

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**915 WRIT PETITION NO. 2021 OF 2021
with Civil Application No.1029 OF 2023**

BALIRAM GHANSHYAM INGALE

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS**

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Advocate for Applicant : Mr. Bachate Pralhad D.
AGP for Respondents/State : Mr. S.G. Sangle
Advocate for R/3 : Mr. P.V. Gole h/f. V.D. Gunale
Advocate for R/4 : Mr. A.N. Sabnis

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**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 3rd February, 2023

PC. :-

1. Admittedly, the seniority declared by the authorities has altered the serial number of the petitioner and has lowered below a person, who is now shown to be senior most amongst the teachers has been appointed as the Headmaster of the School.

2. Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules, 1981 reads as under:

“9) Right of appeal to Tribunal to employees of private schools -

(1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the management; or

(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8]:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may, entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of [five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.”

3. It is thus apparent that under section 9-1 (b), if a candidate is superseded by the management while making an appointment to any post by

promotion and the person is aggrieved by such action of the management, an appeal can be preferred for challenging the supersession before the Tribunal.

4. The learned advocate representing the Headmaster, who has been promoted to the said position on 31.05.2018, which is prior to the judgment of this Court dated 20.03.2020 delivered in Writ Petition No.7845 of 2019 filed by the present petitioner, places reliance upon the judgment of this Court in **Umesh Balkrishna Vispute V/s. State of Maharashtra; 2000 (4) Mh.L.J. 564**. He contends that the law is settled that once an employee is superseded, Section 9 is the statutory remedy.

5. Considering the above, it appears, *prima facie*, that instead of pursuing this petition, it would be appropriate for the petitioner to challenge his supersession which is based on the seniority and in view of the settled law. The School Tribunal would be empowered to consider whether the seniority has been properly arrived at. The petitioner is shown at serial number 3 and the Headmaster is shown at serial number 1. Serial number 2 has retired in the interregnum and the present Headmaster would be superannuating in August-2023. The petitioner has contended that earlier he was at serial number 31 and the respondent no.4 was at serial no.35.

6. This Court [**Coram: Dipankar Datta, CJ (as His Lordship then was) and Smt. Vibha Kankanwadi, J.**] had passed an order on 15.11.2022 concluding in paragraph no.5 that the point of maintainability of this writ petition having regard to the availability of the remedy under Section 9 of the MEPS Act before the School Tribunal, would be left open.

7. The learned advocate for the petitioner submits that the petitioner would approach the School Tribunal by preferring an appeal under Section 9 of the MEPS Act, on or before 21.02.2023.

8. In view of the above, this petition is disposed off as withdrawn with liberty as is prayed for. Since a ground has been taken by the petitioner that a back dated order of approving respondent no.4 as Headmaster has been issued by the education officer, the time spent by the petitioner in this Court in Writ Petition No.7845 of 2019 and the present petition, until the passing of this order today, would be considered as a good ground for condonation of delay. We expect the application for condonation of delay to be decided by the learned Tribunal within three months of the filing of the appeal and neither the management employer nor the Headmaster would unnecessarily consume time for filing their written reply by seeking adjournments. We expect the Tribunal to decide the appeal on its merits, if the delay is condoned, on or before 29.02.2024.

9. In view of above, the pending Civil Application does not survive and stands disposed off.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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