

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 WRIT PETITION NO.12075 OF 2021

Shar-dha D/O Ramesh Bagdi,
 @ Shardha W/O Moses Srisunder.,
 Age 43 YEARS Occu Assistant Teacher,
 In Dr. Fraser Boy's High School,
 At Jalna Tq. and Dist. Jalna.
 r/o At Plot No.120, Saraswati Colony,
 Tq. and Dist. Jalna.
 Pin - 431 203

...PETITIONER
 (Original Appellant)

VERSUS

1. The Secretary.,
 John Wilson Education Society,
 Wilson College, Mumbai,
 Mumbai.,
 Tq.and Dist. Mumbai.
2. Smt.Archana Ramesh More,
 Age Major Occu Service.,
 Head Mistress,
 Dr. Frasar Boy's High School,
 At Jalna Tq. and Dist. Jalna.

....RESPONDENTS

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Advocate for Petitioner : Mr. S. R. Kolhare
 AGP for Respondents - State : Mr. K. B. Jadhavar
 Advocate for Respondent No. 1 : Mr. Salgare h/f.
 Mr. N. V. Gaware
 Advocate for Respondent No. 2 : Mr. Subhash Chillarge

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CORAM : MANGESH S. PATIL, J.

DATE : 18.11.2021

ORAL JUDGMENT :-

Heard the learned Advocate for the petitioner and the
 learned AGP for the State.

2. The petitioner being aggrieved by the appointment of respondent No.2 to the post of Head Mistress of a School by direct recruitment, preferred an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter the Act). By the impugned order, the School Tribunal has dismissed the appeal.

3. Reading of provision contained in Section 9 of the Act reveals that an employee of a private school who is dismissed or removed from services or otherwise terminated, or who is reduced in rank by the order passed by the Management or who is superseded by the Management by making an appointment to any post by promotion, has been given a right to prefer an appeal to the Tribunal. The appeal memo of the petitioner before the School Tribunal inter alia reads as under :

Para No.11- "That, the Respondent No. 1, without following due and Mandatory provisions of Section 3 and Rule 3 And 6 R/W Schedule B of MEPS Rules, 1981, i.e. without Following the seniority cum merit rule directly Appointed the Respondent No. 2 to the Post of Head Mistress, therefore, the Appellant made representation on 20th December 2019, regarding the illegality committed by the Respondent No.1, while Appointing the Respondent No.2, to the post of Head Mistress. A copy of representation dated 20th

December 2019 is annexed herewith and marked as Exhibit -J."

4. These pleadings clearly indicate that the respondent No.2 was directly appointed to the post of Head Mistress, when, according to the petitioner, the post could have been filled only by way of promotion by virtue of Sections 3 and 6 r/w Schedule B of the Act. If such is the state of affairs, a case of the petitioner would not fall in the category of supersession as contemplated under Clause (b) of sub-section (1) of Section 9 of the Act. There is no supersession.

5. Needless to state that unless the case is covered strictly in accordance with the provisions contained in Clauses (a) and (b) of sub-section (1) of Section 9 of the Act, the remedy of appeal would not be available. When according to the petitioner, on her own saying the respondent No. 2 was appointed by way of direct appointment to the post of headmistress and that there was no supersession, she had no right to challenge such appointment by preferring an appeal under Section 9 of the Act.

6. Though this was not an issue that was agitated and considered before the Tribunal, as can be seen from the

impugned judgment and order, still, when the facts and circumstances clearly demonstrate that this is not a case of supersession, there is no merit in the petition.

7. The Writ Petition is dismissed in limine.

(MANGESH S. PATIL)
JUDGE

shp/-