

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3457 OF 2019

Arvind Chandrakant Sadavarte	...Petitioner
V/s.	
The President, Shri. Bahiravnath Education Society (Warna) and Ors.	...Respondents

Mr. Umesh H. Pawar, for the Petitioner.
Mr. Utkarsh S. Desai, for the Respondent Nos.1 and 4
Mr. C. G. Patil, for the Respondent No.5.
Ms. V. S. Nimbalkar, AGP for the Respondent No.3/ State.

**CORAM : C.V. BHADANG, J.
DATE : 14 OCTOBER 2022**

Judgment :

. Rule made returnable forthwith. The learned counsel for the respective Respondents waive service. Heard finally by consent of parties.

2. The challenge in this petition is to the judgment and order dated 23 January 2019 passed by the School Tribunal at Kolhapur in Appeal No.25/2017. By the impugned judgment, the School Tribunal has allowed the appeal filed by the Respondent No.5 (the Appellant before the School Tribunal) and the oral order of reduction in rank of the Appellant from 1 April

2017 from the post of Head Master to the post of Assistant Teacher has been set aside. The Respondent – Management has been directed to reinstate the Appellant notionally since 1 April 2017 on the original post with consequential monetary benefits.

3. I have heard the learned counsel for the Petitioner and the learned counsel for the Respondents. With the assistance of the learned counsel for the parties, I have gone through the record.

4. It is submitted by the learned counsel for the Petitioner that although reduction in rank is considered as a major penalty under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder, as such, an order should be an order in writing pursuant to the case of proved misconduct. It is submitted that in this case neither there were any allegations about misconduct nor there is a written order by the Management by which the Respondent No.5 was reduced in rank. He therefore submitted that the Tribunal was in error in holding that the major penalty of reduction in rank, was imposed on the Respondent No.5, without following the proper procedure. The learned counsel has next submitted that the Tribunal has not gone into the issue of seniority. In the submission of learned counsel, this is not a case of reduction in rank but of alleged supersession. The learned counsel has

pointed out the order of appointment of the Petitioner dated 18 June 1991 by which the Petitioner has been appointed as a Assistant Teacher on probation for two years with effect from 19 June 1991. He points out that the Respondent No.5 on the contrary has been appointed as per the order dated 20 June 1991 with effect from 24 June 1991 and the appointment was stated to be purely temporary for a period of one year. Placing reliance on these appointment orders, it is submitted that the Petitioner was senior to the Respondent No.5. He further brought to my notice a letter dated 28 May 2016 by which the Petitioner had staked his claim to the post of Head Master when the post was to fall vacant on 30 June 2016 on account of retirement of Mr. Ramchandra Mane, the then Head Master. He therefore submitted that the Tribunal has misdirected itself in allowing the appeal and the judgment deserves to be set aside. Except these, there are no other contentions raised.

5. The learned counsel for the Respondent – Management has supported the Petitioner. It is submitted that on the basis of the initial appointment, it was the Petitioner who ranks senior and therefore the Management after coming to know of the error committed in promoting the Respondent No.5, has merely corrected the error and there is no reduction in rank as such, much less, by way of penalty.

6. The learned counsel for the contesting Respondent No.5 has referred to the entries in the service book of the Petitioner and the Respondent No.5. It is submitted that both of them are shown to be appointed on 19 June 1991 and confirmed on 1 June 1993. He has further referred to the entries by which the benefit of the career progression on completion of 12 years of service was granted to the Petitioner and the Respondent No.5 on the same date i.e. on 19 June 2003. He has then referred to the seniority list for the year 2004-2005 (at page 72 of the compilation) in which the Respondent No.5 is shown at Serial No.2 while the Petitioner is shown at Serial No.3 and the Respondent No.4 is shown at Serial No.4. It is submitted that at no point of time there was any objection raised to the said seniority list by the Petitioner or the Respondent No.4. The learned counsel has then referred to the order of appointment of the Petitioner as a Head Master dated 30 June 2016. He submitted that the Petitioner never challenged the appointment of the Petitioner as a Head Master.

7. I have considered the submissions made.

8. It can clearly be seen that the date of appointment and the confirmation of the Petitioner and the Respondent No.5 are same which is evident from the copies of the service book. This aspect is not even disputed by the learned counsel for the Petitioner and

the Respondent – Management. It is also not in dispute that in the seniority list prepared in the year 2004-2005, the Respondent No.5 is shown senior to the Petitioner as well as Respondent No.4. It is also not in dispute that at no point of time there was any objection raised to the said seniority list.

9. The record also discloses that the Respondent No.5 was in fact appointed as a Head Master by order dated 30 June 2016. The Petitioner chose not to challenge the said appointment of the Respondent No.5. It is also not in dispute that the Respondent No.5 was not granted any opportunity to explain and was reduced from the post of Head Master.

10. I have gone through the impugned judgment of the School Tribunal and it does not suffer from any infirmity, so as to require interference. The petition is without any merit and is accordingly dismissed. Interim relief stands vacated. Rule is discharged, with no order as to costs. It is made clear that this Court has not examined the claim or issue about supersession of the Petitioner.

C.V. BHADANG, J.