

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5304 OF 2021

Sanjeevani R. Kadam .. Petitioner.
v/s.
The Education Officer & Others .. Respondents.

Mr. Rakesh Bhatkar with Mr. Pritesh Kadam, Mohan Devkule and Mohit Dalvi, for the Petitioner.

Mr. Sagar A. Mane, for Respondent No.3.

Mr. N. V. Bandiwadekar with Mr. Vinayak Kumbhar i/b. A. N. Bandiwadekar, for Respondent No.4.

Mr. C. D. Mali, AGP for Respondent-State.

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CORAM: G.S. KULKARNI,J.
DATED : 27th SEPTEMBER, 2021.

PC:-

Heard learned Counsel for the parties.

2 The challenge in this Petition is to the judgment and order dated 13th August, 2021 passed by the learned Presiding Officer, School Tribunal, Kolhapur, by which the Petitioners appeal praying for quashing and setting aside the said order and allow the Appeal and declare the supersession by Respondent No.3 – Management dated 26th January, 2020 of Respondent No.4 as Head Master of the School.

3 The case of the Petitioner before the Tribunal was to the effect that in the seniority list of the Assistant Teachers dated 15th March, 2020, the Petitioner was shown at Serial No. 2 and the Respondent No.4 was shown at Sr. No.8. She contended that she was senior to Respondent No.4, hence she should be considered for promotion to the post of Head Master.

4 It appears that there was an important event prior to the publication of the seniority list which possibly missed the attention of the Petitioner namely that Respondent No.4 was promoted as Assistant Head Master on 29th February, 2020. Once he was promoted as Assistant Head Master, he migrated to a higher category namely in category 'B' as provided in Schedule 'F' to the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981. If on the basis of such promotion as Assistant Teacher, a further promotion of Respondent No.4 was made to the post of Head Master, then contention of the Petitioner based on the seniority list of Assistant Teachers dated 15th March, 2020 certainly faded into insignificance.

5 Be that as it may, it appears that the Petitioner did not take any steps to assail the appointment of Respondent No.4 as the Assistant Head Master on 29th February, 2020. Respondent No.4 was appointed as the Head Master on 1st June, 2020 only then the Petitioner approached the Tribunal, praying for the following reliefs:-

- “(a) Decide and declare that the order of supersession dated 01-06-2020 under the appeal is illegal, improper and unjustified and be quashed and set aside;*
- (b) Direct the Respondents to withdraw the said order of super-session;*
- (c) Direct the Respondents to promote and appoint the Appellant as head master with full back wages;*
- (d) Such other relief for the ends of justice may be granted.”*

6 On perusal of the above prayer, it is clear that Petitioner did not assail the first promotion of Respondent No.4 as Assistant Head Master which was granted on 29th February, 2020. On a query made in this regard, it is submitted by the learned Counsel for the Petitioner that Respondent No.4's promotion was not approved by the Education Officer,

hence, the Petitioner could not have challenged Respondent No.4's promotion as Assistant Teacher. Such plea as urged on behalf the Petitioner, cannot be accepted for more than one reason. It does not appear to be the requirement of any rule that approval is required to be granted by the Education Officer for the promotion to take effect for its recognition in law. Mr. Bhatkar is unable to support such plea of the Petitioner on the basis of any legal provision.

7 Secondly, Mr. Bandiwadkar, learned Counsel for Respondent No.4 relying on the decision of the Full Bench of this Court in ***St. Ulai High School and Another v/s. Devendraprasad J. Singh and Another 2007 (1) Mh. L.J. 597*** has contended that the issue of approval is relevant only in the context of disbursal of the financial aid. A perusal of the decision of the Full Bench shows that one of the issue as framed by the Full Bench was whether it was mandatory for every private recognized school to obtain an approval of the Education Department of the State to the appointment of every employee, including a teacher employed at such School. On considering this issue, the Full Bench has held that neither the Act nor the Rules mandate approval of the Education Department as a condition precedent to a valid order of appointment. It was held that the question of approval merely relates to the disbursal of financial aid. The denial of approval could not invalidate an order of appointment.

8 In the aforesaid circumstances, in my opinion, the Petitioner having acquiesced and /or having not challenged the appointment of Respondent No.4 as Assistant Head Master, has proved to be fatal to her case, to assert any right to claim promotion to the post of Head Master. Although the Petitioner was certainly senior to Respondent No.4, however,

except for such acquiescence, she would have been eligible to stake a claim for promotion.

9 The Tribunal has appropriately taken into consideration the facts on record. I find no perversity or illegality in the findings as recorded by the Tribunal.

10 Thus, Petition is accordingly rejected. No order as to costs.

(G.S. KULKARNI,J.)