

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1217 OF 2017

Mrs. Diksha S. Nikam ... Petitioner

V/s.

Badlapur High School and Ors. ... Respondents

Ms. Sanskruti Yagnik for the petitioner.

Mr. V.S. Nimbalkar, AGP for respondent no.3.

Mr. Narendra V. Bandiwadkar I.by Mr. Mandar Bagkar for
respondent nos. 1, 2 and 4.

CORAM : VALMIKI SA MENEZES, J.

DATED : DECEMBER 19, 2022.

P.C. :

The present petition impugns the judgment dated 27th July 2016 passed by Presiding Officer, School Tribunal, Navi Mumbai in Appeal No. 10 of 2015 under the Provisions of Maharashtra Employees of Private School (Conditions of Service) Regulations Act, 1977, whereby the Tribunal had dismissed the appeal filed by the petitioner.

2. The main challenge is to the order of promotion dated 1st June 2014 of the respondent no. 4, who has been promoted to the post of Head Master to the Respondent no. 1-School.

3. The primary challenge in the appeal filed by the petitioner against the order of promotion was on the basis that the petitioner was

appointed earlier in point of time and has obtained seniority for post of Head Master. The petitioner however, accepts the position that, as on the date of initial appointment she did not have the requisite qualification i.e. B.Ed degree even though she was senior to the respondent no. 4. Service rules 12 read with Schedule F of Maharashtra Employees of Private School (Conditions of Service) Regulations Act, 1981, prescribes that promotion to the post of ‘Head Master’ would be on the basis of seniority-cum-merit. The petitioner ought to have obtained the requisite qualification for the post of Head Master as on the date of initial appointment, which she did not.

4. The present petition is founded upon the contention that the petitioner was senior most in terms of the Seniority List of candidates within the zone of consideration for promotion. It is the contention of the respondent no. 4 that the petitioner did not possess the requisite qualification as on the date of her initial appointment. It is the further contention of the respondent no. 4 that this Court in ***‘Gaur Pratibha v. State of Maharashtra’***¹ had occasion to consider a similar challenge to promotion of candidates, who were not qualified as on their initial dates of appointment. Reference was made to the following paragraphs of *Gaur Pratibha (Supra)*:-

“120. This Court's series of judicial pronouncements as cited above, with the final cap by the Supreme Court's Viman Vaman Awale and Bhawana, unmistakably lays down the law: Among Primary Teachers, the seniority is counted from the date of the teacher's joining service. On the other hand, among the Secondary Teachers, the

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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. This 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 the MEPS Rules.

122. 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.

124. The seniority must be reckoned from the date they entered the desired category; that is, from the date they acquired the necessary qualification, but not from the date of their entry into service.”

5. It is the further contention of the respondent no. 4 that, the judgment passed *Gaur Pratibha (supra)* was challenged before Supreme Court and the petition was dismissed. The judgment rendered in *Gaur Pratibha (supra)* has become final. Considering, that the

challenge in the present petition is identical to the one raised in *Gaur Pratibha (Supra)*, and the petitioner was not qualified as on the date of her initial appointment to the post of Head Master, it is clear that the view taken by the School Tribunal that the petitioner was not qualified for the post of Head Master appears to be legally sound.

6. In these circumstances and in view of the law laid down by this Court in *Gaur Pratibha (Supra)*, I do not find any reason to differ from the view taken by the School Tribunal. I find no legal infirmity in the order of the Tribunal and thus there is no case made out for interference with the impugned order in supervisory jurisdiction under Article 227 of the Constitution of India. The order is founded upon preposition of law, which has been upheld by this Court in the case of *Gaur Pratibha (supra)*.

7. The petition is accordingly dismissed. No order as to costs.

(VALMIKI SA MENEZES, J)