

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1221 OF 2022

1. Sahakar Vidya Prasarak Mandal

C/o. Sahakar Vidya Prasarak

Mandal's Secondary School,

Old Mumbai-Pune Road,

Kalwa, Dist. Thane,

Through its President/Secretary.

2. Sahakar Vidya Prasarak

Mandal's Secondary School,

Old Mumbai-Pune Road,

Kalwa, Dist. Thane,

Through its Head Master.

3. Tanaji S. Birambole,

Age- 57 Years, Occ. Head Master,

Sahakar Vidya Prasarak Mandal's

Secondary School,

Old Mumbai-Pune Road,

Kalwa, Dist. Thane.

4. Ramdas H. Sonar,

Age-Adult, Occ.-Retired as Supervisor,
Sahakar Vidya Prasarak Mandal's
Secondary School,
Old Mumbai-Pune Road,
Kalwa, Dist. Thane.

5. Smt. Rema H. Gavit,

Age-Adult, Occ-Assistant Teacher,
Sahakar Vidya Prasarak Mandal's
Secondary School,
Old Mumbai-Pune Road,
Kalwa, Dist. Thane.

.... PETITIONERS.

VERSUS

1. Dinesh Karbhari Kute,

Age-55 Years, Occ. Service
R/o- 12, S.P. Society,
Station Road, Near Sahakar Bazar,
Kalwa, Thane- 400 605.

2. The Education Officer,

[Secondary], Zilla Parishad, Thane.

....RESPONDENTS

Mr. N.V. Bandiwadekar, Senior Counsel i/b Mrs. A.N. Bandiwadekar, for Petitioners.

Mrs. Anupama B. Shah, for Respondent No. 1.

Mr. S.D. Rayrikar, AGP for State- Respondent No. 2.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 28th MARCH, 2023

PRONOUNCED ON:- 11th APRIL, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2) The challenge in this Petition is to a judgment and order dated 21st December, 2021, passed by the learned Presiding Officer Additional School Tribunal, Navi Mumbai in Appeal No. 12 of 2020, whereby the Appeal preferred by the respondent No. 1 came to be allowed and the petitioner No. 1 was directed to appoint the respondent No. 1 as a Supervisor in the petitioner No. 2- School with effect from 1st September, 2019, in the place of petitioner No. 4.

3) Shorn of unnecessary details, the background facts leading to this Petition can be stated as under:-

(a) Sahakar Vidya Prasarak Mandal, the petitioner No. 1 is a Trust registered under Maharashtra Public Trusts Act, 1950. The petitioner No. 1 runs Sahakar Vidya Prasarak Mandal's Secondary School at Kalwa, Dist. Thane, the petitioner No. 2, a Government recognized Secondary School.

(b) The respondent No. 1 was appointed as an Assistant Teacher in the petitioner No. 2- School on 26th August, 1987. The respondent No. 1 then had S.C.C., D.Ed. qualification. The petitioner No. 3 was appointed as an Assistant Teacher on 11th June, 1990. The petitioner No. 3 was then having qualification of B.A, B.Ed. The petitioner No. 3, thus, entered Category "C" under the guidelines for fixation of seniority of teachers in the Secondary Schools (Schedule 'F') appended to the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 ("the Rules, 1981"). The petitioner No. 4, who was having the qualification of B.SC. B.Ed and was appointed as Trained Graduate Teacher on 19th June, 1991. The petitioner No. 4 was also placed in Category "C" on the date of appointment. The petitioner No. 5, who was B.A. B.Ed joined the petitioner No. 2- School as an Assistant Teacher on 14th June, 1993, and was also placed in Category "C".

(c) In contrast, the respondent No. 1 acquired the qualification of B.A. in 1990 and B.Ed in April, 1996, and thereby became a Trained Graduate Teacher and thus entered Category “C” in the year 1996. Upto that point the respondent No. 1 was, according to the petitioners, in Category “D” comprising of Trained Undergraduate Teachers.

4) The above being the position, according to petitioners, the petitioner Nos. 3 to 5 were shown senior to the respondent No. 1 in the seniority list maintained by the petitioner No. 1.

5) On 1st June, 2015, Mr. Pravin Patil, who was appointed as an Assistant Teacher on 12th June, 1989, with qualification of B.A., B.Ed on the date of appointment itself, came to be promoted as Supervisor. Respondent No. 1 filed an Appeal being Appeal No. 56 of 2015, assailing the order of promotion of Mr. Patil, before the learned Presiding Officer, Additional School Tribunal claiming seniority over Mr. Patil on the ground he was appointed as an Assistant Teacher much prior to Mr. Patil i.e. on 15th June, 1987.

6) By a judgment and order dated 24th June, 2016, the learned Presiding Officer, Additional School Tribunal dismissed the Appeal recording a categorical finding that Mr. Patil was

senior to respondent No. 1 as he entered Category “C” on the date of appointment itself, whereas the respondent No. 1 was rightly placed in Category “D” of Schedule ‘F’. The said order attained finality.

7) On 1st September, 2019, the petitioner No. 3, who was then working as a Supervisor came to be promoted to the post of Head Master. Whereas the petitioner No. 4, who was next in the line of seniority, was promoted to the post of Supervisor. Education Officer - respondent No. 2 gave approval to the promotions.

8) Respondent No. 1 preferred an Appeal being Appeal No. 12 of 2020, before the School Tribunal asserting, *inter alia*, that he had acquired qualification of B.A. prior in point of time to the appointment of petitioner Nos. 3 and 4 and, therefore, was senior to petitioner Nos. 3 and 4. The Appeal was resisted by the petitioners as well as respondent No. 2- Education Officer.

9) By the impugned order dated 21st December, 2021, the learned Presiding Officer School Tribunal was persuaded to partly allow the Appeal. The learned Presiding Officer School Tribunal quashed and set aside the order dated 1st September, 2019, promoting petitioner No.4 to the post of Supervisor. The

School Tribunal further directed that the respondent No. 1 be appointed as a Supervisor in place of petitioner No. 4 with effect from 1st September, 2019.

10) Being aggrieved the Management and petitioner Nos. 3 to 5, the affected parties, have invoked the writ jurisdiction of this Court.

11) I have heard Mr. Bandiwadekar, the learned Senior Counsel for the petitioners, Mrs. Anupama B. Shah, the learned Counsel for the respondent No. 1 and Mr. Rayrikar, the learned AGP for respondent No. 2.

12) The learned Counsel took the Court through the pleadings before the School Tribunal, impugned order, the order passed in Appeal No. 56 of 2015 and the material on record.

13) Mr. Bandiwadekar submitted that the impugned order is *ex facie* infirm. The learned Presiding Officer School Tribunal, on the one hand, recorded a clear and categorical finding that the petitioner No. 3 was senior to respondent No. 1 and, yet, in the operative portion even the promotion order in respect of petitioner No. 3 was quashed and set aside. The final order thus runs contrary to the findings recorded in the impugned order.

14) Secondly, the learned Presiding Officer School Tribunal committed a manifest error in recording a finding that a judgment and order in Appeal No. 56 of 2015, wherein a categorical finding was recorded that the respondent No. 1 became a Trained Graduate Teacher eligible to be placed in Category “C” in the year 1996 only, does not bind the Tribunal. Since the respondent No. 1 had not challenged the judgment and order in Appeal No. 56 of 2015, it was not open to the respondent No. 1 to again assail the order of promotion of petitioner Nos. 3 and 4 on the very same ground. In any event, the said finding, if not as *res judicata*, operated as a bar on the principles analogous to *res judicata*.

15) Thirdly, the learned Presiding Officer, School Tribunal, according to Mr. Bandiwadekar, constructed a totally new case that D.Ed (2 years course) was equivalent to Dip.T.(old two years course) in the third entry of Category “C”, which was never pleaded by the respondent No. 1.

16) Mr. Bandiwadekar would urge that the aforesaid view of the learned Presiding Officer School Tribunal is otherwise also erroneous. Since the respondent No.1 acquired B.Ed qualification in the year 1996, he could not have been granted

seniority over that of petitioner No. 4, who was appointed as an Assistant Teacher on 19th June, 1991. The impugned judgment and order, therefore, deserves to be interfered with, submitted Mr. Bandiwadekar.

17) Per contra, Mrs. Shah, stoutly submitted that none of the grounds sought to be urged on behalf of the petitioners are worthy of countenance. Inviting the attention of the Court to provisions contained in Note 2 in Schedule 'F' which provides that D.Ed (2 years course) shall be considered as qualification for the purpose of seniority, Mrs. Shah urged that once the respondent No. 1 acquired B.A. qualification in the year 1990, he entered third entry in Category "C". Since petitioner No. 4 was appointed in the year 1991, the learned Presiding Officer School Tribunal committed no error in holding that the respondent No. 1 was senior to petitioner No. 4.

18) The ground of the judgment in Appeal No. 56 of 2015 operating as a bar to the prosecution of the instant Appeal was stated to be equally untenable. Ms. Shah would further urge that apart from respondent No. 1, Smt. Ghag had assailed the very same order of promotion of Mr. Patil in Appeal No. 57 of 2015. Whilst the Appeal preferred by respondent No. 1 i.e. Appeal No. 56 of 2015 was dismissed, that of Ms. Ghag was

allowed and the said order came to be confirmed upto the Supreme Court. Therefore, since the order of Mr. Patil was set aside in another Appeal by a co-employee, the respondent No. 1 had not challenged the judgment and order in Appeal No. 56 of 2015. Thus it can not be urged that the said judgment and order attained finality.

19) Ms. Shah further urged that the case of the respondent No. 1 was covered by the third entry of Category “C” as the respondent No. 1 had acquired qualification of D.Ed (two years course) at the date of the appointment. Therefore, no interference is warranted in the impugned judgment and order.

20) I have given anxious consideration to the rival submissions. Evidently, the controversy between the parties revolves around the date at which the respondent No.1 got entered into the third entry in Category “C” of Schedule ‘F’.

21) To appreciate the controversy in a correct perspective, it may be advantageous to note the relevant dates of initial appointment, acquisition of qualification and entry into the respective categories and the position of the contesting parties in the seniority list. The learned Presiding Officer School Tribunal has culled out the information in a tabular form below

paragraph No.13.4. The said table is extracted below with necessary additions. The parties in the table are referred to in the capacity in which they were arrayed before the School Tribunal. It reads as under:-

Sr. No.	Parties	Degree	The Date of Appointment	The Date of Entry in C category	Sr. No in the List
1.	The Appellant (Respondent No.1)	SCC (1982) D.Ed.(1986) B.Ed. (1996)	15/06/1987 (As Assistant Teacher)	1996	8
2.	Respondent No. 3 (Petitioner No.3)	B.A. B.Ed.(March 1988)	11/06/1990 (As Assistant Teacher) 1st September 2019 (As Head Master)	11/06/1990	4
3.	Respondent No. 4 (Petitioner No.4)	B.Sc. (April 1987) B.Ed (May 1991)	19/06/1991 (As Assistant Teacher) 1st September, 2019 (As Supervisor)	19/06/1991	5
4.	Respondent No. 5 (Petitioner No.5)	B.A. (Oct.1990) B.Ed. (April 1992)	14th June, 1993 (As Assistant Teacher)	14th June, 1993	6
Impugned Promotion order dt.01/09/2019 promoting Respondent No. 3 as HM and Respondent No. 4 as a Supervisor					

(Italicized portion added by this Court)

22) In the light of the aforesaid factual position, it may be apposite to consider the governing provisions of the Rules, 1981. Under Rule 2 (1) (j), “trained graduate” means a person possessing qualifications mentioned in Sub-Section (i) to (vi) of Clause (1) of Item II in the Schedule “B”. Rule 6 (1) provides that the minimum qualifications for the posts of teachers and the non-teaching staff in the primary schools, secondary schools, higher secondary schools, junior colleges and junior colleges of education shall be as specified in Schedule “B”. Item II of Schedule “B” provides qualification for trained Teachers in Secondary Schools and Junior Colleges of Education. Clause (i) provides qualification for graduate teachers and Clause (ii) for under graduate teachers.

23) In the case at hand, it is indisputable that the petitioner No. 2 is a Secondary School. There is not much controversy over the fact that the respondent No. 1 was holding S.C.C., D.Ed qualification at the date of his initial appointment i.e. 15th June, 1987. The learned Presiding Officer School Tribunal has recorded a finding that the respondent No. 1 has acquired B.A degree on 18th August, 1990. The said finding is not seriously

contested. In the backdrop of these facts, the question of seniority warrants determination.

24) At this juncture, of necessity, recourse to the provisions contained in the Rules in the matter of determination of *inter se* seniority becomes necessary. Rule 12 mandates that every management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non teaching staff in the School in accordance with the guidelines laid down in Schedule “F”.

25) Guideline ‘2’ contained in Schedule “F” with which we are primarily concerned in the case at hand, reads as under:-

“2. Guidelines for fixation of seniority of teachers in the secondary schools Junior Colleges of Education and Junior College classes attached to secondary schools and Senior Colleges. -

For the purpose of fixation of seniority of teachers in the secondary schools. Junior Colleges of Education and Junior College classes attached to Secondary Schools the teachers should be categorised as follows :

Category A:-.....

Category B:-.....

Category C:- Holders of -

M. A. /M. Sc./M. Com., B.T./B. Ed., or its equivalent;
or

B. A./B. Sc./B. Com., B. T./B. Ed., or its equivalent;
or

B. A./B. Sc./B. Com. Dip. T. (old two years course); or

[B. A./B. Sc./B. Com., S. T. C. /Dip. Ed./Dip. T. (one year course) with 10 years post-S. T. C. etc. service.

²[B. A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service ³[after obtaining both academic and training qualifications.]]

Category D :

Category E :

Category F : Untrained Graduates or holders of equivalent qualification.

Category G :

Category H :

Note 1 : For the purpose of categories C, D, and E teachers with S. T. C., T. D., Jr. P. T. C. Dip, T., Dip. Ed. (post S.S.C. one year course) qualifications appointed on or after 1st October 1970 shall be considered as untrained and their seniority shall be fixed in the 'F' or 'G' category of untrained teachers as the case may be.

Note 2 : The following training qualifications which can be secured two years after S.S.C. Examination shall be considered as training qualification for the purpose of seniority even after 1st October 1970 -

(1) D. Ed. (2 years).

(2) T. D. (Bombay University).

(3) Dip. Ed. (Nagpur University).

Note 3 : In the case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior.

Note 4 : The categories mentioned above represent the ladder of seniority and have been mentioned in descending order.....”

26) The controversy between the parties revolves around the question as to whether the respondent No. 1's case, for the purpose of seniority, would fall within the third entry or the fourth entry after he acquired the qualification of B.A in the month of August, 1990. In the opinion of the learned Presiding Officer School Tribunal since the respondent No. 1 had S.C.C., D.Ed (two years course), the respondent No. 1 entered the third entry after he acquired the qualification of B.A. in August, 1990, and, therefore, the petitioner No. 4, who was appointed as an Assistant Teacher in the year 1991, was junior to respondent No. 1.

27) Mr. Bandiwadekar strenuously submitted the aforesaid approach of the learned Presiding Officer School Tribunal is incorrect. It was nobodies case that Dip.T (old two years course) was equivalent to D.Ed (two years course). Mr. Bandiwadekar further submitted that the learned Presiding Officer School Tribunal also lost sight of the fact that in first two entries of category "C" the expression, "or its equivalent" has been used and which is conspicuous by its absence in the third entry. Thus the learned School Tribunal committed a manifest error in

equating D.Ed. (two years course) with Dip.T (old two years course) .

28) The guidelines contained in Schedule “F” are required to be read as whole. Construing the entries in a particular category in isolation may lead to anomalous consequences. The Notes appended bill the categories further elucidate the intent of the entries in the guidelines. The contrast between Note 1 and Note 2 is unmistakable. Note 1 declares that for the purpose of category C, D and E teachers with S.T.C., T.D., Jr. P.T.C Dip., T., Dip. Ed. (post S.S.C. one year course) qualifications appointed on or after 1st October, 1970 shall be considered as untrained and their seniority shall be fixed in the “F” or “G” category of untrained teachers, as the case may be. In contrast under Note 2, the training qualification of, (1)- D.Ed. (two years course), (2)- T.D. (Bombay University) and (3)-Dip. Ed. (Nagpur University), which can be secured two years after S.C.C. examination, shall be considered as training qualification for the purpose of seniority even after 1st October, 1970.

29) A conjoint reading of Notes 1 and 2 would indicate that the training qualifications described under Note 2 constitute a class by themselves and are required be reckoned for the

purpose of seniority even if they are acquired post 1st October, 1970. Secondly, such interpretation is required to be given which gives play to operate both Note 1 and Note 2.

30) This position becomes more clear if the training qualifications subsumed in the third entry are considered. It contains the qualification B.A / B.Sc. / B.Com. Dip.T (old two years course) whereas the forth entry contains post graduate training qualifications of S.T.C./Dip.Ed./Dip.T. (One year course). Again the distinction between two years training qualification course and one year course is maintained and treated differently by putting those qualifications in the succeeding entries. Note 4, thus, ordains that the categories mentioned under guideline 2 represent the ladder of seniority and have been mentioned in descending order.

31) If the entries within Category “C” are considered in juxtaposition with Note 1 and 2, the view taken by the learned Presiding Officer School Tribunal that after acquisition of B.A qualification, the respondent No. 2, with two years D.Ed. Course, catapulted himself to the third entry in Category “C” from Category “F” (of untrained graduate teachers) becomes

justifiable. Any other view would render D.Ed. (two years course) not covered by any of the entries in Category “C”.

32) The absence of the expression, “or its equivalent” in third entry in Category “C”, pressed into service by Mr. Bandiwadekar, in my view, is not of determinative significance. Note 2 removes the ambiguity. It expressly provides that the three specified training qualifications including D.Ed. (two years course) shall be considered as training qualifications for the purpose of seniority even after 1st October, 1970. Omission of these three qualifications in Note 1 which subsumes in its fold all the training qualifications (post S.C.C. 1 year course) also indicates that they were to be treated at a higher pedestal. I am therefore persuaded to hold that the learned Presiding Officer School Tribunal was justified in reckoning the case of respondent No. 1 as falling within the ambit of the third entry.

33) The submission of Mr. Bandiwadekar that operative order runs contrary to the findings recorded by learned School Tribunal, does not carry the matter any further as it is, at best, a case of unrefined articulation. While setting aside the order of promotion dated 1st September, 2019, whereby the petitioner No. 3 was promoted as the Head Master and petitioner No. 4 as the

Supervisor, the learned Presiding Officer took care to clarify that the said order is set aside only to the extent of appointment of petitioner No. 4 as the Supervisor. The operative order could have been worded in a more refined manner. However, that does not detract materially from the merits of the findings and ultimate order passed by the learned Presiding Officer School Tribunal.

34) This takes me to the challenge to the impugned order based on the order in Appeal No. 56 of 2015 on the count that it operated as a bar. The learned Presiding Officer School Tribunal was of the view that the Tribunal was not bound by its own findings though they may have persuasive value.

35) Mr. Bandiwadekar would submit that the aforesaid approach is in teeth of the provisions contained in Section 12 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977, under which finality is given to the decision of the Tribunal. Section 12 provides that notwithstanding anything contained in any law or contract for the time being in force, the decision of the Tribunal on an appeal entertained and disposed of by it shall be final and binding on the employee and the Management and no suit, appeal or other legal proceeding shall lie in any Court, or before

any other Tribunal or authority, in respect of the matters decided by the Tribunal. At the first blush the submission of Mr. Bandiwadekar, in the context of the provisions contained in Section 12, which incorporates a non-obstante clause appears to be attractive. However, on close scrutiny the challenge does not pass judicial muster.

36) First and foremost, in Appeal No. 56 of 2015 the contest was between the respondent No. 1 and Mr. Patil. In a dispute of *inter se* seniority, the questions that arise for consideration are essentially qua relative position of the contesting parties.

37) I have perused the judgment in Appeal No. 56 of 2015. The learned Presiding Officer School Tribunal in that case, had found that on the date of appointment i.e on 12th June, 1989 itself, Mr. Patil was a trained graduate teacher, with qualification of B.A., B.Ed. Indisputably on the date Mr. Patil was appointed, respondent No. 1 had not yet acquired B.A. qualification. The contest between respondent No. 1 and Mr. Patil thus stood resolved with the very finding that on 12th June, 1989 itself, Mr. Patil entered Category “C”. Respondent No. 1 was in Category “F” at that point of time.

38) The learned Presiding Officer School Tribunal, however, went on to record a finding that the Appellant therein-respondent No. 1 herein entered Category “C” after he acquired requisite qualification in the year 1996. Such an observation without the School tribunal having been called upon to delve into the question as to when the respondent No. 1 entered Category “C”, can not be construed as a bar to agitate the said issue in a different proceeding where the seniority of other co-employees is questioned.

39) I am thus persuaded to hold that finding in the order in Appeal No. 56 of 2015 did not operate as a bar to consider and determine the issue of seniority raised by the respondent No. 1.

40) The upshot of aforesaid consideration is that the impugned judgment does not warrant interference in exercise of extraordinary writ jurisdiction. The Petition, therefore, deserves to be dismissed.

Hence, the following order.

:-ORDER:-

- (i)** The petition stands dismissed with costs.
- (ii)** Rule discharged.

[N. J. JAMADAR, J.]

41) At this stage, Mr. Bandiwadekar, learned senior advocate for the petitioners seeks stay to the execution and operation of this order.

42) Since this Court has interpreted the import of the provisions of Schedule- "F" of the Rules, 1981, the execution and operation of this order is stayed for a period of four weeks.

(N. J. JAMADAR, J.)