



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11261 OF 2023

Savita d/o Manmath Swami
Age: 56 years, Occ. Service,
R/o: Near Omkareshwar Temple,
Chakur, Tq. Chakur,
Dist. Latur

... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai
2. The Deputy Director of Education
Latur Division, Latur
3. The Education Officer (Secondary),
Zilla Parishad, Latur,
Tq. & Dist. Latur
4. Jagat Jagruti Shikshan Prasarak Mandal,
Chakur, Dist. Latur,
Through its Secretary
5. The Headmaster
Jagat Jagruti Vidya Mandir,
Chakur, Dist. Latur

... RESPONDENTS

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Mr. B. R. Kedar, a/w Mr. S. K. Mathpati, Advocates for Petitioner
Mr. S. K. Tambe, AGP for Respondent Nos. 1 to 3
Mr. Vivek Dhage, Advocate for Respondent No.4
Mr. R. R. Deshpande, Advocate h/f Ms Priyanka Deshpande,
Advocate for Respondent No.5

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 03.01.2024

ORAL ORDER (Per- Ravindra V. Ghuge, J.) :-

1. The Petitioner who is a lady teacher, has put forth prayer clauses (A), (B), (C) and (D) as under:-

“(A) To direct the respondent No.4 to revise the seniority list as per the directions issued by the respondent No.3 – Education Officer vide order dated 03.01.2023 and submit the proposal of senior most teacher for appointment on the post of Headmaster of the respondent No.5 – School within stipulated period, by issuing a writ of mandamus or any other writ, order or direction as the case may be;

(B) To direct the respondent No.3 to decide the proposal for grant of approval to the appointment of the petitioner on the post of Headmistress of the respondent No.5 – School, within stipulated period, by issuing a writ of mandamus or any other writ, order or direction as the case may be;

(C) To direct the respondent No.1 to 3 to take action against the respondent No.4 for continuous default in complying the directions of the authority, by issuing a writ of mandamus or any other writ, order or direction as the case may be;

(D) To direct the respondent No.4 and 5 to implement the order dated 03.01.2023 passed by the respondent No.3 – Education Officer (Secondary), Zilla Parishad, Latur, pending hearing and final disposal of the present petition.”

2. We have considered the extensive submissions of the learned Advocates for the respective sides, yesterday. Since the hearing continued till late hours, that we posted the matter today for dictating the order.

3. Considering the submissions of the learned Advocates for the respective sides, it is apparent that the Petitioner is before this Court, seeking the implementation of the order dated 03.01.2023. No other issue is raised by the Petitioner in this Petition. The order dated 03.01.2023 has been delivered in the backdrop of an order dated 11.01.2019 passed by this Court [Coram: S. V. Gangapurwala (as His Lordship then was) and A. M. Dhavale, JJ.] in Writ Petition No. 6613 of 2018, which was filed by the present Petitioner. It would be appropriate to reproduce the order since it is the foundation of this Petition, hereunder :-

“ Mr Kedar, learned counsel for the petitioner submits that, as per Rule 12 of the Maharashtra Employees of Private Schools Rules, it is the Education Officer who has to take decision on the seniority list. The petitioner had approached the Education Officer. The Education Officer, after hearing the parties, had directed the management to consider the objection of the petitioner and decide the seniority list. The same ought not to have been done by the Education Officer.

2. *Mr Dhage, learned counsel for respondent No. 4 Management submits that, as per the order of the Education Officer, the Management had issued notice to the petitioner. Petitioner did not remain present. The objection of the petitioner is rejected by order dt. 04.01.2018 and the same is also communicated to the Education Officer. The learned counsel further submits that, respondent No. 4 is appointed as a Headmaster and if the petitioner has to challenge the same, the petitioner has a remedy before the School Tribunal.*

3. *In the present case, we are not concerned with the appointment to the post of the Headmaster. The issue before us is about the seniority. As per rule 12 of the MEPS Rules, it is for the Education Officer to decide the objection and the seniority. In fact, the Education Officer ought to have decided the said objection instead of remitting back to the Management when the Management itself has forwarded the seniority list.*

4. *It appears that, as per the order of the Education Officer, the Management has taken a decision on the seniority list and has also communicated that to the Education Officer under order dt. 04.01.2018.*

5. *The Education Officer shall take final decision with regard to the seniority list submitted after hearing all the parties concerned as per Rule 12 of the MEPS Rules. The same shall be done expeditiously, preferably within a period of six months from today.*

6. *The parties herein shall appear before the Education Officer on 30.01.2019.”*

4. It is in pursuance to the above order passed by this Court, by which the parties were directed to appear before the Education Officer on 30.01.2019. Needless to state, in view of the said

directions, no notice was required to be issued by the Education Officer for intimating the date of hearing to any of the litigating parties at the relevant time.

5. A host of grounds have been raised before us by Respondent No.4, which is the education trust and by Respondent No.5, who is the Head Master of the school at issue. We summarise their contentions as under:-

- (a) Respondent No.5, the purported Head Master of the school Shri S. M. Naragude claims to be the senior most teacher.
- (b) His first appointment is dated 02.08.2002 in category "C" under Schedule-F of the M.E.PS. Rules, 1981.
- (c) The Petitioner was appointed as an Primary Assistant Teacher in category "E" under Schedule-F by order dated 12.06.1986 with effect from 18.06.1986.
- (d) The Petitioner acquired D.Ed. qualification in August 1986.
- (e) The Petitioner obtained B.A. degree in March/April 1991 and B.Ed. qualification on 10.05.1997.
- (f) Respondent No.5 Shri Naragude completed B.Ed. in 1997 and was appointed on 02.08.2002.
- (g) The Petitioner has not raised any objection to the seniority list which was published in 2017 and thereafter.
- (h) Shri Naragude, Respondent No.5 herein was appointed as the Head Master on 03.10.2022 and he joined the post two days prior to the appointment on 01.10.2022. The Petitioner stood superseaded. Therefore, the Petitioner

has to approach the School Tribunal under Section 9 of the M.E.P.S. Act, 1977.

- (i) Mr. Naragude was not heard when the order dated 03.01.2023 was passed by the Education Officer.
- (j) In the light of the judgments delivered by the learned Full Bench of this Court in ***St. Ulai High School and another Vs. Shri Devendraprasad Jagannath Singh - 2007 (1) Mh.L.J. 597*** and ***Namdeo Vishnu Sase Vs. The State of Maharashtra others - 2023 (2) Mh.L.J. 598***, this Petition is not maintainable.

6. It is undisputed, rather conceded that the order passed by this Court dated 11.01.2019 directing the Education Officer to decide the objections as regards the seniority raised by the Petitioner herein, within six months, was not challenged by the management or the Head Master, before the Hon'ble Supreme Court. The said order has attained finality. The order at issue dated 03.01.2023 is a reason and outcome of the order of this Court dated 11.01.2019 reproduced above. All the parties appeared on the date 30.01.2019 as directed by this Court.

7. The learned AGP representing the Education Officer submits that Shri Naragude has not been granted regular approval as a Head Master considering the order of this Court dated 11.01.2019, since the proceedings were being considered by the Education Officer

pursuant to this order of the High Court. As the School had to be headed by a Head Master, a temporary approval was granted to Shri Naragude only for the academic year 2022-2023 as an Incharge Head Master, vide order dated 16.01.2023. Subsequently, an extension was granted from 15.06.2023 only till 31.12.2023. From 01.01.2024, Shri Naragude is not even a temporarily approved Head Master.

8. It is, thus, obvious from the record before us that in order to overcome the directions of this Court set out in the order dated 11.01.2019, the management appointed Shri Naragude as the Head Master by order dated 03.10.2022. It is specifically contended before us that he took charge as the Head Master two days prior to his appointment order, on 01.10.2022. This requires no debate that the management has attempted to overbear the authority of this Court and truncate the directions issued vide order dated 11.01.2019. What is most significant is that neither the management nor the Incharge Head Master Shri Naragude, have challenged the order passed by the Education Officer dated 03.01.2023 before this Court. The said order is a direct outcome of our directions set out in the order dated 11.01.2019. The Education Officer has rightly refused to grant permanent approval to the appointment of Mr. Naragude,

notwithstanding that the management has moulded its order to project that Mr. Naragude was granted a permanent appointment.

9. The management has put forth a fallacious submission that once the management has appointed Mr. Naragude as a permanent Head Master, it is inconsequential as to whether the Education Officer grants a temporary approval. Reliance is placed on the law laid down in *St. Ulai High School* (supra), to contend that the grant of approval by the Education Officer is not a condition precedent to a valid order of appointment. Obviously, the law laid down in *St. Ulai High School* (supra), has been misread by the management. The issue before the learned Full Bench of this Court was as regards whether absence of approval by the Education Officer, would necessarily lead to the removal of the teacher from employment or his employment would be rendered illegal. The issues before the learned Full Bench are set out below paragraph 2, which read thus:-

“2.(i) Whether the Deputy Director of Education could have recalled the earlier order of approval granted by the Education Officer on the ground that the Teacher, whose approval was already granted, was not the senior most Teacher or not ?

(ii) Whether the issue of seniority, including issue of qualification having bearing on seniority, if raised by the

aggrieved Teacher or an employee, could have been decided only by the School Tribunal in the appeal filed by such person impugning the order of supersession or promotion, under Section 9(1) (b) of the MEPS Act read with Rules ?”

10. Considering the law laid by the learned Full bench and the directions of this Court dated 11.01.2019, the management has indulged in an attempt to overbear the authority of this Court by appointing Mr. Naragude with retrospective effect as the Head Master. The Education Officer has rightly granted a temporary approval, since this Court had directed that the seniority list be formalised after considering the entire record and for which, a hearing was directed. Though the decision was not taken within six months, the decision was in the offing and eventually, the decision was delivered on 03.01.2023 by the Education Officer, which has not been challenged either by the management or Mr. Naragude.

11. The management and Mr. Naragude have placed reliance upon the judgment delivered by another Full Bench of this Court in ***Namdeo Vishnu Sase*** (supra), to contend that if a teacher is superseded pursuant to the formalization of a seniority list by appointing another person as the Head Master, the grievance can be

raised by such superseded teacher before the School Tribunal. However, the facts of the case before us are completely different. Though the management attempted to dodge the directions of this Court by hurriedly appointing Mr. Naragude as the Head Master with retrospective effect on 03.10.2022, the Education Officer granted a temporary approval to his appointment as a stop gap arrangement. An Incharge Head Master does not have any right to demand regularization on the post of Head Master. It is the Education Officer who has to consider the fact as to whether a senior most teacher has been appointed as the Head Master and thereafter proceed to grant regular approval. Temporary approval as an Incharge Head Master would not create any rights or equities in favour of Mr. Naragude and, therefore, approval as an Incharge Head Master would not amount to super-session of the Petitioner.

12. In the above backdrop, as the Petitioner who has been declared as the senior most teacher by the Education Officer vide order dated 03.01.2023, is before this Court for issuing directions to the Respondent authorities to act in furtherance of the said seniority list and keeping in view that the said order dated 03.01.2023, formalizing the seniority list, has not been challenged before this

Court, we have no hesitation in accepting this Petition. More over, Shri Naragude is without any approval with effect from 01.01.2024.

13. Considering the overall effect of the directions of this Court dated 11.01.2019, the final seniority list declared vide order dated 03.01.2023, which is intact, **this Petition is allowed in terms of prayer clause (A)**. We direct the management to act in furtherance of the said seniority list formalized vide order dated 03.01.2023, within a period of fifteen days. After the senior most teacher is appointed as the Head Master (the Petitioner having been declared as the senior most teacher), the proposal to seek approval to his appointment shall be forwarded by the management to the Education Officer, within one week thereafter. The Education Officer would accord approval to the appointment of the Head Master within one week from the receipt of the said proposal.

14. We have considered the glaring conduct of the management, who itself tendered a provisional seniority list to the Education Officer in view of the directions of this Court dated 11.01.2019 and without waiting for the Education Officer to pass a final order in view of this direction of the High Court, granted a

permanent appointment to Mr. Naragude, which is an attempt to overbear the authority of this Court and ignore the majesty of law. We are inclined to impose cost of Rs.1,00,000/- (Rupees One Lakh) on the management.

15. The learned Advocate for the management submits that its action may have been a result of misinterpretation and a misunderstanding. It may not be taken as a deliberate act.

16. The learned Advocate for the Petitioner submits that, if the management obeys this order passed by the Court today within the time frame granted, then he would concede to the request of the management not to impose cost. However, if the directions of this Court are not complied with, he prays that this act may be considered as an aggravated act of contempt and cost of Rs.1,00,000/- can be imposed. We accept the statement made by the Petitioner and caution the Management accordingly.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]