

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1278 OF 2022

- 1) Radhesham Baba Gramin Dhyan Prasarak
Mandal, Kurud, through its President,
Kurud, Tahsil – Desaiganj, District -
Gadchiroli.
- 2) Radhesham Baba Gramin Dhyan Prasarak
Mandal, Kurud, through its Secretary,
Kurud, Tahsil – Desaiganj, District -
Gadchiroli.
- 3) Principal,
Radhesham Baba Vidyalaya, Kurud,
Tahsil – Desaiganj, District – Gadchiroli.
- 4) Ku. Lalita Ankush Faye,
Aged about 33 years, Occupation – Service,
Kurud, Tahsil – Desaiganj, District -
Gadchiroli.

.... **PETITIONERS**

VERSUS

- 1) Shri Vishvjit Parasaram Lonare,
Aged about 59 years, Occupation – Retired,
R/o Kurud, Tahsil – Desaiganj, Gadchiroli.
- 2) Shri Dudhram Krushi Nakade,
Aged about 51 years, Occupation – Service,
R/o Kurud, Tahsil – Desaiganj, Gadchiroli.
- 3) Education Officer (Madhyamik),
Zilla Parishad, Gadchiroli, Tahsil and
District Gadchiroli.
- 4) Additional School Tribunal,
Chandrapur.

.... **RESPONDENTS**

Mr. M.P. Puranik, Counsel for the petitioners,
Mr. C.A. Mohgaonkar, Counsel for respondent 1,
Ms. T.H. Khan, A.G.P. for respondents 3 and 4.

CORAM : ROHIT B. DEO, J.

DATED : 8th MARCH, 2022

ORAL JUDGMENT :

The petitioners are assailing the judgment rendered by the Additional School Tribunal, Chandrapur in STC Appeal 3/2021 whereby allowing the appeal preferred by respondent 1 herein, the Tribunal set aside the supersession of respondent 1 as regards the post of Headmaster and in view of the superannuation of respondent 1, directed the management to grant and release the pensionary benefits to respondent 1 by revising his pay scale to the post of Headmaster. In essence, the relief which is granted to respondent 1, in the context of the superannuation, is grant of deemed date of promotion and the consequential benefits.

2. Facts are broadly admitted or are irrefutable.
3. Respondent 1 was appointed as Assistant Teacher on 01-7-1995 in the category of Scheduled Caste.

4. The management has two schools. One which is 100% aided with classes from 5th to 12th standard and the other which is receiving 20% grant-in-aid. Petitioner 4 herein was appointed as Assistant Teacher on 01-7-1995 in Other Backward Category and acquired graduation qualification in the year 1992 and B.Ed. qualification in 1997.

5. It is irrefutable that respondent 1 herein was senior to petitioner 4 and it is on this very premise that according to the management, his consent was obtained while promoting petitioner 4. According to respondent 1, the consent was obtained under coercion. Acting on such consent, the management resolved to promote petitioner 4 as Headmaster and accordingly forwarded proposal to the Education Officer.

6. According to the learned Counsel for the Management Mr. M.P. Puranik, the proposal was objected by respondent 1, which objection the Education Officer eventually rejected.

7. The School Tribunal has held, and rightly so, that it is virtually admitted that respondent 1 was senior to petitioner 4 herein. The School Tribunal then scrutinized the rival contentions as regards the legality and enforceability of the consent allegedly accorded by

respondent 1. The School Tribunal noted that the mandatory procedure envisaged under Rule 3(3) Explanation of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (Rules) was not followed and *inter alia* relying on the decision of this Court in ***Pushpanjali Shenvi v. Nagrik Sewa Mandal, 2016(5) Mh.L.J. 856***, the supersession of respondent 1 is held bad in law. Explanation to sub-Rule (3) of Rule 3 of the Rules reads thus :

“Explanation – For the purpose of this rule, the Management shall communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post :

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the

date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post.”

The Explanation serves a salutary purpose and the legislative intent is to ensure that the management does not ride roughshod over the statutory rights of the employees by pressuring the employees to accord consent. The procedure envisages that the communication of occurrence of vacancy of the head to the senior-most qualified teacher having satisfactory record of service and asking for willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher who is otherwise qualified can be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post.

The proviso to the Explanation applies where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving notice, death, termination of services or reduction in rank. In such a

situation, the senior-most teacher desirous of relinquishing his claim is expected to, within seven days from the date of receipt of communication of occurrence of vacancy, communicate to the management in writing expressing disinclination to accept the post. However, as soon as possible thereafter, and in any case within a period of fifteen days, the provision contemplates that the final statement of the employee shall be recorded before the Education Officer.

8. Mr. M.P. Puranik points out that he is emphasizing not on the proviso, but on the concluding part of the Explanation, which stipulates that in the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post.

9. I am afraid, that the emphasize by Mr. M.P. Puranik ignores that before the said part of the provision comes into play, the earlier part must be complied with which is that the first statement must be recorded before the Education Officer and not handed over to the management, as is the case of the management in the present matter. Indeed, what is contemplated is that the statement of relinquishment must be addressed by the senior-most teacher to the Education Officer.

10. The learned Counsel Mr. M.P. Puranik refers to Section 11 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Act) to buttress the submission that the Tribunal has erred in moulding the relief. The submission is noted only as a courtesy to the learned Counsel Mr. M.P. Puranik. The Tribunal has rightly granted deemed date since the senior-most teacher is illegally deprived of the post of Headmaster and since he is superannuated, such deemed date and consequential benefit could have been the only relief which could have been reasonably granted.

11. The petition is sans substance, and is dismissed.

JUDGE

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