

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE CIVIL JURISDICTION  
WRIT PETITION NO.6904 OF 2022**

Laxman Kashinath Mule ...Petitioner

**Vs.**

The Chairman/Secretary, mahatma ...Respondents  
Phule Vidyaniketan Sanstha and  
Another

Mr. Satish Raut, for Petitioner.

Mr. S.D. Rayrikar, AGP, for Respondent No. 5-State.

Ms. Manjiri Parasnis, for Respondent No. 6.

**CORAM:- N. J. JAMADAR, J.**

**RESERVED ON:- 23<sup>rd</sup> MARCH, 2023**

**PRONOUNCED ON:- 3<sup>rd</sup> APRIL, 2023**

**JUDGMENT:-**

- 1) Rule. Rule made returnable forthwith and heard finally.
- 2) This Petition assails the legality, propriety and correctness of the judgment and order passed by the learned Presiding Officer, School Tribunal, Pune dated 6<sup>th</sup> April, 2022, in Appeal No.29 of 2021, whereby the Appeal preferred by the respondent No. 6, came to be allowed and

the order of promotion of the petitioner-respondent No. 6 therein, to the post of Head Master dated 1<sup>st</sup> January, 2021, came to be quashed and set aside with a direction to respondent No.1-Society to promote respondent No.6 herein to the post of Head Mistress in respondent No. 3 - School with effect from 1<sup>st</sup> January, 2021, with backwages and continuity of service and all consequential benefits.

**3)** The Petition arises in the backdrop of the following facts:-

**(a)** Respondent No.1 - Mahatma Phule Vidyaniketan Sanstha is a Public Charitable Trust registered under Maharashtra Public Trust Act, 1950. It runs various pre-primary, primary and secondary schools. Dnyanprobdhini Prathmik Vidyamandir – respondent No. 3 is one of the schools run by respondent No. 1. Petitioner was appointed as an Assistant Teacher in respondent No. 3- School on 1<sup>st</sup> June, 1993. Education Officer, Zila Parishad, Pune–respondent No. 5 gave approval to the appointment of the petitioner to the post of Assistant Teacher, vide letter dated 10<sup>th</sup> June, 1994, with effect from June, 1993. Respondent

No. 6 was also appointed as Assistant Teacher in the said school on 1<sup>st</sup> June, 1993.

(b) The petitioner claims that till the year 2017, in the seniority list of the Assistant Teachers maintained at respondent No. 3 – School, the petitioner was shown senior to respondent No. 6. The petitioner being placed at Sr. No. 3 and respondent No. 6 at Sr. No. 4. Respondent No. 6 never challenged the said seniority list till the year 2020.

(c) On 1<sup>st</sup> February, 2018, Mrs. Meghna M. Patki, who was working as a Head Mistress, retired. In breach of the rules, respondent No. 1 made changes in the seniority list for the year 2018-2019. Respondent No. 6 was shown at Sr. No. 4 and petitioner at Sr. No. 5. Taking umbrage, the petitioner raised an objection to the seniority list. Yet, the respondent No. 1 promoted respondent No. 6 to the post of Head Mistress and forwarded the proposal for approval to Administrative Officer Primary Education Department, Pune Municipal Corporation – respondent No. 4. The petitioner raised an objection before the respondent No. 4

about the promotion as well as seniority list for the year 2018-2019.

(d) Vide communication dated 22<sup>nd</sup> November, 2019, respondent No. 4 rejected the proposal for approval to the appointment of respondent No. 6 to the post of Head Mistress pointing out that in accordance with the Rule 12 of Maharashtra Employee of Private Schools (Conditions of Services) Regulation Rules, 1981 ("the Rules, 1981"), where the date of appointment is same, an employee who is senior by age, shall be considered senior in service. Petitioner asserts the said order attained finality.

(e) Thereupon, respondent No. 1 by an order dated 19<sup>th</sup> December, 2019, reduced respondent No.6 from the post of Head Mistress to Assistant Teacher at respondent No. 3-School. Respondent No. 1, thereafter promoted petitioner to the post of Head Mistress vide order dated 1<sup>st</sup> January, 2021. Respondent No. 4 granted approval to the promotion of the petitioner to the post of Head Mistress by communication dated 11<sup>th</sup> February, 2021.

(f) Respondent No. 6 challenged the order dated 1<sup>st</sup> January, 2021, promoting the petitioner to the post of Head Mistress by preferring an Appeal No.29 of 2021. Petitioner as well as respondent Nos. 1 to 3 filed reply in the said Appeal. After appraisal of the material and hearing the parties, the learned Presiding Officer, School Tribunal by the impugned order was persuaded to allow the Appeal preferred by respondent No. 6 and set aside the order of petitioner's promotion dated 1<sup>st</sup> January, 2021.

4) The learned Presiding Officer was of the view that in seniority list in the year 2018-2019, respondent No. 6 was shown senior to the petitioner. Respondent No. 6 was in fact promoted to the post of Head Mistress. However, upon an objection being raised by the petitioner, respondent No. 4 vide communication dated 22<sup>nd</sup> November, 2019, rejected the approval.

5) In the opinion of the learned Presiding Officer, School Tribunal, the respondent No. 4 had not decided the issue of seniority and had left the issue to be decided by the Management. The fact that initial date of appointment of

the respondent No. 6 was 1<sup>st</sup> June, 1993 and that of the petitioner 1<sup>st</sup> June, 1993, also weighed with the School Tribunal. Holding that the respondent No. 4 has not correctly decided the issue of seniority, the learned Presiding Officer set aside the order of promotion of the petitioner and directed the Management to promote respondent No. 6 to the post of Head Mistress.

6) Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

7) I have heard Mr. Raut, the learned Counsel for the petitioner, Ms. Manjiri Parasnis, the learned Counsel for the respondent No. 6 and Mr. S.D. Rayrikar, the learned AGP for respondent No. 5 – State.

8) The learned Counsel took the Court through the material on record including the seniority list and the impugned order passed by the School Tribunal.

9) Mr. Raut submitted that the learned Presiding Officer, School Tribunal completely misconstrued the nature of the controversy and the governing principles of law. According to Mr. Raut, the learned Presiding Officer, School Tribunal

failed to appreciate that in accordance with the provisions contained in the Rules, 1981, the Education Officer was the Competent Authority to decide any dispute as to *inter se* seniority. In the case at hand, since the Education Officer had ruled in favour of the petitioner and the said decision was never called in question, the School Tribunal could not have ventured into the said aspect and interfered with the order of promotion, urged Mr. Raut.

10) Mr. Raut laid emphasis on the fact that in the approved seniority list as of 13<sup>th</sup> May, 2017, the petitioner was shown senior to respondent No. 6. No dispute was ever raised about seniority. When the post of Head Mistress of respondent No. 3 – School became vacant, and an occasion arose to promote an Assistant Teacher in the year 2018-2019, the seniority list was unlawfully tinkered with and the respondent No. 6 was shown senior to the petitioner for no rhyme or reason. Mr. Raut urged with tenacity that to the said seniority list, the petitioner had raised objection by making an endorsement, “not acceptable”, as is evident

from the copy of the seniority list (Exhibit-D) to the Petition.

11) Mr. Raut further submitted that the Administrative Officer – respondent No. 4 upon an objection being raised by the petitioner ruled on 22<sup>nd</sup> November, 2019, that the seniority ought to be determined in accordance with Rule 12 of the Seniority Rules. Approval was accordingly declined. Ignoring all these facts, according to Mr. Raut, the learned Presiding Officer, School Tribunal erroneously observed that the fact that the respondent No. 6 was shown senior to the petitioner in the seniority list in the year 2018-2019, was admitted. Therefore, the impugned order warrants interference.

12) Per contra, Ms. Parasnis submitted that School Tribunal had correctly appreciated the issue of seniority and no interference is warranted in exercise of writ jurisdiction. It was urged that the respondent No. 6 was in fact appointed with respondent No. 3 - School on 1<sup>st</sup> June, 1990. Respondent No. 6 was shown senior in the seniority list for the year 2001- 2002. In the circumstances, the

claim of petitioner that she is senior to respondent No. 6 was rightly discarded by the School Tribunal, urged Mr. Parasnis.

13) In the backdrop of the aforesaid facts, which have been noted fairly elaborately, the question that crops up for consideration is whether the School Tribunal was justified in interfering with the order of promotion of the petitioner to the post of Head Mistress on the ground that the Education Officer had not correctly and properly decide the *inter se* seniority ?

14) At the outset, it is necessary to note, the impugned order manifests two contradictory findings as regards the determination of seniority by the Education Officer. At one stage, the learned Presiding Officer, School Tribunal observes that the Education Officer had not decided the dispute about *inter se* seniority between petitioner and respondent No.6 (paragraph No. – 11) and, at another stage, the learned Presiding Officer concludes the Education Officer had not decided the question of seniority correctly and legally (paragraph No. - 13).

15) It may be apposite to immediately notice, the provisions contained in Rule 12 of the Rules, 1981. It 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. ”

16) The aforesaid Rules, cast an obligation on the management to prepare and maintain seniority list of teaching and non-teaching staff in accordance with the guidelines given in Schedule “F”. The seniority list so prepared is required to be circulated amongst the members of the staff concerned. Any subsequent change is also required to be brought to the notice of staff concerned and

their signatures obtained in acknowledgment of having noted the change. The rule envisages an opportunity to the employees to raise an objection to the seniority and enjoins the management to consider the same. If any dispute arises in the matter of *inter se* seniority, Sub Rule (3) of Rule 12, 1981, warrants its reference to the Education Officer for a decision thereon.

17) In the case at hand, all the aforesaid features of the Rule 12, 1981, seem to have found their practical application. A seniority list for the year 2016-2017 as of 31<sup>st</sup> May, 2017, was prepared and circulated (Exhibit-C to the Petition). It seems to have been noted both by the Petitioner and respondent No. 6, in particular, without any protest. For the year 2018-2019, again the seniority as of 1<sup>st</sup> June, 2018, was circulated with a change qua the petitioner and respondent No. 6. Now the respondent No. 6 was shown senior to the petitioner. A copy of the seniority list (Exhibit-D) reveals that the petitioner promptly raised an objection by making an endorsement “not acceptable”. Lastly, the *inter se* seniority dispute eventually came before the

Education Officer and vide communication dated 29<sup>th</sup> November, 2019, the respondent No. 4 ruled that since the petitioner and respondent No. 6 were both appointed on 1<sup>st</sup> June, 1993, the person, who is senior by age, will be treated as senior. It seems on the basis of the said decision, the respondent No. 1 was reduced in rank to the post of Assistant Teacher.

18) The learned Presiding Officer, School Tribunal was, however, of the view that the Education Officer had not decided *inter se* seniority dispute. I am afraid in the backdrop of the material on record and the communication dated 22<sup>nd</sup> November, 2019, such a view could not have been legitimately recorded. The learned Presiding Officer, School Tribunal lost sight of the fact that up to the year 2016-2017, the petitioner was shown senior to respondent No. 6 and later had not lodged any protest.

19) This may not amount to an acquiescence on the part of respondent No. 6. However, when the seniority list was changed for the year 2018-2019, the petitioner raised an objection. In this view of the matter, the learned

Presiding Officer, School Tribunal could not have held that there was no dispute that in the seniority list for the year 2018-2019, the respondent No. 6 was shown senior to the petitioner. Such inference coupled with contradictory findings as to the decision by the Education Officer about *inter se* seniority of petitioner and respondent No. 6, impaired the approach of the learned Presiding Officer, School Tribunal. As a matter of fact, the Education Officer had in terms decided in favour of the petitioner by giving a ruling that since the petitioner and respondent No. 6 had joined the service on the same date i.e. 1<sup>st</sup> June, 1993, the one senior in age would be senior in service.

**20)** Ms. Parasnis would however urge that the said finding is against the weight of the record. Respondent No. 6 had joined the service on 1<sup>st</sup> June, 1990, support was sought to be drawn from the appointment order dated 15<sup>th</sup> May, 1990. It indicates that the respondent No. 6 was appointed on purely temporary basis for the period of one year. The appointment order dated 15<sup>th</sup> June, 1993, whereby the

respondent No. 6 was appointed as an Assistant Teacher with effect from 1<sup>st</sup> June, 1993, seals the issue.

**21)** Ms. Parasnis, relied upon a seniority list maintained for the year 2001-2002, in which respondent No. 6 was shown senior to the petitioner (Exhibit-E to the affidavit-in-reply). I am afraid the said document is of any assistance to the respondent No. 6. It does not seem to have been prepared, maintained and circulated in the manner ordained by Rule 12 of the Rules, 1981. In any event, the basis of seniority of respondent No. 6 in the said chart is the appointment on temporary basis in the said school. Conversely, in the seniority list for the year, 2016-2017, maintained and circulated in accordance with the Rules, 1981, the respondent No. 6 was shown junior to the petitioner.

**22)** In the aforesaid view of the matter, the learned Presiding Officer, School Tribunal was not justified in arriving at a finding that the respondent No. 6 was senior in service to the petitioner and on that premise set aside the order of promotion dated 1<sup>st</sup> January, 2021.

**23)** Resultantly, the Petition deserves to be allowed.

Hence, the following order.

**:-ORDER:-**

- (i)** The Petition stands allowed.
- (ii)** The impugned judgment and order dated 6<sup>th</sup> April, 2022, stands quashed and set aside.
- (iii)** The order of promotion of the petitioner to the post of Head Mistress dated 1<sup>st</sup> January, 2021, stands restored with continuity in service and all consequential benefits without backwages.
- (iv)** The order of status quo passed by this Court on 13<sup>th</sup> June, 2022, stands vacated and the salaries of the petitioner and respondent No. 6 be released in conformity with the aforesaid order.
- (v)** Rule made absolute to the aforesaid extent.
- (vi)** No costs.

**[N. J. JAMADAR, J.]**