

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

WRIT PETITION NO.12705 OF 2017

Smt. Suman Ramchanra Raut

..Petitioner

Versus

The President/Secretary

Ulhas Parisar Prathshthan and Ors.

..Respondents

Mr. Raj J. Khude, for the Petitioner.

Mr. M. S. Lagu, for the Respondent Nos.2 & 6.

Mr. C. D. Mali, AGP for Respondent Nos.3 & 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 14th JUNE, 2022

P.C.

1. Heard.

2. This petition is directed against the order passed by the Presiding Officer/ Additional School Tribunal, Mumbai, whereby petitioner's promotion to the post of Head Mistress of Adivasi Girl's School came to be set aside with directions to the respondent-management to promote respondent No.5/original appellant before the School Tribunal to the said post. The petitioner in supersession of the claim of respondent No.5 was promoted to the said post on 1st August, 2016 and Tribunal has directed that respondent No.5 be granted promotion as Head Master with effect from 1st August, 2016.

3. Counsel for the petitioner while questioning the order passed by the School Tribunal would raise following two grounds :-

a) Though the respondent was holding the post of Head Master, he has resigned from the said post and as such doesn't have the qualification to shoulder the responsibility of the Head Master of Adivasi Girl's School;

b) In a complaint of sexual harassment against girl students, the school superintendent Mr. Girase was arrested. So as to avoid such untoward incident, it is necessary that the petitioner, a female should man the post of Head Mistress of the Adivasi Girl School.

4. The prayer is opposed by the counsel for the respondents, so also learned AGP on the ground that the order of the School Tribunal is in tune with the law and the supersession of the respondent No.5 was based on the illegality committed by the management.

5. The fact remains that the respondent who was the appellant before the School Tribunal is senior to that of the petitioner in employment/service. The respondent alleged to have resigned on earlier two occasions from the said post. There is no statutory embargo or disqualification as can be inferred from the provisions of Act or Rules which can be considered to the detriment to the interest and right of respondent so as to man post of Head Master.

Merely because the petitioner was appointed as Head Mistress by passing the claim of the respondent No.5 does not create any absolute right in her favour to continue on such post being a lady teacher. Rather it is brought on record that before the petitioner was appointed as Head Mistress the respondent No.5 who is admittedly senior in service and also qualified was not given opportunity to claim the said post of Head Master. Just because the post of Head Master is in a Adivasi Girl's school that by itself does not create any basic right in favour of petitioner to claim continuation or appointment as Head Mistress even though she is junior to the respondent.

6. Even after the resignation, respondent continued to be senior to the petitioner and as such, as and when post of the Head Master becomes vacant, the management is duty bound to offer the same to the respondent.

7. All these grounds prevailed before the Tribunal to grant relief in favour of the respondent which are based on the legal principles. That being so, no case for interference is made out.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]