

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

SANTOSH
SUBHASH
KULKARNI

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WRIT PETITION NO. 5058 OF 2022

- 1 The Chairman/President/Secretary
The General Education Society, Having
office at : Dadar, Mumbai – 28
- 2 The Head Master/Principal G.E.I. New
English School and Junior College, Joshi
Baug, Kalyan (W)

...Petitioners

Versus

- 1 Mrs. Jyostna Anil Surve
Age : 54 years, Occu. Service
R/at B-2/6, Runwal Nagar, B Plot, Kolbad,
Near Pratap Cinema, Thane (W) – 400 601
- 2 The Deputy Director of Education,
Jawhar Bal Bhavan, Charni Road,
Mumbai – 400 004
- 3 The Education Officer (Sec),
Education Department Zilla Parishad,
Thane

...Respondents

Mr. A. A. Garge, a/w Kashyap Bhalerao, for the Petitioners.
Ms. Pranita Pramod Hingmire, for Respondent No.1.
Mr. A. P. Vanarse, AGP for the State/Respondent Nos.2 and 3.

CORAM: N. J. JAMADAR, J.

DATED : 10th MARCH, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties heard finally.
2. The challenge in this petition is to an order dated 3rd March, 2022, passed by the Presiding Officer, Additional School

Tribunal, Navi Mumbai, on an application (Exhibit-11) preferred by the petitioner in Appeal No.15 of 2021, whereby the petitioner sought reference of the purported *inter se* seniority dispute, to the Education Officer/Deputy Education Officer in accordance with the provisions contained in Rule 12(3) of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 (“the MEPS Rules”).

3. The background facts necessary for the determination of this petition can be stated in brief as under:

(a) The General Education Society, petitioner No.1, runs, *inter alia*, G. E. I. New High School and Junior College at Joshi Baug, Kalyan (W). Petitioner No.2 is the Principal of the said College. Respondent No.1 was initially appointed as an Assistant Teacher on 11th January, 1993. On 1st January, 2020, respondent No.1, being senior most Assistant Teacher, was promoted as the Vice Principal of Junior College.

(b) Vide communication dated 30th August, 2021, petitioner No.1 reverted respondent No.1 to the post of Assistant Teacher on the strength of a decision taken in the meeting of the Board of Directors of petitioner No.1 held on 27th August, 2021. It was, *inter alia*, recorded that her seniority ought to have been considered from 11th January, 1993, instead of 1st August, 1997

and thus reckoned, there were other Assistant Teachers, who were senior in service to respondent No.1.

(c) Being aggrieved, respondent No.1 preferred an appeal before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 ("The MEPS Act").

(d) The petitioners entered appearance. Petitioner No.1 preferred an application (Exhibit-11) assailing the tenability of the appeal on the ground that there was no reduction in rank, as such, and the dispute was essentially regarding *inter se* seniority amongst the Assistant Teachers. In view of the provisions contained in Rule 12 of the MEPS Rules, the said issue was within the province of the authority of Education Officer. Therefore, petitioner No.1 prayed for dismissal of the appeal and reference of the dispute to the Education Officer.

(e) By the impugned order, the learned Presiding Officer, School Tribunal, was persuaded to reject the application holding that petitioner No.1 – Management had not finalized the seniority list in accordance with the mandate contained in Rule 12(1) of the MEPS Rules. Resultantly, it cannot be said that there was a dispute as to *inter se* seniority simplicitor. The Presiding Officer thus directed the filing of reply by the

petitioners and determination of the appeal, thereafter, in an expeditious manner.

4. Being aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

5. Mr. Garge, the learned Counsel for the petitioners, submitted that the Presiding Officer was clearly in error in rejecting the application. Inviting the attention of the Court to the communication impugned before the School Tribunal and the letter dated 1st September, 2021 (Exhibit-H), whereby the said decision was accepted by respondent No.1, albeit under protest, and the seniority list of the Assistant Teachers prepared by petitioner No.1, it was strenuously submitted that petitioner No.1 had merely corrected an inadvertent mistake as there were other Assistant Teachers, who were senior in service to respondent No.1. In any event, according to Mr. Garge, Vice Principal is not a designated promotional post. Therefore, there was no reduction in rank, in the strict sense of the term.

6. Mr. Garge would further urge that as the Assistant Teacher was designated as a Vice Principal by the sheer force of seniority, having noticed that there was an error in reckoning the seniority of respondent No.1 viz-a-viz other Assistant Teachers, petitioner No.1 was fully justified in revoking the order

of appointment of respondent No.1 as the Vice Principal. Mr. Garge would thus urge that the dispute is about *inter se* seniority pure and simple. Inviting the attention of the Court to the provisions contained in Rule 12(3) which warrant reference of the dispute in the matter of *inter se* seniority to the Education Officer, Mr. Garge would urge that the petition deserves to be allowed.

7. Rule 12 of the MEPS Rules reads as under:

“12. Seniority List

(1) 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”. The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of *inter se* seniority shall be referred to the Education Officer for his decision.”

8. Ms. Hingmire, the learned Counsel for respondent No.1, laying emphasis on Sub-Rule (1) of Rule 12 stoutly submitted that the question of reference of the dispute to the Education Officer about *inter se* seniority under Sub-Rule (3) would arise only after the management adheres to the mandate contained in

Sub-Rule (1) in the matter of fixing the seniority. In the case at hand, petitioner No.1 Management nowhere claims that seniority was fixed in the manner ordained by Sub-Rule (1) of Rule 12. Without fixing the seniority and providing an opportunity of raising objection to the provisional seniority, respondent No.1 was unjustifiably divested of the office of the Vice Principal. The learned Presiding Officer, School Tribunal, was thus justified in rejecting the application.

9. Mr. Garge could not dispute the fact that the seniority list, on which reliance was sought to be placed on behalf of the petitioners, had not been circulated amongst members of the staff concerned. Nor objection thereto considered and determined by the Management. However, according to Mr. Garge, the issue can be resolved by giving time to the petitioners to circulate the seniority list, invite the objection and, thereafter, determine the seniority.

10. I am afraid the aforesaid course can be resorted to, at this juncture. Implicit in the aforesaid submission is non-compliance of the provisions contained in Sub-Rules (1) and (2) of Rule 12. In the circumstances, the question as to whether the impugned action of divesting respondent No.1 of the office of Vice Principal, on which the respondent No.1 admittedly worked

pursuant to the promotion order, constitutes reduction in rank, is required to be determined by the School Tribunal. Thus, no fault can be found with the impugned order declining to make a reference of the dispute to the Education Officer.

11. Mr. Garge next attempted to assail the tenability of the appeal before the School Tribunal on the count of non-joinder of a necessary party. It would suffice to observe that all issues would be open for consideration by the School Tribunal.

12. Resultantly, the petition deserves to be dismissed.

13. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to costs.

[N. J. JAMADAR, J.]