

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

WRIT PETITION NO.11228 OF 2019

Sou. Pratibha Chandrakant Pawar

...Petitioner

Versus

Vishal Sahyadri Shikshan Sanstha,
Godoli, Satara and Ors.

...Respondents

....

Mr. N.V. Bandiwadkar for the Petitioner.

Mr. Prashant Bhavke i/.b Mr. Vaibhav Gaikwad for Respondent No.4.

Mr. Amit A. Gharte for Respondent No.1.

Mr. Vaibhav R. Gaikwad for Respondent No.4.

Mr. S.H. Kankal, AGP for Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT PRONOUNCED ON: 6th MAY, 2022.

JUDGMENT:-

1. The Petitioner has raised a challenge to order dated 06/09/2019 in Appeal No.48 of 2015 passed by the School Tribunal, Kolhapur. By the impugned order the School Tribunal allowed the appeal filed by Respondent No.4 and directed the school management to promote the Respondent No.4 as Head Mistress of Respondent No.1-School w.e.f. 01/09/2014 without backwages.

2. The brief facts necessary to decide this petition are as under :-

The Petitioner and the Respondent No.4, were appointed as assistant teachers in Sahyadri Madhyamik Vidyalay, Shahu Nagar, (Respondent No.3 -School) run by Respondent No.1-Shikshan Sanstha. Mr. Hanumant Jadhav, the Head Master of Respondent No.3 school superannuated on 31/08/2014. On 01/09/2014, the Petitioner was appointed as Head Mistress and the proposal was submitted to Respondent No.6-Education Officer for approval. By orders dated 06/10/2014, 7/1/2015 and 16/04/2015, Respondent No.6 granted signing authority to the Petitioner and by order dated 27/05/2015 granted approval to the promotion of the Petitioner as Head Mistress w.e.f. 01/09/2014.

3. The Respondent No.4 filed an Appeal before the School Tribunal under Section 9 of M.E.P.S. Act, 1977 challenging the promotion of the Petitioner. Respondent No.4 claimed that she was appointed as an Assistant Teacher on 02/10/1991. The Respondent No.4 claims that she was a qualified teacher and that she is in continuous service with Respondent No.3 school since 1991 without any break. The Respondent No.4 further claimed that the Petitioner was appointed in the year 1992 and is junior to her. Considering her seniority, in the year 2001, the

Respondent No.4 was promoted as a supervisor and that the Respondent No.6-Education Officer had given approval to the said promotion.

4. Respondent No.4 claimed that being the senior most teacher, on the retirement of Hanumant Jadhav, she ought to have been appointed as the Head Mistress. However, the then Head Master Hanumant Jadhav, illegally gave charge to the Petitioner. Upon taking charge, the Petitioner misused her post as a Head Mistress to fabricate and manipulated service records of the Respondent No.4. The Petitioner also sent a proposal to appoint her as a Head Mistress. It was alleged that Respondent No.5 -Deputy Director of Education and Respondent No.6 - Education Officer ignored the objections raised by Respondent No.4 and without considering the seniority of Respondent No.4, allowed the proposal submitted by the Petitioner. She claimed that the appointment and approval of the Petitioner as Head Mistress is illegal and that considering her seniority she is entitled to be promoted as Head Mistress of Respondent No.3-School.

5. Respondent No.1, Shikshan Sanstha admitted that the Respondent No.4 was appointed as a Assistant Teacher on full time basis w.e.f. 02/10/1991 and that she has been working continuously without

any break. The Respondent No.1 further stated that the Petitioner was appointed as an Assistant Teacher in the year 1992 and that she is junior to the Respondent No.4. The Respondent No.1 further claimed that considering the seniority of Respondent No.4, she was promoted to the post of Supervisor since the year 2001. Respondent No.1 has stated that the Petitioner has no authority to appoint herself as a head mistress and/or to send the proposal for approval to Respondent Nos.5 and 6.

6. The Petitioner claimed that she was appointed initially as part time teacher on 15/10/1991 and since 13/06/1992, she was appointed as a probationary teacher. The Petitioner denied that the Respondent No.4 was appointed on 02/10/1991 and claimed that she was appointed on probation vide order 14/06/1993. The service record of Respondent No.4 shows her date of appointment as 14/06/1993. Her approval was subsequent and Respondent No.4 is junior to the Petitioner. She claims that the Respondent No.4 has fabricated the appointment order dated 02/10/1991. The Petitioner claims that she had refused promotion as Supervisor due to domestic reasons. Being the senior most teacher, the then Head Master H.V. Jadhav gave charge to her on 01/09/2014 and on 08/10/2014, Respondent No.6 – Education Officer gave approval to her appointment as Head Mistress. The Petitioner claimed that since

Respondent No.4 was junior to her, she was not entitled to be appointed as Head Mistress.

7. Learned Presiding Officer of School Tribunal, Kolhapur, upon considering the material produced by the respective parties, held that the Respondent No.4 was appointed as probationary assistant teacher on 02/10/1991. The School Tribunal has observed that there is overwriting in the appointment letter produced by the Petitioner wherein the date of the appointment of the Respondent No.4 is shown as 21/06/1993. The Tribunal has observed that the said appointment letter produced by the Petitioner appears to have been created after the year 2000 and hence, is not genuine. The Tribunal also observed that the muster roll for the period from October 1991 to September, 1994 also shows that the Respondent No.4 was working in the School since 03/10/1991 and her name was shown above the name of the Petitioner. The Tribunal also rejected the contention of the Petitioner that the Respondent No.4 was initially appointed as a part time teacher. The School Tribunal observed that since the appointment letter of the Respondent No.4 prove the date of appointment as 02/06/1991, the approval as well as entry in the service book showing her date of appointment as 21/06/1993 is not relevant and that her claim cannot be rejected merely because she did not

raise any grievance before the Respondent No.6 – Education Officer. Based on these findings, the School Tribunal held that the Respondent No.4 is entitled to be promoted as Head Mistress w.e.f. 01/09/2014, without back wages/monetary benefits. This order has been challenged in this Writ Petition filed under Article 227 of the Constitution.

8. Mr. Bandiwadekar, learned counsel for the Petitioner submits that by appointment order at Exhibit – A, the Petitioner was appointed as part time teacher w.e.f. 15/10/1991. Subsequently, by appointment order dated 05/06/1992, she was appointed as a full time teacher w.e.f. 13/06/1992. In the list of the teachers working in Respondent No.3 – School, her name was shown at Sr.No.2, below the name of the acting Head Master – Hanumant Jadhav. By order dated 16/02/1993, Respondent No.6 – Education Officer granted approval to the Petitioner as full time teacher on probation w.e.f. 13/06/1992. The Petitioner having satisfactorily completed the probation period, she is deemed to be in permanent service. On 13/06/2004, she completed 12 years continuous service as full time teacher and was sanctioned senior scale w.e.f. 13/06/2004. Entry in this regard was also made in her service book.

9. He submits that though the Respondent No.4 has relied upon

appointment order dated 02/10/1991, the records reveal that she was appointed as part time teacher in the academic year from 12/06/1992. He contends that the Respondent No.4 would not have been appointed as a part time teacher in the academic year of 12/06/1992 had she been appointed as a full time teacher w.e.f. 02/10/1991. He submits that the Respondent No.6 – Education Officer had not granted approval to the appointment of Respondent No.4 w.e.f. 02/10/1991. There is no entry in the service book of Respondent No.4 showing her date of appointment as 02/10/1991. The said order, which was issued on a public holiday, is wholly suspicious. Moreover, there is no contemporaneous evidence to substantiate the claim of Respondent No.4. He submits that the contention of the Petitioner that Respondent No.4 was appointed as an Assistant Teacher by order dated 14/06/1992 is also supported by the Education Officer. He submits that no specific plea was raised that the said appointment order is fabricated. He submits that the appointment of the Respondent No.4 was approved w.e.f. 13/06/1999. Upon completion of continuous service of 12 years, Respondent No.4 was sanctioned senior scale w.e.f. 21/06/2005.

10. Mr. Bandiwadekar, learned counsel for the Petitioner submits that the aforesaid facts reveal that the Petitioner was appointed prior in

point of time and hence, she is senior to the Respondent No.4. He further submits that in the seniority list prepared in terms of Rule 12, the Petitioner was always placed above the Respondent No.4. The Respondent No.4 had signed the said seniority list without any objection or complaint and had thereby accepted that the Petitioner was senior to her. He therefore contends that the Tribunal has grossly erred in relying upon the appointment order dated 02/10/1991 and in rejecting the other documents such as approval orders, grant of seniority scale and entries to that effect in the service book, seniority list etc., which amply proves that the Petitioner is senior to the Respondent No.4. Mr. Bandiwadekar, learned counsel for the Petitioner further contends that there is no challenge to the promotion of the Petitioner. He contends that the relief of reinstatement cannot be granted in the absence of such prayer. He therefore contends that the order is patently illegal and cannot be sustained.

11. Mr. Bhavke, learned counsel for Respondent No.4 states that the Respondent No.4 had joined duties w.e.f. 03/10/1991. The seniority list for the year 1992-93 shows the date of appointment as 01/10/1991 and Respondent No.4 was placed above the Petitioner, whose date of appointment is shown as 13/06/1992. He further contends that the

Respondent No.4 was also promoted as supervisor which is a promotional post and this fact also proves that the Respondent No.4 was senior to the Petitioner. The Respondent No.4 has also signed the muster roll from 03/10/1991 till May 1992 as part time teacher and full time teacher from 13/06/1992 and in the muster roll for the month of August, 1992 onwards, the name of the Petitioner is shown below the name of Respondent No.4. He submits that the appointment of the Respondent No.4 was on clear vacancy. The Petitioner has also admitted the fact that the Respondent No.4 was appointed on 02/10/1991 and is in continuous service since the year 1991. Even otherwise if both appointments are of the same date, seniority has to be determined on the basis of age and that the date of approval is not relevant for deciding the seniority. He submits that the seniority list produced by the Petitioner is for the year 2001-02 onwards, which is prepared by the Head Master and not by the Management. He submits that the Tribunal has upon considering the material on record held that the appointment order produced by the Petitioner is fabricated. There being no jurisdictional error, finding of fact recorded by the Tribunal does not warrant interference in the writ jurisdiction.

12. Mr. Amit Gharte, learned counsel for the Respondent No.1 –

Shikshan Sanstha submits that as per the records, Respondent No.4 was appointed on 02/10/1991. He submits that the appointment letter dated 14/06/1993 produced by the Petitioner is fabricated. He submits that as per the muster roll, the Respondent No.4 has worked as a full time teacher since June, 1992. He submits that as per the records, Respondent No.4 was senior to the Petitioner.

13. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

14. It is not in dispute that Respondent No.1 started Respondent No.3 – School in the year 1991. Respondent Nos.5 and 6 had given permission/approval to Respondent No.1 – Shikshan Sanstha to start 8th std. Class in the academic year 1991-92. The Petitioner and Respondent No.4, both qualified teachers belonging to open category, were appointed as the Assistant Teachers in Respondent No.3 – School which is run by Respondent No.1 – Shikshan Sanstha.

15. It is not in dispute that the Petitioner was appointed as an Assistant Teacher w.e.f. 13/06/1992. The dispute is as regards the date of appointment of Respondent No.4. The Respondent No.4 claims that she

was appointed on 02/10/1991. Though this claim is accepted by the Respondent No.1/Shikshan Sanstha, the Petitioner claims that the Respondent No.4 was appointed on 14/06/1993. The appointment order dated 14/06/1993 produced by the Petitioner, showing the date of appointment of Respondent No.4 as 14/06/1993 has been discarded by the Tribunal on the ground that the same is fabricated. A perusal of the appointment order produced by the Petitioner reveals that the date on the said appointment order was printed as '*Date / /200*' which has been filled in as '*Date 14/06/1993*'. It appears that this form was printed in the year 2000. The appointment order allegedly issued on 14/06/1992 was typed on these printed forms by changing the first three digits of the year i.e., '*200*' to '*199*'. It is in these circumstances that the Tribunal has observed that the order allegedly issued in the year 1993 could not have been issued on the printed format prepared in or after the year 2000. These findings are not perverse as to warrant interference in the writ jurisdiction.

16. It is pertinent to note that Respondent No.4 has produced the appointment order dated 02/10/1991 as well as the copy of the joining letter which reveals that the Respondent No.4 had joined duties in Respondent No.3 -School on 03/10/1991. She was the only qualified

assistant teacher, appointed against a permanent vacancy in Respondent No.3 School and that she is in continuous service since 03/10/1991 has been admitted by Respondent No.1 – Shikshan Sanstha. The muster roll for the period from 03/10/1991 till July, 1993 which was verified and attested as true copies by the Petitioner as Head Mistress shows that the Respondent No.4 had joined the duties since 03/10/1991. The name of the Petitioner is not mentioned in the muster roll from October, 1991 till July, 1992. She had signed the muster roll for the first time in August, 1992 wherein her date of appointment is shown as 13/06/1992 and her name in the muster roll is shown below the name of the Respondent No.4, whose date of appointment is shown as 03/10/1991. The muster roll therefore supports the contention of the Respondent No.4 that she is in continuous service since October, 1991.

17. The Respondent No.4 has also produced seniority list for the year 1992-93 wherein the name of Respondent No.4 is shown above the name of the Petitioner. The seniority list for the year 1992-93 shows the Petitioner's date of appointment as 13/06/1992 whereas that of the Respondent No.2 as 02/10/1991. The Petitioner had not raised any objections for placing her below Respondent No.4. In the initial seniority list, the management had shown the date of appointment of Respondent

No.4 as 02/10/1991 and she was shown as senior to the Petitioner and as such in the subsequent seniority list, the Education Officer could not have changed the date of appointment or the seniority of the Respondent No.4 viz-a-viz the Petitioner. It has been held by this Court in ***ST. Ulai High School Vs. Devendra Prasad , 2007 Mah. Law Journal 597*** that Rule 12 of Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 does not confer finality on the decision of the Education Officer. An employee against whom action is taken by the management on the basis of the decision of the Education Officer in the matter of inter se seniority, is entitled to challenge the action of the management, where the action complained of falls within the description set out in clauses (a) and (b) of Sub Section 1 of Section 9. Hence, the Respondent No.4, who has been superseded on the basis of subsequent change in inter se seniority was justified in raising this incidental issue before the School Tribunal in an appeal under Sub Section 1 of Sub Section 9 and the School Tribunal while deciding the legality of order of supersession was competent to decide the issue of inter se seniority.

18. It is well settled that for the purpose of reckoning the seniority of the employee, the initial date of appointment is relevant. In the instant case the appointment letter as well as the muster roll and the seniority list

of the year 1992-93 prove that the Respondent No.4 was appointed on 02/10/1991 and was in continuous service since then and as such the fact that the approval was granted subsequently or that there was change in subsequent seniority list is of no significance. Reliance is placed on the decision of this Court in ***Salim Gulab Mulla v/s. State of Maharashtra and ors. 2016(6) Mh.L.J. 617.***

19. It is also pertinent to note that when Respondent No.1 – Shikshan Sanstha appointed Hanmant Jadhav as the Head Master, the Respondent No.4 had made a representation alleging that said Hanmant Jadhav was not qualified to be appointed as a Head Master and that she was the only qualified candidate for the said post. The records also indicate that the Respondent No.4 vide letter dated 25/08/1995, the Respondent No.4 had requested the Respondent No.1 – Sanstha to take steps to get her appointment approved and she had also made allegations against the then Head Master – Hanumant Jadhav for fabricating her service records. It is also an undisputed fact that in the year 2001 the Respondent No.4 was appointed as a supervisor, which is a promotional post. The Petitioner had not placed any material on record to show that the said post was offered to her and that she had declined to accept the said post because of domestic issues. In the absence of such material,

appointment of the Respondent No.4 to the promotional post of Supervisor in the year 2001 also substantiates the claim of Respondent No.4 that she was senior to the Petitioner.

20. Under the circumstances, the findings recorded by the School Tribunal that the Respondent No.4 was senior to the Petitioner and that she was entitled to be promoted as head mistress are not perverse. There is no illegality or impropriety in the order passed by the Tribunal hence, the petition is dismissed. Since the interim order has been operating since long, the same is continued for a period of three weeks to enable the Petitioner to approach the higher court, if she so desires.

(SMT. ANUJA PRABHUDESSAI, J.)