



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3691 OF 2020

Shardha d/o Ramesh Bagadi
Shardha w/o Moses Srisuder,
Age: 42 years, Occu.: Assistant Teacher,
In Dr. Fraser Boy's High School, At
Jalna, Tq. And Dist. Jalna.
R/o. Plot No.120, Saraswati Colony,
Near Jalna Railway Station Jalna,
Tq. And Dist. Jalna.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Jalna.
3. The Deputy Director of Education,
Old Multipurpose High School,
Near Bhadkal Gate,
Tq. And Dist. Aurangabad.
4. The Secretary,
Jhon Willson Education Society,
Wilson College,
Mumbai, Choupoaty,
Mumbai-400.32
5. Smt. Archana Ramesh More,
Age: Major, Occu.: Service,
Head Mistress,
Dr. Frasar Boys High School,
At Jalna, Tq. And Dist. Jalna.

.. RESPONDENTS

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Mr. S. R. Kolhare, Advocate for the petitioner.
Mr. A. M. Phule, AGP for respondent Nos.1 to 3.
Mr. V. G. Sakolkar, Advocate for respondent No.5.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 15th APRIL, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. Present petition has been filed to direct respondent No.2 to decide the objection/complaint of petitioner dated 13.02.2020 in respect of approval dated 28.01.2020 in favour of respondent No.5 as Head Mistress in Fraser Boys High School, Taluka and District Jalna. She also prays that the appointment of respondent No.5 should be quashed and set aside with direction to respondent No.4 to promote the petitioner to the post of Head Mistress with effect from 01.11.2019.

3. The facts which are not in dispute are that respondent No.4 is a minority institution running a school by name Fraser Boys High School at Jalna. In fact, respondent No.4 runs five recognized schools in the State of Maharashtra. Respondent No.4 is maintaining separate seniority list. In view of Section 3 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the petitioner was initially appointed as Shikshan Sevak from 01.11.2001 and

thereafter her services came to be confirmed. She was at Serial No.1 in the seniority list for the year 2018-2019. The petitioner belongs to minority community i.e. Christian and her performance was good throughout her career. The post of Head Master became vacant since 01.09.2017. The petitioner was given charge of Head Mistress by respondent No.4 by order dated 18.09.2017. Thereafter, it was extended by every three months. Though there were qualified and eligible teachers, respondent No.4 was not willing to promote them, but placed an advertisement to the post of Head Mistress in January, 2019, which was in contravention of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. If a person is not having teaching experience, then the said condition can be relaxed when it comes to promotion and such relaxation can be granted by the Deputy Director of Education. The management had called the petitioner as well as respondent No.5 for interview in response to the advertisement for the post of Head Master, but respondent No.5 has been arbitrarily chosen. Her appointment is illegal, hence, deserves to be set aside and the petitioner deserves to be promoted.

4. Heard learned Advocate Mr. S. R. Kolhare for the petitioner, learned AGP Mr. A. M. Phule for respondent Nos.1 to 3 – State and learned Advocate Mr. V. G. Sakolkar for respondent No.5.

5. At the outset, it is to be noted that respondent No.4 is a minority institution. Section 3(2) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, reads thus :-

"3. Application of Act :-

(1)

(2) Notwithstanding anything contained in sub-section(1), the Provisions of this Act shall not apply to the recruitment [of the Head of a minority school and] other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to [the Director or, as the case may be,] the Deputy Director for this purpose."

We are concerned with the Head of the school and, therefore, the other recruitment rules are not applicable. The interpretation has been considered in many cases. In **Gunvantlal Kantilal Khamar v. State of Maharashtra & Ors.**, [Writ Petition No.1144 of 1986 decided on 17.02.1992], it has been observed that :-

"The intention of the legislature is clear that every employee of a minority school should be governed by the provisions of the Act in respect of the matters relating to conditions of service and conduct and discipline rules. Once this aspect is borne in mind, then it is obvious that the later part of amended sub-section (2) becomes redundant. The fact that the names of employees in the minority school are notified by the management to the Deputy Director is entirely irrelevant because from the

date of the amendment such employees are entitled to the benefit of the provisions of the Act, including conditions of service and conduct and discipline rules. The embargo in unamended sub-section (2) of Section 3 in respect of the employees not exceeding three was removed by the amendment with effect from 07 August, 1987 and, therefore, from the date of the amendment of the provisions of the Act and the Rules shall apply to all the employees of minority school. The only right reserved in the minority school by sub-section (2) is in respect of the recruitment to the Head of minority school.”

6. In **Hakimsingh s/o Ram Sumer Singh Yadav v. Shri Vardhaman Sthanakwasi Jain Shravak Sangh and Ors.** [2001 (1) ALL MR 692], it has been held by this Court that :-

10. It has been held by catena of decisions that notwithstanding the protection granted to a minority institution under Article 30(2) of the Constitution, the State Government has the right to regulate the working of such minority institutions and this implies that the minority institutions must be administered in keeping with the provisions of law within the ambit of which such administration falls. When the appointments of Assistant Teachers, Supervisor. Assistant Head Master or for that matter Head Master, are being made, it is incumbent upon the minority institutions as well to ensure that all these appointees fulfill the requirements regarding eligibility, both educational as well as experiencewise. We may usefully refer to recent judgment of the Supreme Court in this regard in the case of *Board of Secondary Education and Teachers Training v. Jt. Director of Public Instructions, Sagar*, and the

observations of their Lordships in para 3 read thus :

"The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which take away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in *State of Kerala v. Very Rev. Mother Provincial*, and *Ahmedabad St. Xavier's College Society v. State of Gujarat*, make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant. We need not go into any other question in this appeal."

7. Reference was made to the decision in **Gunvantlal Kantilal Khamar (Supra)**, wherein the observations are "to insist that only

senior-most eligible teacher should be appointed to the post of a Head of the school would amount to denial of right guaranteed by Article 30(1) of the Constitution. It was contended that sub-section (2) of Section 3 of the Act would lead to an oppression and discontentment amongst the senior teachers as their chance of promotion to the Head of the school would be in jeopardy. A teacher entering service in a minority institution knows fully well that the right to be posted as Headmaster does not depend upon the seniority but on the selection to be made by the management.”

8. Thus, in this case, it can be certainly said that respondent No.4 being the minority institution was justified in undertaking direct recruitment for the post of Head Mistress in view of conjoint reading of Article 30(1) of the Constitution of India and Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

9. It is to be noted that the petitioner who was fully aware about the said situation about the rights of respondent No.4 to hold direct recruitment for the post of Head Mistress had, in fact, filled the form in pursuant to the advertisement and also appeared for the interview along with respondent No.5. Once she has undergone the recruitment process, now she cannot challenge the said recruitment process as illegal when she is unsuccessful. There is absolutely no merit in the

present petition as there is no illegality in the appointment of respondent No.5 directly as Head Mistress and the grant of approval to her appointment as such.

10. The Writ Petition stands dismissed.

11. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm