

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1953 OF 2019

Pandurang S/o Rangnath Kurhe
Age : 57 years, Occu. Service as Assistant Teacher
R/o. Jalke Khurd,
Tq. Newasa, Dist. Ahmednagar ...Petitioner

Versus

1. The State of Maharashtra
Through it's Secretary,
Education Department, Mantralaya,
Mumbai-32.
2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar.
3. The President
Samta Shikshan Prasarak Mandal,
At Post Kharwandi Tq. Newasa,
Dist. Ahmednagar.
4. The Secretary
Samta Shikshan Prasarak Mandal,
At Post Kharwandi Tq. Newasa,
Dist. Ahmednagar. ...Respondents

...

Mr. Vaibhav B. Dhage, Advocate for the Petitioner.
Mr. S.B. Pulkundwar, AGP for the Respondent/State.
Dr. R.J. Godbole, Advocate for Respondent No.3.
Mr. S.R. Kedar, Advocate for Respondent No.4.

**WITH
WRIT PETITION NO.674 OF 2019**

Namdeo S/o. Vishnu Sase,
Age : 57 years, Occu. Service
R/o. Jalke, Ta. Newasa,
Dist. Ahmednagar ...Petitioner

Versus

1. The State of Maharashtra

Through its Secretary,
School and Education Department,
Mantralaya, Mumbai-32.

2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar.
 3. Samta Shikshan Prasarak Mandal,
Kharwandi Ta. Newasa, Dist. Ahmednagar.
Through its President.
 4. Shri Pandurang Rangnath Kurhe
Age : 57 years, Occu. Service
R/o. Jalke Khurd, Ta. Newasa,
Dist. Ahmednagar
- ...Respondents

...

Mr. Adinath B. Jagtap, Advocate for the Petitioner.
Mr. S.B. Pulkundwar, AGP for the Respondent/State.
Mr. V.B. Dhage, Advocate for Respondent No.4.

...

**CORAM : A.S. GADKARI &
S.G. MEHARE, J.J.**

RESERVED ON : 08th FEBRUARY, 2022

PRONOUNCED ON : 23rd FEBRUARY, 2022

JUDGMENT (PER S.G. MEHARE, J):-

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

Heard the respective counsels.

2. The issues involved in both the writ petitions are interlinked, hence, taken up for disposal together.
3. The questions of inter se seniority and appointment as Head of the School have been raised in these petitions.
4. To appreciate the lis between the parties, it will be appropriate

to refer to the relevant facts of petitions for consideration conjointly as under:-

Both the petitioners will be referred to by their names hereinafter for convenience.

Petitioner Shri Sase has impugned the Order of respondent no.2/Education Officer dated 05.01.2019, holding petitioner Shri Kurhe senior to him. Petitioner Shri Kurhe has impugned the Order of the same Education Officer dated 21.01.2019, declining approval to his appointment as Head of the School. In view of the directions issued by this Court in W.P. No.10346/2018, the seniority dispute of both Petitioners was decided by respondent no.2 by his Order dated 05.01.2019. By Order dated 05.09.2018, respondent no.2, had accorded sanction in favour of Shri Sase to look after the day to day affairs of the School and sign the pay bills. Petitioner Shri Sase had filed a W.P. No.6442/2021 before the Division Bench of this Court. The Coordinate Bench of this Court had issued directions to the Director of Education Pune, to consider all the earlier Orders passed before and take the decision afresh expeditiously. Accordingly, The Deputy Director decided the dispute on 03.01.2022 and cancelled the promotion granted to Shri Sase as Head Master. Shri Sase again challenged the said Order in W.P. no.1018/2022. Once again, the Division Bench of this Court, by its Order dated 19.01.2022, granted an opportunity to Shri Sase and the school management to submit all

documents. This Court had directed the Deputy Director of Education to take a decision afresh regarding the approval of his appointment as Head Master, preferably before 20.02.2022.

5. It is not disputed that Shri Sase was appointed as a Special teacher on 30.06.1987, and he was S.S.C. A.T.D. Shri Kurhe was appointed as an Assistant teacher on 13.06.1986, and he was M.A. B.Ed.

Shri Sase has no objection that Shri Kurhe was appointed earlier to him, however, as there was a break in his service, hence he could not be held senior to him. He claimed that he is the senior-most employee in the School. Under the Order of respondent no.2 dated 05.09.2018, he was looking after the day-to-day affairs of the School and was signing the pay bills. Respondent no. 2 erred in law in not considering the break in service of Shri Kurhe.

6. Shri Dhage, the learned counsel for the Petitioner Shri Kurhe vehemently argued that the Petitioner was not only appointed earlier to the appointment of Shri. Sase, but also a trained teacher holding M.A., B.Ed degree. Shri Kurhe was the only candidate qualified and eligible for the appointment as Head Master. As usual, the dispute in the Management made him a scapegoat and put him at a great loss to enjoy the post of Head Master. Shri Sase was not qualified and eligible to be appointed as Head Master, but only due to the favourable management he was appointed on the said post. Unfortunately,

respondent no.2, the same Education Officer, granted approval to his appointment in contravention of the M.E.P.S. Rules and Regulations. The other rival group of Management successfully deprived the Petitioner of the post of Head Master till he retired on superannuation on 31.05.2019. Though the Petitioner is retired on superannuation, his right to claim the seniority benefit as Head Master still survives. In the circumstance of the case and having regard to the conduct of the Management and Shri Sase, heavy cost may be imposed on them.

7. Per contra learned counsel Shri Jagtap for petitioner Shri Sase would argue that the respondent/Education Officer has not considered the roster dated 26.12.1990, which shows the date of approval to the appointments. He further submitted that while determining the seniority, respondent no.2/Education Officer did not consider the break-in service of Shri Kurhe. The date of seniority would be the date of approval for the appointment, and a break in service would not be considered. Petitioner was the senior-most in the institution. Hence, respondent no.2 had correctly given him a charge of Head Master. The impugned Order determining seniority and holding Shri Kurhe senior to him dated 05.01.2019 violates the M.E.P.S. Rules and Regulations and hence it is liable to be quashed and set aside.

8. The group rivalry in the Management is apparently seen from the support extended by respondents no.3 and 4 to the petitioners,

respectively.

9. Before we advert to the factual matrix, it would be appropriate to consider relevant provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 and Rules 1981 (M.E.P.S. Act and Rules 1981 for short). Rule 3 of the Rules 1981 pertains to the qualification and appointment of Head, which reads thus:

“3. Qualifications and appointment of Head.

(1) A person to be appointed as the Head-

a) (i)

(ii)

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education :

Provided that, in the case of a person to be appointed as the Head of a night secondary school -

(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and

(ii) the experience laid down in clause (b) of sub-rule (1) may be as a part-time teacher.

(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if

there is no person with the teaching experience mentioned in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in clause (b) of sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.

Note: *In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head.*

(3) The Management of a school including a night school shall fill up the post of the Head by appointing the seniormost member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfills the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

[Explanation] *- For the purpose of this rule, the Management shall communicate any occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives*

a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post :

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post;]”

10. It is crystal clear from the above Rule that the Management has to appoint the senior-most member of teaching staff following the guidelines laid down in schedule F, provided such member should have a satisfactory service record. He must fulfill the conditions laid down in sub-rule (1) of Section 3.

11. The seniority of the teaching staff shall be maintained as provided under Rule 12 of the Rules of 1981. The said Rule imposes a responsibility and duty on the Management to maintain the seniority list of teaching staff, including Head Master and Assistant Head Master in accordance with the guidelines prescribed in Schedule F. Such seniority list is required to be circulated amongst the members concerned and to have a record, their signatures on such list are to be obtained. Any subsequent change made from time to time in such a seniority list shall also be brought to the notice of the concerned staff members. Objections, if any, raised against the seniority list or to the changes made therein from time to time shall be duly considered by the Management. However, the disputes about the seniority shall be referred to the Education Officer for his decision. So, while maintaining the seniority list, the Management must consider Rule 12 and the guidelines prescribed in Schedule F together.

12. Clause 2 of Schedule F deals with the categories for the fixation of seniority of the teaching staff in the Secondary Schools and Junior Colleges. The teaching staff has been divided into A to H categories.

Category 'A' and 'B' speak of the seniority of the teachers from the date of their appointment based on the strength of students and the number of Divisions. Category 'C' deals with the teachers holding the educational Qualifications with stipulated years of posts in a few cases. Category 'D' deals with the holders of graduate degrees and S.T.C./Dip. Ed. (one-year course) or its equivalent. Untrained graduates or holding equivalent qualifications fall in category 'F'. Untrained matriculates or equivalent qualification holders are in category 'G'. All teachers other than those mentioned in categories 'A' to 'G' have been kept in category 'H'.

13. It has also been mentioned in Note 5 in Schedule F that, where a Management runs more than one School, and where Junior College classes are or are not attached to any one or more of such schools, the seniority list for a particular cadre shall be a combined list of all persons in that cadre working in all the schools (excluding night school, if any), or Junior College classes attached to schools of the Management. The total continuous service rendered by the persons in a particular cadre in any school or Junior College class shall be taken into consideration for the purpose of seniority and for the purpose of promotion.

14. Petitioner Shri Kurhe was M.A. B.Ed on 13.06.1986, i.e. the date of his appointment as Assistant teacher. Hence, he falls in category 'C'. However, the Management did not obtain approval for

his appointment till 01.03.1990. The approval was granted to him from the end of the year 1990 and 27.03.1992 with back wages protection.

15. As regards the category of Shri Sase, considering his educational qualification on the date of his appointment, he falls in category 'E'. It is not disputed that he secured his 'A. M.' degree in due course of his service. He claimed it to be equivalent to B.Ed. His approval order dated 13.11.2007 reveals that from 01.11.2007, he was placed in the pay scale of B.Ed from D.Ed. This document is against the claim of Shri Sase that on the day of his appointment, he possessed the educational qualification equivalent to Shri Kurhe. In no case, on the date of his appointment, he was in category 'C'. The Rule is crystal clear that educational qualification determines the category of the teachers. A teacher falls in category 'C' only on securing a professional degree of B.Ed.

16. The effect of possessing and non-possessing professional qualification has been elaborated by the Division Bench of this Court at Nagpur Bench, in the case of **Anjali Jayanti Khati vs Bal Mandir Sanstha**, 2009 (1) Bom. C. R. 206 in para no. 11, which reads as under :

“11. Date of continuous appointment is not the only criteria for fixation of the seniority. Seniority has to be fixed according to Rules laid down in Schedule 'F' to the Maharashtra Employees of Private Schools Rules. The present petitioners fall in

Category ‘C’ since all of them as on the date of fixation of seniority in 1992 were trained teachers. However, while fixing the seniority the date of acquisition of B.Ed. Qualification would also become material. Unless one acquires or possesses such qualification as B.Ed. or professional qualification one cannot go up in the ladder. If a teacher is a graduate but does not hold training or professional qualification he cannot fall in Category ‘C’. He may enter ‘C’ category the day he acquires training or professional qualification. The ladder is in descending Order. Here it must be borne in mind that a trained teacher would be put above untrained teacher though length of service wise the untrained teacher may senior. Education Officer seems to have not followed the instructions contained in Schedule ‘F’. The seniority is to be fixed mainly on three criteria i.e. length of continuous service, the acquisition of professional qualification and the age, if two or more candidates or teachers are appointed on the same day.....”

17. The law on the seniority of teachers and the various categories has been crystallized once again by the Division Bench of this Court at Principal Seat at Bombay in W.P. No. 14242 of 2018 with other writ petitions decided on 09.04.2019 and the concluding paragraphs no.115 to 117 reads as under :

Conclusion:

“115. This Court’s series of judicial pronouncements, as cited above, with the final cap by the Supreme Court’s Vimam Vaman Awale and Bhawna, unmistakably lays down the law: Among Primary Teachers, the seniority is counted from the date of teacher’s joining service. On the other hand, among the Secondary Teachers, the seniority is counted based on when the teachers had been placed in a particular category- for their

seniority stands graded and categorized by the date of their very joining. The categorization is qualification-dependent. Placed in the descending Order of category, the teachers rise in ranks of seniority with their additionally acquired qualifications under Guideline (2) of Schedule F, appended to Rule 12 of MEPS Rules.

“116. Once a few teachers reach a common category, equal they may have all been in rank, but their seniority depends on who entered the specific category first. And this entry depends on the date of teacher’s acquiring qualification, not on the date of his or her joining service.”

117. Thus, a teacher who is a member of a lower category can in no manner rank senior to the teacher who is already a member of a higher category. Such a claim could be based neither on his continuous service nor on his acquiring the qualification and reaching the higher category. To be specific a teacher, for example, in category D, E, or F, on later migration to Category C, cannot steal a march over a teacher already ensconced in that higher category. That teacher’s seniority by length of service and by his or her later acquiring the requisite, additional, or even superior qualifications does not defeat the right of teachers already found placed in Category C. What applies to Primary Teachers cannot apply to Secondary Teachers, for the Rules do keep these two streams of teachers unmixed.”

18. In the case at hand, at the time of his appointment, Shri Sase did not possess qualification equivalent to B.Ed. He acquired it in the year 2007. Hence, no question arises to consider him in Category ‘C’ from the date of his appointment. So far as the seniority list maintained by the Management under the signature of the President

(undated) relied upon by Shri Sase is concerned (Exh. A in his petition), it does not bear the signature of Shri Kurhe. The said list is against the mandate of Rule 12 of the Rules 1981. Having regard to the dispute in Management, we have serious doubt about its genuineness as possibility of creating the said list subsequently cannot be ruled out.

19. Now, we turn to the ground of removal/termination of Shri Kurhe from service and consider whether there was any such removal/termination and if yes, what is its effect on seniority?

20. The learned counsel for Shri Sase would argue that Shri Kurhe was removed/terminated from service by Order dated 25.03.1991 as he was appointed for a academic year. He had challenged his termination before the School Tribunal, but the petition was dismissed. Again, at the mercy of the Management he was appointed on 27.03.1992. Termination of service is a break in service, and the Management has not condoned his break in service. Hence, he cannot claim continuity in service from 13.06.1986.

21. Section 25-A and 26 of M.E.PS Regulation Act, 1977 provides for the termination of the services of the staff on account of abolition of posts. Rule 25-A attracts in case of closure of the School, whereas Rule 26 pertains to retrenchment of permanent employees in the situation of reduction of establishment owing to reduction in the number of classes or division; fall in the number of pupils resulting in

reduction of establishment; change in the curriculum affecting the number of certain category of employees; closure of course of studies; and any other bona fide reason of similar nature. Under Section 28, the services of a temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calendar month's notice or by paying one month's salary in lieu of notice as well as by way of penalty for misconduct.

A break in service is discontinuation in service. Such break may be physical where the employee concerned does not perform his duties on account of various reasons. For seniority, the employee shall be permanent in service. A candidate appointed against the reserved post as contemplated in Rule 9 (7) of the Rules 1981 shall be temporary on year to year basis. The Rules regarding termination/removal from service are very specific, as discussed above.

22. The record reveals that the School Tribunal, Pune, in its Order dated 17.12.1991 in Appeal No. 45/91, held that Shri Kurhe was a permanent employee from 13.06.1986 and turned down termination order dated 25.03.1991 and declared his continuity in service. One more Order of the same School Tribunal dated 12.12.1997 passed in Appeal no. 133/1992 reveals that the termination of Shri Kurhe by the Management by its Order dated 13.06.1992 was turned down and

the Management was directed to reinstate him from 13.06.1992 with back wages. These factums are more than sufficient to believe that Shri Kurhe never had a break in his service. Since he was terminated illegally, no question of a break in service arises.

23. On the contrary, Shri Sase was placed first time in Category “C” on securing a degree of A.M. in 2007. He had no comparison with petitioner Shri Kurhe for considering the seniority till 2007. He was in a different category. His seniority claim against Shri Kurhe has no legal basis and is unfounded.

24. In view of the above, we are of the opinion that the Order determining the seniority by respondent no.2 impugned before us is free from any legal infirmity and does not warrant interference.

25. Now, we turn to the next question of declining the appointment of Shri Kurhe as Head Master. We have discussed the Rules of seniority in detail while dealing with the question of seniority. Seniority and educational qualification, particularly a Bachelor’s degree, a graduation degree of any branch with five years full time teaching experience, is a sine qua non for the appointment as Head of the School as provided under Rule 3 of the Rules 1981. Having regard to the legal demand for the post of Head of the School, Shri Kurhe had the requisite qualifications and seniority and was eligible to be posted as Head of the school. No one has a case that the service record of Petitioner Shri Kurhe was unsatisfactory nor any adverse

material is placed on record. There was no ground at all to deny him the appointment of the Head of the School. Surprisingly the same Education Officer/respondent no.2 who has held that Shri Kurhe was the senior-most in the School conveniently turned a blind eye to take a conscious decision approving his appointment as the Head of School on extraneous and unfounded grounds.

26. It is miserable that the School Managements nowadays are more interested in appointing a man of their choice on various posts legally unfit and unsuitable than paying attention towards the quality of education and the future of the innocent students. It is experienced from various cases that School Managements are frustrating the very purpose of the Regulations of 1977 and Rules 1981. The competence of suitable candidates is deliberately avoided. Depriving legitimate right of a teacher to hold and enjoy a post of a Head of the School would not only demoralise him but also discourage many competent and eligible teachers. Such practices are depreciable. The case in hand is an example of its kind keeping the two teachers fighting in the Court of law for years together. No one has a thought in his mind what the message they are passing to the parents, pupils and society. We are of the opinion that the School is not a battlefield. However, unfortunately, the Managements are seen using the Schools as battlefields of discrimination and instigation. The facts and circumstances of the the case reveals that the teachers have

been made puppets in the hands of the Management. We have every reason to form the above opinion. Shri Sase has filed three writ petitions in this Court, and one litigation is pending before the Deputy Director of Education Pune. He forced Shri Kurhe to contest the said petitions and engaged him in litigation till he retired on superannuation and successfully deprived him of holding and enjoying the post of Head Master though he was legitimately qualified and entitled. One may assess how much time and money he might have spent in the Court of Law and on litigation which time was more valuable for the students. It seems not possible for a teacher to litigate to such an extent without the active support from the Management or a rival group of the Management. We have come across many cases of similar nature. Hence, we have put the above remarks with the hope that the teachers should not waste the valuable time to be utilized for students in future.

27. For the reasons recorded above, we are of the opinion that this is a fit case to saddle exemplary costs on the rival groups of the Management particularly, the President and the Secretary. We make it clear that we are not against bonafide litigation if the right of any person is violated.

28. For the above reasons, we pass the following Order :

ORDER

1) The Writ Petition No.1953/2019 is allowed, and the Writ

Petition No. 674/2019 stands dismissed.

- 2) The Order refusing the approval to the appointment of petitioner Shri Pandurang Rangnath Kurhe dated 21.01.2019 by respondent no.2 is quashed and set aside.
- 3) Respondent no.2/Education Officer (Secondary), Zilla Parishad, Ahmednagar, is directed to grant approval to the appointment of Shri Pandurang Rangnath Kurhe, as Head Master from July 2018 and release his entire salary as Head Master on submitting bills by the Head Master of the School.
- 4) The Head Master or any incharge Head Master of Gurudas Bhaskargiri Maharaj Madhyamik Vidyalaya Jalke, Tq. Newasa, District Ahmednagar is directed to submit the entire salary bills, as Assistant teacher, if any, due and as Head Master from July 2018 and also submit the necessary papers of pension and other retiral benefits of Shri Pandurang Rangnath Kurhe if not yet submitted to the Education Officer within one month from the receipt of this Order. On receipt of such bills and pension papers, respondent no.2/Education Officer (Secondary) Ahmednagar shall clear it within a fortnight from its receipt.
- 5) Shri Sase is imposed with costs and shall pay a cost of Rs. 25,000/- (twenty-five thousand) within a month from the date of this Order to Petitioner Shri Pandurang Rangnath Kurhe.
- 6) The respondent nos.3 and 4, i.e. the President and Secretary

(who were holding the said posts at the beginning of these litigations) shall deposit cost of Rs. 50,000/- (fifty thousand) each with the Registry of this Court within a month from the date of this Order. The Registrar (Judicial) to place a note for approval from this Court for Orders donating the said amount to the orphanage or any other suitable social organization working for children in the jurisdiction of this Court.

- 7) In the above terms, the Rule is made absolute in W.P. No. 1953/2019 and Rule is discharged in W.P. No 674/2019.

(S.G. MEHARE. J.)

(A.S. GADKARI, J.)