

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 7486 of 2018

Rajendra S/o Onkar Patil

Versus

Sau. Madhuri Purushottam Kulkarni and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.L.Khapre, Senior Advocate assisted by Shri
R.G.Kavimandam.

Shri K.V.Bhoskar, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 7th JUNE, 2023.

Heard.

2. In this writ petition, the order below Exhibit 40 dated 26th September, 2018 passed by the School Tribunal allowing the application for amendment moved by the respondent no.1 in appeal No. 2 of 2015, is under challenge.

3. Shri Khapre, learned Senior Advocate for the petitioner argues that this Court in first round permitted to the respondent no.1 to amend the appeal memo, and accordingly though thrice it was amended, the application Exhibit 40 was moved for amendment.

4. It is submitted that the appeal was fixed for judgment and at the stage of judgment, the application was moved. It is submitted that there were no pleadings as regards due diligence which required as per the proviso to Rule 17 of Order VI of the Code of Civil Procedure. He therefore, submits that the order is erroneous and the order needs to be quashed and set aside.

5. On the other hand, Shri Bhoskar, learned counsel for the respondent no.1 submits that after this Court permitted the respondent no.1 to amend the pleadings, instead of moving application for amendment, wrongly an affidavit was filed raising the issue of supersession. He submits that the application for amendment was moved as per the permission granted by this Court, hence, there is no error committed by the Tribunal in allowing the application moved by the respondent no.1.

6. In the light of rival contentions of the parties, I have perused the record and the impugned order.

7. In the first round of litigation in Writ Petition No. 6050 of 2015, this Court vide order dated 17th April, 2017 has observed in paragraphs 2 and 3 as follows:

“2. The first question involved before the School Tribunal was regarding supersession in the matter of promotion to the post of Head Master/Head Mistress of Junior College, and the second question was regarding cancellation of the promotion of the respondent no.1 to the said post. The School Tribunal has set aside the promotion of the petitioner No.3 to the post of Head Master of Junior College after holding that the cancellation of the promotion of the respondent No.1 was not proper.

3. The promotion of the respondent No.1 to the post of Incharge Head Mistress by itself does not confer upon her any right to hold the post. The promotion as Incharge Head Mistress can always be cancelled at any point of time. Hence, the School Tribunal has committed an error in holding that the cancellation of the promotion of the respondent no.1 was not proper. The question of eligibility and qualifications of the respondent No.1 for promotion to the post of Head Mistress is required for the first time before this Court, so as to consider the case of supersession in the matter of promotion. The matter is, therefore, required to be remanded back to the School Tribunal for consideration of the rival claims afresh by permitting the parties to suitably amend their pleadings.”

8. From the above observations made by this Court, it is evident that this Court has in clear terms observed that the question of eligibility and qualifications of the respondent no.1 for promotion to the post of Head Mistress is required to be gone into by the School Tribunals. For the said purpose, this Court has permitted to the parties for suitably amending the pleadings.

9. Undisputedly, in the light of those directions, affidavits were filed raising the issue of supersession. However, after realising that an application for amendment needs to be filed, it was filed accordingly but by that time the appeal reached to the stage of passing of judgment.

10. It is informed that both the petitioner and respondent no.1 have superannuated during the pendency of the present writ petition.

11. It is pertinent to note this Court vide order dated 31st October, 2018 stayed the proceeding before the School Tribunal.

12. In the circumstances, considering the findings recorded by this Court in Writ Petition No. 6050 of 2015 and in the above referred backdrop, I am not inclined to interfere with the impugned order. Accordingly, writ petition is disposed of.

13. Needless to mention that as the School Tribunal has allowed the amendment application of the respondent no.1, the petitioner has every right to make consequential amendment.

[ANIL S. KILOR, J.]