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wp8923.19

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8923 OF 2019

Namrata Vitthalrao Pawar .. Petitioner
Age. 40 years, Occ. Service,
R/o. Sahyadri Primary Vidya Mandir,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

VERSUS

1. Sanjay Dattatraya Varpe .. Respondents
Age. 45 years, Occ. Service,
R/o. At Post Shrirampur,
Tal. Sangamner, Dist. Ahmednagar.
2. Sahyadri Bahujan Vidhya Prasarak
Samaj, Sangamner,
Tal. Sangamner, Dist. Ahmednagar.
3. The Education Officer,
Primary Schools,
Zilla Parishad, Ahmednagar.

Mr.Avinash Borulkar h/f. Mr.G.B. Kadlag, Advocate for the petitioner.
Mr.K.N. Shermale, Advocate for respondent No.1.
Mr.Hanumant Jadhav, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 01.10.2024
PRONOUNCED ON : 03.12.2024

J U D G M E N T :-

01. This petition arises out of judgment and order passed by the
learned Presiding Officer, School Tribunal, Solapur in Appeal No. 52 of

2013 dated 28.03.2019. The petitioner was original opponent before the School Tribunal. Respondent No.1 was was the appellant. Respondent No.3 is the Education Officer (Primary), Zilla Parishad, Ahmednagar. The learned Presiding Officer, School Tribunal by way of the impugned judgment and order allowed the appeal holding that the appointment/promotion of the present petitioner as Headmistress in the school amounts to supersession of respondent No.1. Said promotion is illegal. The order of appointment of present petitioner is set aside directing respondent No.1 to be treated as Headmaster from 05.01.2011. The monetary benefits are also directed to be paid to respondent No.1.

02. Brief facts giving rise to the present disputes are that the management runs two primary schools, namely Shri Bhausaheb Santuji Thorat Primary Vidyamandir and Sahyadri Primary Vidyamandir. Both the schools are at Sangamner. The petitioner was appointed in Sahyadri Primary Vidyamandir, whereas respondent No.1 was appointed in Shri Bhausaheb Santuji Thorat Primary Vidyamandir. The petitioner and respondent No.1 were appointed as Assistant Teachers in the respective schools. Respondent No.1 was appointed in the year 1995 and was made permanent after two years. In the year 2000, his school became grant-in-aid school. In 2002 respondent No.1 came to be appointed as

grade Headmaster in the primary school. Said appointment was sanctioned w.e.f. 01.06.2002. However, thereafter, strength of the students was reduced to less than 200. In view of decrease in the number of students, the post of Headmaster in the school, namely, Shri Bhausahab Santuji Thorat Primary Vidyamandir came to be abolished. In that view respondent No.1 was directed to work as Incharge Headmaster. It was expected of the management to maintain common seniority list. However, the seniority list was not maintained in common. The petitioner came to be appointed as Headmistress in Sahyadri Primary Vidyamandir. It was case of the respondent before the School Tribunal that if common seniority list is prepared, then he is senior to the petitioner and he ought to have been appointed as Headmaster in Sahyadri Primary Vidyamandir. For the said purpose, he collected necessary documents under the Right to Information Act. Thus, before the School Tribunal, it was case of respondent No.1 that being senior to the petitioner, the appointment of the petitioner as Headmistress amount to supersession and prayed for necessary reliefs.

03. Before the School Tribunal, it was case of the petitioner that the appeal was not maintainable for misjoinder of the parties and for want of cause of action. The respondent was not punctual and efficient

and it is for this reason, strength of the students in Sahyadri Primary Vidyamandir was decreased and for that reason the post of Headmaster in that school came to be abolished. Initially, appointment of the petitioner as Assistant Teacher was on 01.07.1994 in a non-aided school. She was working as teacher in English school run by the management. Said school came to be closed and at the same place Marathi school was opened. The post of Headmaster came to be sanctioned in Marathi school. In the said school the petitioner was working as Headmistress on non-grant basis. Because of her hard work and sincerity the strength of the students also was increased. Later-on the school started receiving grants also. Since she was already working as Headmistress and since the school was on non-grant basis, she continued as such even after the school became a granted school. There is no supersession.

04. The case of the management was that the petitioner possesses educational qualification as HSC, D.Ed. and she was appointed on 01.07.1994 as Assistant Teacher in the English medium school. She worked with the said school till 30.04.2000 and later on said school came to be closed. The petitioner was thereafter taken in Marathi medium school. That time said school was on non-grant basis. In the school, the petitioner was made Incharge Headmistress. It is after the approval by

the Education Officer from 01.06.2002, the petitioner was given the charge of regular Headmaster. The appointment of the petitioner does not amount to supersession or reduction of rank and therefore, there was no cause of action to file the appeal.

05. With this case, the learned Tribunal held that the appeal is maintainable. The act of the respondent clearly amounts to supersession of respondent No.1. The respondent is held entitled to be appointed as the Headmaster in the place of the petitioner w.e.f. 03.06.2009. The Tribunal considered that the respondent was appointed as Assistant Teacher on 13.06.1995 and he was working as Incharge Headmaster. The respondent was given a letter dated 12.11.2005 by the management, showing that the respondent was granted pay-scale of Rs.5500/- - 9000/- with an approval of the Education officer. It is taken that the appellant was working as a Headmaster till 05.01.2011. Later-on, post came to be abolished because of reduction in the strength of the students, whereas the petitioner was appointed on non-grant-in-aid basis on 01.07.1994 in English medium school, which came to be closed thereafter. However, no record was produced to show that she was in-fact appointed from 01.06.2000. The Tribunal considered the roster register, wherein respondent No.1 was shown at Sr. No.1 in the order of

seniority and the petitioner was shown at Sr. No.4. The Tribunal considered the documents showing appointment of the petitioner from 01.06.2000. There is no document to show that she was appointed from 01.07.1994, as permanent teacher. Respondent No.1 though was working in a different school as Assistant Teacher, both the schools are under the same management and common seniority list needs to be maintained.

06. The learned Advocate for the petitioner vehemently argued that the learned Member of the School Tribunal committed illegality by accepting the case of the respondent. It ought to have been seen that the schools in which the petitioner and respondent No.1 were working are different schools. The petitioner was rightly promoted in the school, where she was appointed. He prays for setting aside the order of the School Tribunal.

07. Learned Advocate Mr. Shermale for respondent No.1 supported the order passed by the Tribunal. He submits that the petitioner was appointed as Shikshan Sevak by order dated 30.05.2001 in Sahyadri Primary Vidyamandir from 01.06.2001 till 31.05.2003. He thus submits that it is undisputed fact that respondent No.1 was

appointed as a teacher in 1994. Even approval was granted to his appointment. Thereafter, he was made Incharge Headmaster of Shri Bhausahab Santuji Thorat Primary Vidyamandir. Both the schools are run by the same management and therefore it was necessary to maintain common seniority list. The management for some reason did not maintain common seniority list. Since two seniority lists were prepared for two different schools, the petitioner was treated to be senior-most in the Sahyadri Primary Vidyamandir. The School Tribunal has rightly considered common seniority list, where respondent No.1 is shown at Sr.No.1. The appointment of the petitioner till 2001 cannot be considered for the purpose of seniority as till then her appointments were temporary in nature, every year. For the first time, she was appointed as Shikshan Sevak in 2001 till 31.05.2003. Thus, she cannot claim seniority prior to 2003; whereas the appointment of respondent No.1 is dated 13.06.1995 and there is no dispute. He submits that there is also no dispute about the seniority of respondent No.1 in the seniority list. The petitioner is shown to have been appointed from 14.02.2006. By no stretch of imagination she can be considered to be senior than respondent No.1. He thus prays for rejection of the writ petition.

08. Having considered all the facts and the record, undisputedly

what appears from record is that respondent No.1 was appointed as a Teacher on 13.06.1995; whereas the petitioner was appointed on 14.02.2006. In the seniority list also name of respondent No.1 appears at Sr. no.1; whereas petitioner's name at Sr. No.7. The order appointing the petitioner as Headmaster clearly appears to be in violation of Rule 12 of the MEPS Rules. The act of promoting the petitioner clearly amounts to be in supersession of respondent No.1. This Court does not find any reason calling for interference in the order passed by the learned School Tribunal.

09. In view of above, the writ petition stands dismissed. No order as to costs.

[KISHORE C. SANT, J.]

. At this stage, the learned Advocate for the petitioner prays for continuation of the interim relief that is running in favour of the petitioner since 2019.

. The request is vehemently opposed by the learned Counsel for the respondents. However, since the interim relief is running in favour of the petitioner since 2019, the same is continued for a period of six weeks from today.

[KISHORE C. SANT, J.]