

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2196 OF 2019

1] Matoshri Savitribai Fule Education Society,
 Nagpur through its Secretary
 Dipankar Ganpatrao Humne,
 Aged about 52 years,
 R/o. C/o. Mahatma Gandhi Girls High School,
 Vaishalinagar, Nagpur-17.

2] Mrs. Sangita w/o Dipankar Humane,
 Aged about 46 years,
 Occupation-Service,
 Headmistress, Mahtma Gandhi Girls High
 School, Vaishalinagar, Nagpur-17.

..Petitioners
 (Ori. Respondents)

..Versus ..

1] The Education Officer (Secondary),
 Zilla Parishad, Nagpur,
 District-Nagpur.

2] Smt. Jyoti Mahendra Meshram,
 Aged about 51 years,
 Occupation-Service,
 R/o. Math Mohalla, Ambedkar Chowk,
 Indora, Nagpur.

..Respondents
 (Ori. Appellant)

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Shri A.S. Deshpande, Advocate for the petitioners,
 Ms M.A. Barabde, AGP for respondent no.1-State,
 Shri P.N. Shende, Advocate for respondent no.2.

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CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 04.10.2021.
PRONOUNCED ON : 11.10.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition takes exception to the judgment of the School Tribunal, Nagpur in Appeal STN No.42/2017 dated 02.01.2019, whereby the appeal filed by the respondent no.2 is partly allowed and she was granted symbolic promotion to the post of Headmistress and consequential benefits.

3. Facts shorn of unnecessary details are as under :

 The petitioner no.1 is the Society runs Mahatma Gandhi Girls High School, Vaishalinagar, Nagpur-17. The petitioner no.2 is the Headmistress of the said school. The respondent no.1 is the Education Officer (Secondary), Zilla Parishad, Nagpur. The respondent no.2 is the Teacher, who by filing appeal before the School Tribunal, challenged her supersession to the post of Headmistress , as according to her, the petitioner no.2 was junior to her and still she was promoted on the post of Headmistress, as she is the wife of the Secretary of the petitioner no.1.

4. The respondent no.2 possesses qualification of BA, MA, D.Ed. and B.Ed. In the year 1989, vide appointment order dated 1.7.1989, the respondent no.2 was appointed as Lower Division Teacher on clear and permanent vacancy after following due procedure of law. Her services were approved by the Education Officer on 26.12.1989 on probation and after completion of two years probation, the Education Officer granted approval to the appointment of the second respondent on regular and permanent basis. With the prior permission of the school, the respondent no.2 improved her qualification and acquired B.A. degree. Therefore, she was upgraded to the post of trained graduate teacher under 25% trained graduate teacher quota in the year 1995. The second respondent thereafter in the year 2001 acquired B.Ed. qualification and thereby entered in Category 'C' of the trained graduate teachers.

5. The petitioner no.2 was appointed as trained graduate teacher on 1.7.2004 and she entered in Category 'C' of the trained graduate teacher from the date of her initial appointment w.e.f. 1.7.2004. The petitioner no.2 was appointed on the post of Headmistress by superseding the claim of the respondent no.2. The petitioner no.2 was given promotion on the post of Headmistress as she was wife of the Secretary of the petitioner no.1. By keeping

other employees including the respondent no.2 in dark, her proposal for approval to the said promotion was forwarded to the Education Officer, who without verifying the documents granted approval to the promotion of petitioner no.2, vide order dated 15.11.2017. It is to be noted here that the Education Officer, vide order dated 8.9.2016, had declared the petitioner no.2 as surplus teacher. Only with a view to save the services of petitioner no.2, the respondent no.1 management, in collusion with the Education Officer, secured the approval to the promotion of the petitioner no.2.

On 16.12.2017, the respondent no.2 was declared as surplus. She challenged the said order by filing Writ Petition No.432/2018. This Court, vide order dated 07.08.2018 dismissed the writ petition by observing as under :

*“Coram : B.P Dharmadhikari and
Z.A. Haq, JJ.
Dated : August 07, 2018.*

1. The petitioner attempts to demonstrate that she cannot be declared surplus. According to the petitioner, it has to be either respondent no.4 or then one Mr. Sonare. Said Sonare is not party before this Court.

2. In so far as the respondent no.4 is concerned, on the date on which the petitioner is declared surplus she was already promoted as Headmistress and therefore was not in cadre of the petitioner. Her promotion has been independently challenged before the School Tribunal and as such its validity cannot be gone into by this Court.

3. In this situation, we find that the impugned order dated 16/12/2017 cannot be interfered with by this Court in writ jurisdiction.

The petition is, therefore, dismissed. Pending applications are also disposed of. No costs.”

6. The respondent no.2 challenged her supersession and the promotion granted in favour of the petitioner no.2 by filing Appeal STN No.42/2017 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short ‘MEPS Act’). The Tribunal allowed the appeal by granting symbolic promotion and all consequential benefits to respondent no.2, this order is impugned in the present petition.

7. Heard the learned Advocate for the petitioners, the learned Assistant Government Pleader for the respondent no.1-State and the learned Advocate for the respondent no.2.

8. The learned Advocate for the petitioners strenuously submitted that since the respondent no.2 was promoted and sent to High School on 1.12.2011, she came in category ‘C’ in the year 2012 and, therefore, she is junior to the petitioner no.2 and hence she was not entitled for promotion on the post of Headmistress. He further submits that the respondent no.2 never challenged the seniority list.

By placing reliance in the judgment of the Division Bench in Writ Petition No.4238/2017, he submits that the respondent no.2 was not entitled for any relief from the School Tribunal, as she is the juniormost in category 'C'. He submits that since this court dismissed the Writ Petition No.432/2018, which was filed by the respondent no.2 challenging her declaration as surplus teacher and since this Court observed in the said order that the petitioner no.2 was already promoted as Headmistress and since this court refused to go into the validity of promotion of petitioner no.2, as it was independently challenged before the School Tribunal, this Court had refused to interfere in the order dated 16/12/2017 therefore the declaration of respondent no.2 as surplus was confirmed by this court. In that view of the matter also, the respondent no.2 was not entitled for any relief from the School Tribunal. He therefore submits that the impugned judgment of the Tribunal is unsustainable and the same is liable to be quashed and set aside by allowing the petition.

9. The learned Assistant Government Pleader for the respondent no.1-State submitted that appropriate orders may be passed.

10. The learned Advocate for the respondent no.2, on the other hand, supports the judgment of the Tribunal. He submits that

the respondent no.2 had acquired qualification to enter in category 'C' in the year 2001, whereas the petitioner no.2 was appointed and entered in category 'C' in the year 2004. In that view of the matter, respondent no.2 was senior-most teacher entitled to be promoted as Headmistress and not petitioner no.2. It is only because the petitioner no.2 was the wife of Secretary of the petitioner no.1 special favours were shown to her by promoting her on the post of Headmistress by superseding the respondent no.2. By joining hands with the Education Officer, approval to her promotion was obtained. He further pointed out that though the petitioner no.2 was declared surplus by the Education Officer, vide order dated 8.9.2016, the said order was at no point of time set aside. In spite of that she was promoted by ignoring the claim of the respondent no.2, because she was promoted on the post of Headmistress, she entered in category 'A' and, therefore, since she was removed from category 'C', the declaration of her post as surplus was rendered infructuous. According to him, Writ Petition No.4238/2017 was decided in different facts, however, the observation in the same, in fact, supports the case of respondent no.2. He therefore submits that there is no merit in the writ petition and the petition is liable to be dismissed.

11. The record indicates that initially the respondent no.2

having H.S.S.C, D.Ed qualification was appointed as Lower Division Teacher on 1.7.1989. In the year 1993, she acquired B.A qualification and was upgraded to the post of trained graduate teacher under 25% trained graduate quota in the year 1995. Thereafter, the respondent no.2 entered in category 'C' of the trained graduate teacher by acquiring B.Ed qualification in the year 2001.

12. The petitioner no.2 was appointed as trained graduate teacher on 1.7.2004 and from that date itself she entered in category 'C' of trained graduate teacher. The respondent no.2 therefore was senior to the petitioner no.2 and ought to have been promoted to the post of Headmistress. However, petitioner no.2 being the wife of the Secretary of the petitioner no.1, which is clear from the cause title of the petition itself as the petition is filed by the petitioner no.1 through its Secretary 'Dipankar Ganpatrao Humne' who is the husband of the petitioner no.2, was shown special favours by promoting her to the post of Headmistress. This was done to overcome the order passed by the Education Officer dated 8.9.2016 by which the petitioner no.2 was declared as surplus teacher. With a view to save the service of the petitioner no.2 and to remove her from category 'C', the promotion order was issued in her favour thereby shifting her to category 'A'. This order appears to have been passed by keeping all the other teachers in dark, the petitioner no.1

has managed to obtain approval to the said promotion of the petitioner no.2 by joining hands with the Education Officer. Though the respondent no.2 was senior to the petitioner no.2, she was declared surplus. When she challenged the order of declaring her surplus by filing Writ Petition No.432/2018, this court refused to interfere in the said order considering the fact that the petitioner no.2 was already promoted as Headmistress, when the respondent no.2 was declared surplus and as the promotion of petitioner no.2 was already independently challenged before the School Tribunal. This court observed that its validity cannot be gone into by this court, therefore, the petition was dismissed.

13. In the seniority list dated 1.1.2017 though the petitioner no.2 is shown at Sr. No. 8 and respondent no.2 is shown at Sr. No.9, fact remains that the petitioner no.2 completed M.A. B.Ed in the year 2004, whereas the respondent no.2 completed M.A. B.Ed in the year 2001. Therefore, the respondent no.2 entered into category 'C' of Schedule A of M.E.P.S. Rules in the year 2001, whereas the respondent no.2 entered category 'C' in the year 2004. Though before the Tribunal, the petitioners claimed that the respondent no.2 entered into category 'C' in the year 2007, they failed to produce any document in support of the said contentions. It is therefore clear that the respondent no.2 had the requisite qualification for

appointment as a Head in the year 2001, the respondent no.2 was having the requisite qualification on the date of her appointment on 1.7.2004.

14. In Writ Petition NO.4238/2017, the Division Bench of this Court at Nagpur was dealing with the claim of the petitioners therein for direction to the respondents to rectify the common seniority list prepared by the respondent no.3, in the light of Hon'ble Apex Court judgment in **Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust and others**, (2014) 13 SCC 219. This court observed as follows :

11. *It would thus be apparent that Clause-I and II of Schedule-B under Rules 2 (1) (j) and 6 of the MEPS Rules, 1981 read with the Guidelines under Schedule-F framed under Rule 12 of the MEPS Rules, 1981 clearly delineate that there are not only separate qualifications, but also separate Rules applicable for fixation of seniority of teachers in the primary schools, and for fixation of seniority of teachers in the secondary schools. Whereas the seniority of teachers in primary schools is based upon continuous officiation counted from the date of acquiring the educational qualification as prescribed under item (1) of Schedule "B", in case of teachers in secondary schools, the fixation of seniority, is categorized into Categories A to H based upon the qualifications held at the time of the initial appointment. It is permissible in case of secondary schools to climb the ladder, by improving one's qualifications as contemplated by Notes 3 and 4 thereunder. If any teacher among a particular category, improves his qualification and thereby*

switches over to a higher category, he would be joining the higher category at the lowest rung and does not steal a march over those already present in that category, even if his initial appointment may have been prior to that of those present in the category to which he is switching over. To clarify this, a teacher, in Category E, holding S.S.C. and diploma in education, in case subsequently improves his qualification by acquiring those qualifications as listed in Category C, and therefore, becomes entitled to be included in Category C, he will be the junior most in Category C, on his date of such inclusion, even though, he may have been appointed in Category E earlier in point of time than those already included in Category C.

Any other interpretation would render Guideline-II and Notes 3 & 4 appended thereunder of Schedule F meaningless, for the reason that once the categories are created, then the seniority is clearly cadre based and the seniority therefore will have to be calculated and maintained categoriwise, based upon the date of entry in the particular category and the length of stay there. This would necessarily mandate that though the ladder of categories can be ascended by improving one's educational and teaching qualification as prescribed by Schedule B, the entry into the higher category on account of such acquisition/improvement of/in qualification, would enable such person to join at the bottom of the seniority list of that cadre/category and not otherwise, which status would continue with such person, till he remains in that category/cadre. In such a situation, the date of his initial appointment, in a lower category would become redundant and all that would matter, for determining his seniority, categorywise, would be the date of his entering such category, otherwise a teacher not qualified to enter or be included in a particular category, upon acquiring the requisite qualification,

later on, may claim to have become senior to those already more qualified to him, by reason of which they already stood ensconced in that category earlier in point of time, which in our humble opinion, cannot be the meaning or interpretation given to Guideline-II of Schedule F read with Schedule B of the MEPS Rules, 1981 in the matter of determination of seniority of secondary school teachers.

12. *As per Schedule B under the MEPS Rules, 1981 for appointment as a teacher in secondary schools categories have been created such as (1) graduate teacher (2) undergraduate teacher (3) drawing teacher (4) craft teacher (5) language teacher, and the qualifications which one should possess, for entitling him to be included in the above categories are also prescribed, however a degree/diploma or equivalent qualification as prescribed therein in Teaching or education is a must.*

15. Considering the aforesaid observations of the Division Bench, it is clear that the respondent no.2 was senior to the petitioner no.2 and the respondent no.2 was superseded while granting promotion to the petitioner no.2 on the post of Headmistress for obvious reasons that she was the wife of Secretary of the petitioner no.1. The ratio in the above judgment clearly supports the case of the respondent no.2.

16. The Tribunal has properly appreciated the documents on record and the contentions raised by the respective parties and by correctly interpreting the provisions of the M.E.P.S. Act and Rules and

the citation placed before it, has rightly come to the conclusion that the respondent no.2 was senior to the petitioner no.2 and, therefore, was justified in granting symbolic promotion to the respondent no.2 along with consequential benefits. No fault can be found with the findings of fact recorded by the Tribunal. No case is made out by the petitioners to interfere in the impugned judgment of the Tribunal. The petition sans merit, is therefore **dismissed**. Rule discharged. No costs.

(N.B. Suryawanshi, J.)