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3357.20 wp R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3357 OF 2020

GIRASE DILIP CHANDRASING
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS.

...

Mr. Chaitanya V. Dharurkar, Advocate for petitioner
Mr. A.D. Wange, AGP for respondent Nos. 1 and 2. :

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 9TH OCTOBER, 2024.
PRONOUNCED ON : 18TH NOVEMBER, 2024.

P.C. :-

1. The petitioner has approached this court with the following
reliefs :-

[B] The order dated 3.2.2020 (Exhibit N) and copy of the consequent approval order dated 7.2.2020 (Exhibit M) issued by Ld. R-2 Education Officer, thereby granting approval as I/c. Headmaster to the R-5 may kindly be quashed and set aside;

[B1] The order dated 8.10.2020 (Exhibit N-1) and order dated 19.3.2021 (Exhibit N-2) issued by the respondent No.2 Education Officer, thereby granting approval as In-Charge Head Master to the respondent NO.5 may kindly be quashed and set aside.

[C} By issuing appropriate writ, order or direction the respondent No.2 Education Officer may kindly be directed to accord 'Permanent' approval to the petitioner's appointment as Headmaster at the respondent No.4 School w.e.f. 01.01.2017

[C-1] By issuing writ, order or direction the education officer may kindly be directed permanent approval to the petitioner's appointment as Head Master at R-4 school or any of the other 2 schools run by respondent No.3 Management w.e.f. 01.01.2017

[D] By issuing appropriate writ, order or direction the respondent No.2 Education Officer may kindly be directed to calculate and pay to the petitioner the difference of pay and arrears of salary by considering the petitioner's appointment as 'Permanent Headmaster' w.e.f. 01.01.2017.

2. Mr. C.V. Dharurkar learned advocate for the petitioner submits that the petitioner was employed with the respondent No. 3 - Educational Trust which runs three educational institutions. The common seniority list of the teachers working in all the three schools as on 1st January 2017 has been maintained. The petitioner being senior-most teacher was promoted on clear vacant sanctioned post of Headmaster. The proposal for approval to the appointment of the petitioner as Headmaster was forwarded to the respondent No.2 Education Officer. However, he approved appointment of the petitioner as in-charge Headmaster, giving reason of pending dispute between the two groups of management. Thereafter, approval to the petitioner's appointment as in-charge Headmaster was continued under various orders of limited duration.

3. Mr. Ramesh Desale, who claims to be Chairman of the Trust had filed Writ Petition no. 9109 of 2018 before this court assailing the order of approval granted to the petitioner's appointment by Education

Officer on the post of Headmaster. The said Writ Petition was disposed of by this court vide order dated 8th January 2019 with direction to respondent No.2 Education Officer to take appropriate decision for appointment and approval of suitable Headmaster as per seniority and provisions of Rule 3 (3) of the MEPS Rules,1977 so also, keeping in view the service record of the teachers. The respective parties were directed to be heard.

4. The Education Officer heard respective parties and granted approval in favour of petitioner as in-charge headmaster MHSS High school only for a period of 6 months. On 27th June 2019, again fresh proposal for grant of regular approval to the petitioner's appointment as regular Headmaster was forwarded to respondent No.2 Education Officer, however, respondent No.2 issued order dated 7.2.2020 granting approval in favour of the respondent No.5 as in-charge headmaster although he is junior to the petitioner as per the common seniority list.

5. During the pendency of this petition, the Education Officer issued further orders dated 8th October 2020 and 19 March 2021 granting temporary approvals as in-charge Headmaster in favour of respondent No.5 ignoring the claim of the petitioner for permanent approval based on his seniority.

6. Mr Dharurkar would submit that now, the petitioner has been retired from service on attaining age of superannuation. Although he was appointed as Headmaster by the respondent management as per his seniority and he was entitled for a permanent approval, he was wrongly denied permanent approval. He would, therefore, urge that the petitioner would be entitled to the arrears of pay scale and salary of the post of Headmaster from the date of appointment.

7. In support of his contention he relies upon the judgment of this court in the case of *Kondiba s/o. Gundaji Kiwande vs. Zilla Parishad and others, reported in 2001(1) Bom.C.R. 71* and the judgment of the Honourable Supreme Court in the matter of *Union of India and others vs. K.B. Rajoria, reported in (2000)3 SCC 562*.

8. Mr. Dharuakar would further submit that if the petitioner is wrongly superseded or denied permanent approval to his appointment as Headmaster, he would be entitled to a deemed date of promotion and consequential benefit of difference in salary of the post of Headmaster. Mr Dharurkar would further submit that since the appointment of the petitioner was on regular basis in tune with his seniority in the common seniority list, he would be entitled for consequential benefits deference to such appointment.

9. We have considered the submissions advanced by the learned advocate for petitioner and learned AGP for respondent Nos. 1 and 2, although respondent Nos. 3 to 5 are served they have failed to cause appearance

10. The gist of submissions advanced on behalf of the petitioner is that the petitioner was senior-most teacher as per the common seniority list maintained by the Trust in respect of the teachers working on establishment of three schools run by the Trust. Owing to his seniority, he was promoted on the post of Headmaster by order issued by the secretary of the trust. Accordingly he had assumed charge of promotional post w.e.f. 1st January 2017. The proposal for approval to the appointment of petitioner on post of Headmaster was forwarded to the Education Officer. However, Education Officer, for the reasons best known to him, granted ad-hoc approval for 6 months. Unfortunately till the retirement of the petitioner permanent approval was declined to his

appointment. Later on, respondent No.5 was promoted on the post of Headmaster and even he was granted ad-hoc approval. The approval granted in favour of the petitioner depicts that it was an Ad-hoc arrangement for conduct of day to day business of the school. Consequently, the order of petitioner's promotion on regular post of Headmaster was never approved till the date of his retirement.

In this background the learned advocate for the petitioner submits that in the light of law laid down by this court in the cases of *Kondiba Kiwande (supra)* and *K.B. Rajoriya (supra)*, the petitioner is entitled for deemed date of promotion and all consequential benefits

11. In the case of *Kondiba Kiwande (supra)*, the petitioner therein was granted deemed date of promotion as Headmaster since he was wrongly superseded by respondent Nos.4, 5 and 6 therein. In the present case, admittedly, neither the petitioner nor anyone was ever approved as permanent Headmaster of the school. Admittedly, this is not a case of **supersession**. In this case ad-hoc appointment on the post of Headmaster was approved for conduct of day to day affairs of the school

12. Although, the petitioner was entitled for such appointment owing to his seniority, it appears that petitioner was given approval on Ad-hoc basis as in-charge Headmaster. The petitioner accepted such order. He had approached this court only when the junior person was appointed and approved as Ad-hoc Headmaster. The petitioner never raised grievance during his service period regarding his approval as in-charge Headmaster. The Writ petition was filed in the month of August 2020 challenging the order dated 7th February 2020 granting ad-hoc approval to the appointment of respondent No.5 as in-charge Headmaster. In that view of the matter, we find that law laid down by this Court in the case of *Kondiba Kiwande (supra)* or in the matter of

K.B. Rajoriya (supra) would not apply in the facts of the present case. Consequently, we do not find any merit in the petition, the same is dismissed.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-