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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.443 OF 2022**

**LAXIMIKANT M. PARAB**

**... PETITIONER**

***Versus***

**JAIRAM N. KERKAR AND 3  
ORS.**

**... RESPONDENTS**

**Mr. Gajendra Usgaonkar, Advocate for the Petitioner.**

**Mr. Vivek Rodrigues with Mr. S. Malik, Advocates for  
Respondent No.1.**

**Mr. D. Pangam, Advocate General with Mr. P. Arolkar,  
Additional Government Advocate for Respondent Nos.2 & 4.**

**CORAM: M. S. SONAK &  
BHARAT P. DESHPANDE, JJ.**

**DATE : 4<sup>th</sup> OCTOBER 2022**

**P.C. :**

**1.** Heard Mr Usgaonkar for the Petitioner.

**2.** By this petition under Articles 226 and 227 of the Constitution of India, the petitioner questions the order dated 19.08.2022 by which the Tribunal has vacated the Stay granted by it on 02.08.2022. The Petitioner has also prayed for restraint on filling up the post of Principal on a regular basis in pursuance of the impugned order dated 19.08.2022.

3. The Division Bench took up this petition because of Contempt Petition No.1916/2022(F), in which respondent no.1 in this petition had alleged non-compliance with the Division Bench's order dated 27.07.2022 in Writ Petition No.1334/2022(F). Since the issues were interconnected, it was thought appropriate to take up both matters together.

4. The Management drew out a seniority list of teachers on 01.09.2020. Aggrieved by the same, respondent no.1, Jairam Kerkar, instituted an appeal before the Director as provided under the Goa School Education Act, 1986 and the Rules made thereunder. The Director allowed this appeal on 21.01.2021, holding that Jairam Kerkar was senior to the present Petitioner Laximikant Parab.

5. Laximikant Parab did not react against the Director's order dated 21.01.2021, but the Management filed a purported review on 14.10.2021. Mr Usgaonkar does not appear for the Management. But he defends the Management's action and relies upon ***D. Ganesh Rao Patnaik & Ors. V/s. State of Jharkhand & Ors.***<sup>1</sup> to submit that fixation of seniority is an administrative function; therefore, a review is always maintainable.

6. At least, *prima facie*, this decision is inapplicable to the facts of the present case because the Director decided the issue on seniority in

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<sup>1</sup> 2005 AIR SCW 5199

a quasi-judicial capacity. There was no provision pointed out enabling review. It is well settled that when it comes to judicial or quasi-judicial authorities, the power of review is never inherent but has to be expressly conferred. Be that as it may, what is pertinent is that the Petitioner, Laximikant Parab, had neither filed a review petition nor appealed against the Director's order to the Tribunal within the prescribed limitation period.

7. After a vacancy arose in the Principal position on 30.07.2022, the Management ignoring the Director's order dated 21.01.2021 treated the Petitioner Laximiant Parab as senior to Jairam Kerkar and appointed him as in-charge Principal. The Management relied on the Stay granted by the Tribunal, ex parte on 02.08.2022 in Petitioner's belated appeal questioning the Director's order dated 21.01.2021.

8. This above appointment was made even though, before this date, Jairam Kerkar had instituted Writ Petition no.1334/2022(F) seeking directions to the Management to *inter alia* convene the regular DPC and to make a regular appointment to the post of Principal. By order dated 27.07.2022 we disposed of Writ Petition No.1334/2022(F) by directing the Management to comply with the Director's order dated 21.01.2021 and start the process of convening regular DPC for filling up the post of Principal on a regular basis by treating Jairam Kerkar as Senior to Laximikant Parab.

**9.** Laximikant Parab, as noted earlier, had instituted an appeal before the Administrative Tribunal to question the Director's order dated 21.01.2021. This was filed after a delay of 155 days after excluding the period the Hon'ble Supreme Court had excluded in its COVID-19 extension of limitation order. This appeal was instituted on 29.07.2022 along with the application for Stay. The Tribunal granted an ex-parte stay on 02.08.2022. However, after Jairam Kerkar appeared, the Tribunal again heard the matter and did not extend the ex-parte Stay. The Tribunal also observed that *prima facie*, there seems to be a collusion between the Management and Laximikant Parab.

**10.** Mr Usgaonkar submits that the earlier stay order was granted after a detailed hearing and, therefore, the same should not have been now vacated. He submits that the appeal would be rendered infructuous upon the vacation of the Stay. He points out that the Stay should continue until the application for condonation of delay is considered. He relies on the decision of the Calcutta High Court in *Sri Rani Satinji Mandir & Ors. V/s. Shyam Sundar Jhunjhunwala*<sup>2</sup>.

**11.** Upon hearing the learned Counsel for the parties, including the learned Advocate General, we are satisfied that no interference is warranted against the impugned order dated 19.08.2022.

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**2** AIR 1984 Cal 20

**12.** In the facts of the present case, no *prima facie* case was made out for grant of any stay, much less an ex-parte stay. But, that apart, the finding about *prima facie* collusion also finds support from the conduct of the Management going to great lengths to institute review and appoint the Petitioner as in-charge Principal even though in terms of the seniority list, the Petitioner does not continue to be senior to Jairam Kerkar.

**13.** There is no question of the Petitioner's appeal being rendered infructuous. However, if the delay is condoned and ultimately the appeal is allowed, the Tribunal can always issue directions for holding a review DPC based upon the altered senior positions. In peculiar facts of the present case, the grant of Stay amounts to the grant of final relief to the Petitioner at the interim stage.

**14.** The appointment rules also emphasise seniority, which were possibly not considered when making the ex-parte order. Additionally, the decision of the Calcutta High Court relied upon by the Petitioner was based on facts peculiar to the said case. Those facts are not comparable to the facts in the present case. Finally, there was the issue of delay, based on which at least no *ex- parte* relief should have been granted.

**15.** After the stay order was granted, the Management hurriedly appointed the Petitioner as in-charge Principal. After the Stay order

was vacated, the Management, even without any interim protection from this Court, continued the Petitioners in charge posting. Now that the stay order has been vacated and this order has upheld this order of vacation, the Management would be obliged to appoint Jairam Kerkar as in-charge Principal pending the holding of regular DPC. Even the regular DPC will have to be held at the earliest, considering our order dated 27.07.2022 in Writ Petition No.1334/2022(f).

**16.** There is no jurisdictional or other error in the impugned order made by the Tribunal. Accordingly, this petition is liable to be dismissed and is hereby dismissed. A separate order is made in the connected contempt petition. There shall be no order on costs.

**BHARAT P. DESHPANDE, J.**

**M. S. SONAK, J.**

NITI K  
HALDANKAR

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