

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO. 30 OF 2014 IN
WRIT PETITION NO. 3805/1999(D)

APPELLANT : Satyendra Chandra Chatterjee,
 Aged about ___ years, Occ. Assistant Teacher,
 R/o. Sadar Bazar, Gandhi Chowk,
 Nagpur.

Versus

RESPONDENTS 1: Bengali Education Society, through its
 Secretary, Shri Amal Kumar Rudra,
 aged about 53 years, Occ. Service,
 Having its Office at Dhantoli, Nagpur-12.

2. Smt. Madhumati Bhelwa,
 Occ. Head Mistress, Bengali High School,
 Dhantoli, Nagpur-12.

3. Presiding Officer, School Tribunal,
 Nagpur, Administrative Building No.1.
 Civil Lines, Nagpur.

4. Education Officer (Secondary),
 Zilla Parishad, Nagpur.

 S/Shri A.M.Ghare and A.A.Kathane, Advocates for petitioner.

None for respondents-Management.

Mrs. S.S.Jachak, Assistant Government Pleader for respondent no.4.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.

DATED : DECEMBER 07, 2021.

ORAL JUDGMENT (PER A.S.CHANDURKAR, J.)

The challenge raised in this Letters Patent Appeal is to the judgment of
 the learned Single Judge in Writ Petition No. 3805/1999 dated 08.02.2012. By the

said judgment the writ petition preferred by the respondent no.1 herein challenging the judgment of the School Tribunal, Nagpur dated 02.09.1999 has been allowed by dismissing the appeal preferred by the appellant before the School Tribunal.

2. The facts relevant are that the appellant was engaged on 20.08.1979 being duly qualified as an 'Assistant Teacher' at the school which is being conducted by the respondent no.1. He was thereafter promoted to the High School in August 1989. Since the post of 'Head Master' became vacant, the Management sought to fill in the same by appointing one Shri M. K. Barat. The Management proceeded on the basis that it being a linguistic minority, it was entitled to appoint a 'Head' of its own choice. According to the appellant, he being the senior most 'Assistant Teacher' who was fit for promotion, the appointment of Shri Barat on the post of 'Head Master' was illegal. The appellant therefore filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the said Act'). In the said appeal it was specifically pleaded in paragraph 2 that the Management did not satisfy the requirements of Article 30 of the Constitution of India for the reason that it was not established by the people from the minority community but was being merely administered by them.

3. The Management filed its reply before the School Tribunal and took the stand that it had the necessary linguistic minority status by referring the permission granted by the Deputy Director of Education on 25.04.1988 notifying the post of 'Head' in that regard. By virtue of such communication the appointment of Shri Barat who was an outsider was supported.

4. The learned Presiding Officer of the School Tribunal considered the respective pleadings of the parties. He then observed that as required by Section 3(2) of the said Act name of Shri Barat had not been notified by the Management to the Deputy Director of Education on the basis of which he could have been given an order of appointment. Since it was found that the provisions of Section 3(2) of the said Act was not complied with, the learned Presiding Officer held that the appellant being the seniormost 'Assistant Teacher', he was entitled to be promoted on the post of 'Head Master'. Accordingly the appeal preferred by the appellant was allowed on 02.09.1999.

5. The Management being aggrieved by the aforesaid adjudication challenged the aforesaid judgment of the School Tribunal in Writ Petition No.3805/1999. It relied upon the provisions of Section 3(2) of the said Act as well as the communication dated 25.04.1988 to support the appointment of Shri Barat as 'Head Master'. After finding that the post of 'Head' along with three other posts had been notified as required by Section 3(2) of the said Act, the learned Single Judge found that the School Tribunal was not justified in allowing the appeal preferred by the appellant. On that count, the judgment of the School Tribunal was set aside and the appeal preferred by the appellant came to be dismissed.

Being aggrieved, the aforesaid adjudication has been challenged in the present Letters Patent Appeal.

6. Shri A.M.Ghare alongwith Shri A.A.Kathane, learned counsel for the appellant made twofold submissions. It was urged that in view of the provisions of

Article 30 of the Constitution of India and by virtue of the law laid down in ***S.Azeez Basha and anr. vs. The Union of India and ors. AIR 1968 SC 662*** it was necessary for an institution to be established and administered by persons from minority community or language. It was submitted that the institution was not established by any person belonging to the linguistic minority but it was only being administered by a linguistic minority. Since the Management did not satisfy the requirements of Article 30 of the Constitution of India, it was not entitled to rely upon the provisions of Section 3(2) of the said Act to bypass the claim of the appellant. Though this specific plea was raised by the appellant in paragraph 2 of the appeal memo, the same has not been duly considered. This caused prejudice to the case of the appellant. It was then submitted that even if it was assumed that the Management was a linguistic minority, the provisions of Section 3(2) of the said Act had not been followed. The said provision required notification of names of the ‘Head’ and three other persons to whom the provisions of the said Act would not apply in the matter of recruitment. The communication dated 25.04.1988 referred to notifying the post of ‘Head’ and three other posts, but did not notify any name. Since the provisions of Section 3(2) were clear, the communication dated 25.04.1988 could not be considered to be in compliance with the provisions of Section 3(2) of the said Act. In that regard, reference was made to the decisions in ***Gunvantlal Kantilal Khamar vs. State of Maharashtra and Ors. 1993 I CLR 295*** and ***St. Theresa’s High School and anr. vs. State of Maharashtra through the Dy. Director of Education and Ors. 1997(2) Mh. L. J. 713***. On these counts, it was submitted that the judgment of the learned Single Judge was liable to be set aside and the judgment of the School Tribunal ought to be restored.

There has been no appearance on behalf of the Management despite due service.

7. The learned Assistant Government Pleader in this backdrop was directed to obtain instructions from the respondent no.4-Education Officer (Secondary), Zilla Parishad, Nagpur as to whether the Management had been recognised as minority institution for the purposes of applicability of Section 3(2) of the said Act. On instructions from the Education Officer (Secondary), a Certificate dated 08.02.2012 issued by the Competent Authority and Additional Chief Secretary, Minority Development Department, Maharashtra State, Mantralaya, Mumbai was produced. The same is taken on record and marked 'A' for identification. As per this Certificate, the Management on 19.05.2011 had moved an application seeking recognition as a linguistic minority. After examining the matter, such linguistic minority status was granted by the aforesaid Certificate on 08.02.2012 to the Management.

8. We have considered the contentions raised by the learned counsel for the appellant and we have given due consideration to the material available on record. The question as to whether the Management is a linguistic minority is the basic question that goes to the root of the present proceedings. While the appellant claims his entitlement to the post of 'Head Master' on the basis of his seniority, the Management has relied upon the provisions of Section 3(2) of the said Act to urge that being a linguistic minority institution, it is entitled to appoint a 'Head' of its choice. In paragraph 2 of the memorandum of appeal, the appellant has specifically asserted that the Management is not recognised as a linguistic minority. In reply the Management has stated that it has been granted such linguistic minority status

and has relied upon the provisions of Section 3(2) of the said Act. We find that except for communication dated 25.04.1988 issued by the Deputy Director of Education notifying the post of 'Head' and three other posts, there is no material on record to indicate as to whether such linguistic minority status was granted to the Management. There is no clear finding recorded either by the Presiding Officer or by the learned Single Judge while adjudicating the proceedings and the dispute has proceeded only on the basis of the communication dated 25.04.1988. In the light of the fact that the Education Officer has placed on record the Certificate dated 08.02.2012 indicating grant of linguistic minority status from that date, we feel that this aspect which goes to the root of the matter ought to be adjudicated before the School Tribunal. This is for the reason that the Management despite service has not chosen to contest the present appeal. We therefore do not find it appropriate to base our conclusion on the Certificate dated 08.02.2012 in the absence of the Management.

9. The other contention as to whether the names as contemplated under Section 3(2) of the said Act have to be notified to the Deputy Director of Education or the post of 'Head' and other three posts have to be notified would depend upon the answer to the first question as to whether the Management enjoyed the linguistic minority status. The learned counsel for the appellant submitted that on a plain reading of Section 3(2) of the said Act what is required to be notified are the names and not the posts in question. On the contrary, the communication dated 25.04.1988 indicates the posts being notified. We however do not find it necessary at this stage to go into this aspect as the same could be raised before the School

Tribunal for its adjudication.

10. In the light of aforesaid, we find that a fresh adjudication of the appeal is called for especially in the light of the Certificate dated 08.02.2012 issued by the Competent Authority. Since remand is warranted, in these facts the judgment of the School Tribunal dated 02.09.1999 as well as the judgment of the learned Single Judge dated 08.02.2012 in Writ Petition No. 3805/1999 are set aside. The appeal preferred by the appellant under Section 9 of the said Act is restored before the School Tribunal for afresh adjudication in accordance with law.

The parties are at liberty to amend their pleadings and place additional material on record in the said appeal. Since the appeal is of the year 1996, the School Tribunal shall decide the same as expeditiously as possible and preferably by the end of **April 2022**. All questions on merits are kept open. The School Tribunal shall not be influenced by any observation made in this judgment. The letters patent appeal is allowed in aforesaid terms. There shall be no orders as to costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

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