

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

WRIT PETITION NO.8783 OF 2021

Rashtriya Sahakari Shikshan Prasarak
Mandal Ltd. Chalisgaon, Dist. Jalgaon
Through it's Secretary
(Shri. Arun Bhimrao Nikam, Age: 73 yrs,
Occu: Secretary of above trust). .. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Sports and Education Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education
Nashik Division, Nashik
3. The Education Officer (Secondary)
Zilla Parishad, Jalgaon
Tq. & Dist. Jalgaon
4. Parmeshwar s/o. Gangaram Dhole
Age : 48 years, Occu : Service,
Head Master, Secondary School,
Bahal, Tq. Chalisgaon, Dist. Jalgaon ..Respondents

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Mr. Ramesh I. Wakade, Advocate for the petitioner.
Smt. R.P. Gour, AGP for Respondent Nos.1 to 3
Mr. Suvidh S. Kulkarni, Advocate for Respondent No.4 (absent)

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WITH

WRIT PETITION NO.1129 OF 2020

Parmeshwar s/o. Gangaram Dhole
Age : 48 years, Occu : Service,
R/o. Working as Head Master,
Secondary School, Bahal,
Tq. Chalisgaon, Dist. Jalgaon .. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary)
Zilla Parishad Jalgaon
Tq. & Dist. Jalgaon
3. Rashtriya Sahakari Shikshan Prasarak
Mandal Ltd., Chalisgaon, Dist. Jalgaon
Through its Chairman.
4. Rashtriya Sahakari Shikshan Prasarak
Mandal Ltd., Chalisgaon Dist. Jalgaon
Through its Secretary .. Respondents

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Mr. Suvidh S. Kulkarni, Advocate for the Petitioner (absent)

Ms. R.P. Gour, AGP for Respondent Nos.1 & 2

Mr. Ramesh I. Wakade, Advocate for Respondent Nos.3 & 4

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 27-09-2022
PRONOUNCED ON : 14.10.2022**

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. Writ Petition No.8783 of 2021 has been filed by the School Management assailing the decision of the Education Officer (Secondary), Zilla Parishad, Jalgaon dated 16.10.2019. By that order, the Education Officer has held the promotion of Shri. Ashok Nathu Deore as headmaster to be invalid and has directed the Management

to promote respondent no.4 as headmaster with retrospective effect from 01.08.2011.

2. Respondent No.4 in Writ Petition No.8783 of 2021 is the petitioner in Writ Petition No.1129 of 2020 which is filed by him for implementation of the order dated 16.10.2019.

3. The short issue that arises for consideration is about validity of the order dated 16.10.2019. Considering the order that we propose to pass, we do not deem it necessary to narrate the entire factual background under which both the petitions have been filed. The main issue raised by the school management in Writ Petition No.8783 of 2021 is about the jurisdiction of the Education Officer in deciding the issue of entitlement of promotion.

4. The school management runs 48 schools and 1 Junior College. It had promoted one Shri. Ashok Nathu Deore on the post of Headmaster from NT-C category on rotational reservation by order dated 01.08.2011. It is claimed by the School Management that such promotion was effected in accordance with the seniority list maintained as per the provisions of Maharashtra Employees of Private Schools' (Conditions of Service) Rules, 1981 (hereinafter referred to

as the 'Rules of 1981'). The promotion was approved vide approval order dated 30.03.2013 with effect from 01.08.2011. Thereafter respondent no.4 (Parmeshwar Gangaram Dhole) was promoted to the post of headmaster by order dated 30.05.2017 and approval to his promotion was granted by order dated 20.07.2017. It is the case of the school management that one Smt. Shubhada Vitthal Shingade @ Shubhada Shriram Kolekar had challenged the promotion of Shri. Ashok Nathu Deore by filing appeal before the School Tribunal, Nashik in Appeal No.50 of 2011 which came to be rejected vide judgment and order dated 15.03.2013. It is therefore submitted by the school management that if respondent no.4 was aggrieved by the promotion of Shri. Ashok Nathu Deore, he ought to have filed appeal before School Tribunal rather than approaching the Education Officer. It is, therefore, submitted that the Education Officer did not have any jurisdiction to decide the issue of promotion or supersession.

5. Under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the 'Act of 1977') an appeal would lie in respect of grievance of supersession. Sub-section (1) of Section 9 reads thus:

'9. Right of appeal to Tribunal to employees of private schools. - (1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee

in a private school-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the management; or

(b) who is superseded by the Management while making an appointment to any post by promotion; and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8]:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

- (2)*
- (3)*
- (4)*

6. Undoubtedly, respondent no.4 had the remedy of filing an appeal under Section 9 of the Act of 1977 if he felt aggrieved by the promotion of Mr. Ashok Nathu Deore in the year 2011. Since School Tribunal has the jurisdiction to decide the issue of promotion and supersession, we are of the view that the Education officer has erred in entertaining the said dispute and giving a verdict of entitlement of rival parties for promotion.

7. Mr. Wakade, learned Counsel appearing for the petitioner has rightly relied upon the decision of this Court in

Saraswati Seva Sangh vs. Education Officer (Secondary Section) Zilla Parishad, Thane and others [2002 (5) Mh.L.J. 388] in which this Court held that the Education Officer does not have jurisdiction to decide the issue of termination in respect of which there is specific remedy of filing appeal under Section 9 of the Act of 1977. He has also relied upon the decision of this Court in **Mohammad Hasan Khan vs. Mohammad Majidulla & Others**, 2002 (4) All.M.R. 512, wherein the issue involved was about the time limit within which the appeal against the grievance of supersession would be filed under Section 9 (1)(b) of the Act of 1977. Though the judgment is not directly relevant to the issue, the same does suggest that there is a remedy available under Section 9 of the Act in respect of the grievance of supersession. We are of the view that the Education Officer thus could not have decided the grievance of supersession raised by respondent no.4.

8. Faced with this difficulty Ms. Gour, learned AGP has relied upon the provisions of Rule - 12 of the Rules of 1981 to contend that the Education Officer would have role to play with regard to maintenance of seniority list under Schedule 'F' of the Rules. However, the Education Officer has not confined himself to the question of determination of seniority, but has proceeded to hold

the promotion of Shri. Ashok Nathu Deore to be erroneous and directed promotion of respondent no.4 retrospectively with effect from 01.08.2011. In this regard, Mr. Wakade has rightly relied upon the decision of this Court in **Umesh Balkrishna Vispute vs. State of Maharashtra and Others** [2000 (4) Mh.L.J. 564] in which it is held that finalization of seniority list in terms of Rule 12 of the Rules, 1981 is not final and conclusive and that the same is not binding on the School Tribunal. It is further held that Section 9 (1) of the Act has overriding effect as it opens with *non obstante* clause and the dispute relating to seniority list can also be considered by the Tribunal as an incidental question while deciding the controversy in regards to the supersession. Therefore, reliance of Ms. Gour on the provisions of Rule 12 of the Rules of 1981 is misplaced.

9. Consequently, we are of the view that the order dated 16.10.2019 passed by the Education Officer is unsustainable. We set aside the same. Writ Petition No.8783 of 2021 accordingly succeeds and is allowed. Consequently, Writ Petition No.1129 of 2020 seeking implementation of the order dated 16.10.2019 is dismissed. However, it would be open to the petitioner in Writ Petition No.1129 of 2020 (the respondent no.4 in writ Petition No.8783 of 2021) to exercise the remedy as provided for under Section 9 of the Act of 1977. In the

event such appeal is filed, the same shall be decided strictly in accordance with its own merits without being influenced by the observations of the Education Officer in order dated 16.10.2019 or the observations made by us in this judgment. The issue of limitation in filing such appeal is kept open.

10. Rule is made absolute in Writ Petition No.8783 of 2021. Rule is discharged in Writ Petition No.1129 of 2020. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

GGP