

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 311 OF 2021

SUREKHA NAIQUE DESSAI

...PETITIONER

Versus

STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 8 ORS.

...RESPONDENTS

Mr. Somnath B. Karpe with Mr. Abhishek Sawant, Advocates
for the Petitioner.

Ms. Maria Correia, Additional Government Advocate *for*
Respondent Nos. 1, 2, and 3.

Ms. Kalpa Govenkar, Advocate *for Respondent No. 4.*

Mr. Chaitanya Padgaonkar with Ms. Apeksha Kalokhe,
Advocates *for Respondent Nos. 6 and 7.*

**CORAM: M.S. SONAK &
M. S. JAWALKAR, JJ.**

DATED: 22nd September 2021.

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. Mr. Karpe, the learned Counsel for the petitioner states that all the respondents have been served and even an affidavit of service has been filed to that effect. He points out that respondent no. 7 has been served on two occasions in this matter.
3. On 15.09.2021, we clarified that this Petition will be disposed of finally at the stage of admission.

4. The petitioner claims to be the senior-most Teacher under the feeder cadre when it comes to promotion to the post of Principal of Smt. Chandrabhaga Tukoba Naik Higher Secondary School (said School). None of the respondents before us have disputed the position that the petitioner is senior-most in the feeder cadre.

5. Mr. Karpe pointed out the seniority list, which is placed on record on page 49 of the paper book to this Petition. In terms of this, the petitioner is shown at serial no. 2, and respondent no. 9 is shown as serial no. 1. However, there is no dispute that respondent no. 9 has retired since June 2021 and therefore, the Petitioner is the seniormost teacher in the feeder cadre.

6. To date, no regular DPC has been convened to fill up the post of Principal in the said School. Instead, respondent no. 8 came to be appointed as Incharge Principal of the said School. If the seniority list on page 49 is perused, then, the name of respondent no. 8 appears below the name of the petitioner herein. This means that the petitioner is senior to respondent no. 8 in the feeder cadre. There is no response filed before us as to why the normal rule of seniority in making the Incharge appointment has been deviated from, in this case.

7. Recently, in **Teja Bhise Vs. State of Goa & Others** (Writ Petition No. 1830/2021 (F) decided by us on 14.09.2021), we have held that such Incharge appointment should normally follow the rule of seniority unless there are special reasons to deviate from such normal rule. In this decision, we had also pointed out that normally, such promotion even on regular basis, is to be given to the senior-most teacher in the feeder cadre in terms of Rule 86 of the Goa School Education Rules, 1986. The first criteria are seniority subject to fitness and merit. Therefore, unless it is established that there is something seriously wrong with the senior-most teacher reflecting on her fitness, normally such Incharge position or ad-hoc position should follow the admitted seniority position.

8. In this case, there are some inter se disputes between the members of the managing committee. Such disputes are pending adjudication before the Civil Court and some proceedings are also pending before the Director of Education. Such disputes cannot be any good grounds for denying the petitioner the post of Incharge Principal, pending the convening of the regular DPC to make regular promotion.

9. The learned Counsel for the respondents state that they have no objection to any order, directing, convening of the

regular DPC at an early date so that regular promotion can be made to the post of Principal.

10. Accordingly, we dispose of this Petition by making the following order:

O R D E R

- (a) The concerned respondents should, notwithstanding the inter se disputes between them, ensure that regular DPC is convened within two months for filling up the post of Principal of the said school on regular basis. The Director of Education should also extend necessary assistance for this purpose. The regular appointment for the post of Principal should then be made within a maximum period of one month from the date of recommendation of the regular DPC.
- (b) The appointment of respondent no. 8 as Incharge Principal is hereby quashed. However, he may continue till 30.09.2021. Since, the charge will have to be handed over to the petitioner w.e.f. 01.10.2021. This is only the outer time limit indicated by us.
- (c) The respondent nos. 4 and 6 should issue necessary orders, concerning the aforesaid, even though, there may be inter se disputes between them.

- (d) Nothing in this Petition or for that matter, in this order, is intended to even remotely influence or affect the inter se disputes between the members of the managing committee of the said School. We only clarify that such inter se disputes should not work to cause prejudice to the petitioner, in this case. Therefore, we have directed respondents nos. 4 and 6 to issue the necessary orders.

11. All concerned to act on authenticated copy of this order.

M. S. JAWALKAR, J.

M. S. SONAK, J.

VAIGANKAR
ESHA SAINATH

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