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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12956 OF 2019

Gajanan J. Lawar

...Petitioner

V/s.

Education Officer (Secondary), Zilla Parishad

Solapur & Ors.

...Respondents

Mr.P.M. Jadhav for the Petitioner.

Mr.Akhil Kupade for the Respondent Nos.3 to 5.

Mr.N.C. Walimbe, AGP for the State – Respondent Nos.1, 2, 6 and 7.

**CORAM : R.D. DHANUKA &
R.N. LADDHA, JJ.**

DATE : 9TH DECEMBER, 2021.

P.C. :-

1. Rule. Mr.Walimbe, learned AGP waives service for the respondent nos.1,2, 6 and 7. Mr.Kupade waives service for the respondent nos.3 to 5. By consent the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order and direction against the respondent nos.1 to 6 to fix the pay scale of the petitioner as per directions given by the respondent no.2 to the respondent no.1 on 22nd August, 2019 in time bound manner. The petitioner also seeks

an order and direction against the respondent nos.1 and 2 to appoint the petitioner as regular Headmaster in the respondent no.4 school. In prayer clause (C) of the petition, the petitioner seeks an order and direction for fixation of the salary of the petitioner of the respondent no.4 school as per 7th pay commission.

3. The matter appeared before this Court yesterday. Mr.Jadhav, learned counsel for the petitioner inadvertently made a statement before this Court that prayer clause (C) does not survive. He seeks withdrawal of the said statement. We agree that the statement made by the learned counsel for the petitioner insofar as prayer clause (C) is concerned was made inadvertently. We allow the learned counsel to withdraw the said statement and consider the said prayer on its own merits.

4. The petitioner was appointed as Assistant Teacher with the respondent no.4 on 11th June, 2001. Sometime in the year 2006, the petitioner was appointed as in-charge Headmaster of the respondent no.4 school with effect from 22nd February, 2006. Though the petitioner was the senior most Assistant Teacher in the respondent no.4 school, the Management submitted the proposal to the respondent no.5 for approving the appointment of the wife of the Chairman of Laxmibai Pandurang Phalke Shikshan Prasarak Mandal, Pandharewadi, District Solapur. The said proposal of the

respondent no.4 school however was returned by the respondent no.1 on 15th May, 2018 on the ground that the said proposal was not based on the seniority list.

5. The respondent no.1 thereafter addressed a letter dated 20th October, 2018 to the respondent no.3 to submit the proposal as per the seniority list as regular Headmaster as payment of the teachers was pending since last four months.

6. The respondent no.1 vide letter dated 17th December, 2018 authorized the petitioner to sign the documents being senior most teacher in the respondent no.4 relating to disbursements of salary of the staff of the respondent no.4 school.

7. Vide letter dated 15th May, 2019 addressed to the respondent no.1, the petitioner pointed out that due to the refusal of the respondent No.4 to sign the necessary documents for fixation of salary as per 7th pay commission and option form the employees were denied their salaries for last three months. The respondent no.2 vide letter dated 22nd August, 2019 directed the respondent no.1 to take steps for fixation of the salaries of the staff and teachers of the respondent no.4 school as per the 7th pay commission. Since the Management did not submit the proposal of the petitioner for appointment to the post of Headmaster though being senior most teacher and submitted the proposal of the respondent no.5 though

was not the senior most Assistant Teacher, the petitioner filed this petition.

8. Mr.Jadhav, learned counsel for the petitioner invited our attention to various exhibits to the petition including the seniority list and would submit that the petitioner was appointed on 11th June, 2001, whereas the respondent no.5 was appointed on 27th June, 2011 as an Assistant Teacher. The petitioner was given authority to sign the documents being senior most Assistant Teacher even in the past by the Education Officer. He submits that though the respondent no.5 being far below in the seniority list, the respondent no.3 as Chairman of the Institution illegally sent the name of his wife for the post of Headmistress for approval. He submits that though the Education Officer rightly rejected the said proposal sent by the Management to support the respondent no.5 since the same was not made as per the seniority list, the Management did not submit the proposal for appointment of the petitioner in compliance with the directions issued by the Education Officer. The Management also did not submit the proposal for payment of salary of the petitioner and other teachers by applying the recommendation of 7th pay commission.

9. Learned counsel for the petitioner invited our attention to the averments made by the Deputy / Education Officer (Secondary),

Zilla Parishad, Solapur on behalf of the respondent nos.1, 2, and 6 made in the affidavit in reply dated 4th December, 2020 and would submit that the Education Officer has rightly averred in the said affidavit that the petitioner being the senior most Assistant Teacher ought to have been appointed as the Headmaster and not the respondent no.5 who was far below in the seniority list. The Education Officer also pointed out various illegalities on the part of the Management in not sending the payment bills of the sanctioned employees along with annual increment as per 7th pay commission in the office of the Superintendent Payment Unit (High School), Zilla Parishad, Solapur

10. Learned counsel for the Management does not dispute that the petitioner is the senior most Assistant Teacher in the respondent no.4 school and he was given the authority to sign being the senior most Assistant Teacher even in the past. Learned counsel does not dispute that the respondent no.5 is far below in the senior list and being the wife of the Chairman of the Management, her name was sent for approval and not the name of the petitioner. The averments made by the Education Officer in the affidavit in reply stating that the petitioner was senior most Assistant Teacher in the school, whereas the respondent no.5 was not the senior most is not controverted by the respondent no.3.

11. In the affidavit in reply, the Management however has contended that the petitioner had filed a letter / undertaking dated 16th June, 2008 before the Education Officer that he was not interested in accepting the post of Headmaster. It is also the case of the Management that three other Assistant Teachers who were also senior to the respondent no.5 had given similar letter / undertaking that they did not want to become Headmaster.

12. We accept the statement made by the Education Officer in the affidavit in reply that the petitioner being the senior most Assistant Teacher and was entitled to be appointed as Headmaster. In the affidavit in reply filed by the Education Officer, it is also pointed that if the Management sends the payment bills of the sanctioned employees along with annual increment as per 7th pay commission in the office of the Superintendent Payment Unit (High School), Zilla Parishad, Solapur, the payment would be done accordingly.

13. In our view, the said so called letter / undertaking dated 16th June, 2008 given by the petitioner allegedly signed before the Education Officer is not in consonance with the provisions of the Maharashtra Employee of Private Schools (condition of Service) Rules, 1981 and would not be binding upon the petitioner. Be that as it may, the said undertaking was for a particular period and would not apply in perpetuity. It is an admitted position that the Management

has taken similar undertaking not only from the petitioner but also from the other three senior most Assistant Teachers. The petitioner as well as other Assistant Teachers who were senior to the respondent no.5 obviously would not give up their claim for post of Headmaster to accommodate the wife of the Chairman of the Management.

14. After hearing the matter on 8th December, 2021, this Court in the said order observed that the Court was not impressed with the statement made by the learned counsel for the respondent nos.3 to 5 that the petitioner and the other three Assistant Teachers had given such undertaking voluntarily ignoring their status of seniority and their claim on the post of Headmaster / Headmistress and adjourned the matter to enable the learned counsel for the Management to take instructions whether the petitioner can be appointed as a Headmaster on regular basis and would send the proposal for appointment of the petitioner as Headmaster to the respondent nos.1 and 2 for approval. Learned counsel for the respondent nos.3 to 5 on instructions states that no statement can be made. He however concedes that the petitioner is the senior most Assistant Teacher in the school.

15. In our view, the Management has acted illegally in obtaining such undertaking not only from the petitioner but also from

other three Assistant Teachers, who were senior to the respondent no.5 that they will not claim the post of Headmaster though being senior to the respondent no.5. Though the Education Officer issued the directions to the Management to submit the proposal of the senior Assistant Teacher, the Management for one or other reasons obliged the respondent no.5 - wife of the Chairman of the respondent no.3 and sent her proposal and did not appoint the senior most Assistant Teacher as Headmaster.

16. Be that as it may, in view of the fact that the seniority of the petitioner is not disputed by the Management, we direct the Management to send the proposal for the appointment of the petitioner as Headmaster within two weeks from today with effect from 18th September, 2015 with a copy to be served upon the petitioner. The Education Officer is directed to grant approval to the said proposal within two weeks from the date of submission of the proposal with effect from 18th September, 2015 and shall pay the differential payment of salary as Headmaster with effect from 18th September, 2015 with all consequential benefits as per the 7th pay commission. Such benefit shall be granted to the petitioner within four weeks from the date of granting approval. The Education Officer is directed not to approve the appointment of the respondent no.5 on

the said post of the Headmistress submitted by the Management.

17. The School Management is directed to submit the payment bills of the sanctioned employees along with annual increment as per 7th pay commission in the office of the Superintendent Payment Unit (High School), Zilla Parishad, Solapur, within two weeks from today. The said proposal shall be disposed of by sanctioning the payment in accordance with 7th pay commission in terms of the statement made in paragraph 14 of the said affidavit in reply within four weeks thereafter.

18. Before parting with this order, we had proposed to direct the Education Officer to take action against the Management for illegal favour to the respondent no.5, who is the wife of the Chairman of the respondent no.3. Learned counsel for the respondent nos.3 and 4 prays not to pass any such direction and undertakes to comply with the order passed by this Court within the time prescribed and assures that his client would not pass any illegal order by doing any favour to any other staff member of the school Management. The assurance made by the learned counsel for the respondent no.3 is accepted as and by way of an undertaking to this Court. In view of such undertaking, we do not propose to take any action against the school Management at this stage.

19. The writ petition is allowed in aforesaid terms. Rule is

made absolute accordingly. There shall be no order as to costs. The parties to act on the authenticated copy of this order.

(R.N. LADDHA, J.)

(R.D. DHANUKA, J.)

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