Patil was even junior to Mr.Thingle. This Court, by order dated 09/03/2020, quashed the impugned order of the Education Officer and considering the role played by the Education Officer, directed the Deputy Director of Education to consider the whole issue and pass a fresh order.

9. As the Deputy Director of Education/respondent No.4 herein delivered an order dated 19/08/2021 approving the appointment of Mr.Chavan as the Head Master, this petition has been preferred by the petitioners.

10. For clarity, we are recording the seniority list, as it was at the relevant time in A.Y. 2019-2020 as under :-

1. Shri Bhamare Kishor Bhalchandra- Head Master (superannuated on 31/05/2019).
2. Shri Bhat Pramod Anant - Declined to be Head Master (superannuated on 30/09/2020).

3. Shri Shete Harendrakumar Pandharinath (petitioner No.2), was Head Master - Voluntarily resigned and again subsequently declined to be Head Master.

4. Shri Chavhan Bhalchandra Lala - Respondent No.4 - Incumbent Head Master.

5. Shri Thingle Madhukar Yoseph

6. Shri Patil Umesh Jairam - Was appointed Incharge Head Master - His appointment was quashed by order dated 09/03/2020 passed by this Court in WP No.110/2020.

11. The learned Senior Advocate has canvassed that on the date the impugned order was passed, Shri Bhamre had already retired and Shri Bhat had declined to become the Head Master. Shri Shete, petitioner No.2 was then senior most and was willing to be the Head Master. Shri Bhat has retired on 30/09/2020. The Deputy Director has referred to the resignation of Mr.Shete tendered on 17/03/2019 as the Head Master and has illegally not appointed him as the Head Master. The rules clearly mandate that the senior most eligible teacher has to be the Head Master. The consent of Mr.Shete was not taken and he was not even heard. He then points out a recent development that Shri Chavan

has resigned as Head Master on 04/09/2021 and as such, it is only Mr.Shete who could be considered for appointment as Head Master

12. Rule 3 of the MEPS Rules, 1981 reads thus :-

"3. Qualifications and appointment of Head. - (1) A person to be appointed as the Head -

(a) (i) of a primary school having an enrollment of students above 200 or having Standards I to VII shall be the senior most trained teacher who has put in not less than five years' service; and

(ii) of any other primary school shall be the senior most teacher in the school;

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education :

Provided that, in the case of a person to be appointed as the Head of a night secondary school -

(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and

(ii) the experience laid down in clause (b) of sub-rule (1) may be as a

part-time teacher.

(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons, though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in clause (b) of sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.

Note : *In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head.*

(3) The Management of a school including a night school shall fill up the post of the Head by appointing the senior most member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is the only school run by the Management) or schools if there are more than one school (excluding night school) conducted by it) who fulfills the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

[Explanation - For the purpose of this rule, the Management shall communicate any occurrence of vacancy of the Head to the senior-most

qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post :

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalize the appointment. Such a teacher shall

thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post;]"

13. We find from the record that there are internal squabbles in the two factions of the Educational Institution. We may not be called upon to consider that controversy. Suffice it to say that we have to consider the following factors :-

[a] The senior most employee Shri Bhamre has superannuated.

[b] The next senior most teacher Shri Sawle has also superannuated.

[c] By following the seniority, petitioner No.2 Shri Shete was already appointed as a Head Master and he voluntarily retired on 17/03/ 2019 citing reasons that he cannot continue to perform the said function.

[d] On 14/09/2019, petitioner No.2 Shri Shete again informed in writing that he does not desire to again become the Head Master due to

his ill health.

[e] This Court has already negated the appointment of Shri Umesh Jayram Patil as the Head Master, who was junior by two stages to respondent No.4 Shri Chavan.

[f] Considering the above, Shri Chavan was already appointed as the Head Master on 10/10/2019 and his appointment was approved from the day he took charge of Incharge Head Master from 01/09/2019.

14. Petitioner No.2 Shri Shete has resigned voluntarily and he has not lodged any complaint with the Education Officer or respondent No.2 that he was pressurized to resign. It is now contended that he resigned because he had some domestic problems and he has now resolved his domestic problems and therefore he should again be considered for appointment as Head Master by removing respondent No.4 Shri Chavan. We are of the view that if a person has resigned voluntarily and has not raised any grievance as regards the factum of his resignation, the matter has to rest there. His resignation attains finality and such a teacher can not subsequently rise and say that his domestic problems are resolved and he is again willing to become the Head Master and for which the position of Head Master already

occupied by respondent No.4 Chavan can fall vacant only after terminating the services of Mr.Chavan as Head Master. If this is permitted, there would be a grave uncertainty. A person who has resigned voluntarily, can not thereafter, at the cost of the incumbent Head Master, be re-appointed as the Head Master by terminating the incumbent Head Master, save and accept, if his resignation is challenged and is proved to be a forceful resignation, so as to be quashed and set aside.

15. When respondent No.4 Mr.Chavan was already appointed as Head Master, there was no reason for the petitioner/Management to create a controversy of trying to dislodge him and appoint Shri Umesh Jayram as Head Master, and thereafter take a plea that petitioner No.2 Mr.Shete is now willing to be the Head Master once again. Moreover, Mr.Shete has again declined in writing on 14/09/2019 from becoming an Head Master.

16. We find from the impugned order that respondent No.2 has adverted to these factors in details and has passed a well reasoned order. Certain disputed issues about petitioner No.2 Shri Shete having

been allegedly involved in an offence of outraging the modesty of a mother of a student, have also been referred to in the impugned order. Nevertheless, this factor has not influenced the impugned order and we have no reason to consider the said factor since a citizen of this Country will always be presumed to be innocent until proven guilty.

17. In service matters, a person who has resigned from the post of Head Master, thereby has acquiesced his right to continue as the Head Master and cannot be permitted, one fine morning, to rise and reclaim the said position at the cost of the incumbent Head Master. We, therefore, answer the two issues, accordingly .

18. Now, a controversy has been brought before this Court by the petitioner/Management contending that now Mr.Chavan has resigned voluntarily. We are unconcerned with the same, notwithstanding, the fact that the learned Advocate for Mr.Chavan submits that he finds Mr.Chavan to be under great pressure and duress, who did not even meet him though he is present in the Court hall. As this is an issue *inter-se* the Head Master Mr.Chavan and the Management, we have no reason to deal with this aspect. The Education Officer can deal with

this issue of purported resignation. We have concluded in this judgment that Shri Chavan is rightly approved as Head Master and Shri Shete is not eligible to become the Head Master having resigned and again having declined to become the Head Master.

19. This petition is, therefore, dismissed. Rule is discharged.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)