

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.3273 OF 2022

NAMDEO VISHNU SASE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.T.Shelke, Advocate for the Petitioner.

Mr.P.S.Patil, AGP for Respondent Nos. 1 to 3.

Mr.S.V.Suryawanshi h/f Mr.P.B.Shirsath, Advocate for Respondent No.5.

Mr.N.D.Batule h/f Mr.S.V.Natu, Advocate for Respondent No.4.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : MARCH 17, 2023

PER COURT :

1. By a detailed order dated 06.04.2022, this Court has formulated 4 issues and referred the matter to the Hon'ble The Chief Justice of the Bombay High Court, to constitute a Larger Bench. The 4 issues are as under :-

[i] Whether the Deputy Director of Education could have recalled the earlier order of approval granted by the Education Officer on the ground that the Teacher, whose approval was already granted, was not the senior-most Teacher or not ?

[ii] Whether the issue of seniority, including issue of qualification having bearing on seniority, if raised by the aggrieved Teacher or an

employee, could have been decided only by the School Tribunal in the appeal filed by such person impugning the order of supersession or promotion, under Section 9 (1)(b) of the MEPS Act read with Rules ?

[iii] Whether the Education Officer or the Deputy Director of Education has power to direct the Management to cancel the appointment of an employee if found having been appointed without following the due procedure laid down in Rule 3 by adjudicating upon the dispute about seniority ?

[iv] Whether power of Education Officer or Deputy Director of Education under Rule 3(6) of the Rules is inconsistent with the powers of School Tribunal under Section 9(1)(b) of the MEPS Act or not and if so, whether Section 9(1)(b) of the MEPS Act will prevail ?

2. The learned Full Bench has delivered a judgment on 03.03.2023 and the above reproduced 4 issues have been answered in paragraph Nos.26 and 27, as under :-

"26. Hence we answer the points of reference as under :-

Point No.(i) : *Whether the Deputy Director of Education could have recalled the earlier order of approval granted by the Education Officer on the ground that the Teacher, whose approval was already granted, was not the senior most Teacher or not ?*

Answer : *Since the respondent No.5 was aggrieved by the appointment of the petitioner as Headmaster, the only remedy available to him was to prefer an appeal under section 9(1)(b) of the MEPS Act and the DDE could not have recalled the earlier order of approval granted by the*

Education Officer to the petitioner's appointment.

Point no.(ii) : *Whether the issue of seniority, including issue of qualification having bearing on seniority, if raised by the aggrieved Teacher or an employee, could have been decided only by the School Tribunal in the appeal filed by such person impugning the order of supersession or promotion, under Section 9(1) of the MEPS Act read with Rules ?*

Answer : Yes.

Point No.(iii) : *Whether the Education Officer or the Deputy Director of Education has power to direct the management to cancel the appointment of an employee if found having been appointed without following the due procedure laid down in Rule 3 by adjudicating upon the dispute about seniority ?*

Answer : Yes.

27. *Point No.(iv) Whether power of Education Officer or Deputy Director of Education under Rule 3(6) of the Rules is inconsistent with the powers of School Tribunal under Section 9(1)(b) of the MEPS Act or not and if so, whether Section 9(1)(b) of the MEPS Act will prevail ?*

Answer : *There is no inconsistency in rule 3(6) of the Rules and Section 9(1)(b) of the MEPS Act. The powers under rule 3(6) of the Rules can be exercised by the Education Officer or the DDE independently but not at the instance of an employee who can prefer an appeal under section 9(1)(b) of the MEPS Act."*

3. We have heard the learned Advocates for the respective sides in the light of the above and the facts of the case, which have

been extensively adverted to in our order dated 06.04.2022. There is no dispute that Respondent No.5 approached the Deputy Director of Education raising a grievance as regards the seniority *interse* between the Petitioner and Respondent No.5 and the appointment of the Petitioner as the Head Master.

4. Precisely, this issue has been answered by the learned Full Bench while dealing with issue No.4 and which is set out in Paragraph No.27 reproduced above. It is thus ruled that though Rule 3(6) of the rules may empower the Education Officer or the Deputy Director of Education, independently, to consider as to whether the seniority has been strictly followed, such powers cannot be exercised on an application/complaint of an aggrieved Party, who claims to have suffered the formalization of the seniority and has also suffered supersession. Once the Seniority Committee of an employee is disturbed and that leads to his supersession, the remedy available to him would be u/s 9 (1)(b) of the MEPS Act, 1977.

5. The learned Advocate for Respondent No.5 / Original Complainant submits on instructions that he may be granted liberty to

approach the School Tribunal for challenging his supersession and the time spent by him in litigation on account of he approaching the Deputy Director, Education and the time spent in this Court from 03.03.2022 till the passing of this order, may be considered as a good ground for condonation of delay.

6. In view of the above, this petition is partly allowed. The impugned order dated 03.01.2022 and 18.02.2022, passed by the Deputy Director (Education), are quashed and set aside. Keeping in view the conclusions drawn by the Full Bench in paragraph No.27 reproduced above, Respondent No.5 would be at liberty to approach the School Tribunal. The time spent by him before the Deputy Director (Education) and in this Court, till the passing of this order, would be considered as a good ground for condonation of delay, provided Respondent No.5 prefers an appeal within 30 days from today.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)