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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2952 OF 2021**

1. Krishna Mahadu Gasti
Aged : 54 years, Occ : Service
R/o. Hebbal, Tal. Gadhinglaj
Dist. Kolhapur – 416 503
2. Gram Vikas Shikshan Mandal,
Hebbal – Jaldyal, Tal . Gadhinglaj
Dist. Kolhapur
Through its President

... Petitioners

Versus

1. Mahesh Shamrao Deshmukh
Aged : 45 years, Occ : Service
R/o. Batkananagali
Tal. Gadhinglaj Dist. Kolhapur
2. The Education Officer
[Secondary], Zilla Parishad
Kolhapur

... Respondents

Mr. Narendra V. Bandivadekar, Senior Advocate a/w. Mr. Vinayak R. Kumbhar, Mr. Rajendra B. Khaire and Mr. Aniket S. Phapale i/b. Ms. Ashwini Navjyot Bandiwadekar for the Petitioners.

Dr. D. S. Hatle a/w. Mr. Deepak Jamsandekar for Respondent No. 1.

Mr. V. G. Badgujar, AGP for Respondent No. 2.

CORAM : GAURI GODSE, J.

DATE : 26th MARCH 2024

ORAL JUDGMENT

1. Rule. Dr. Hatle waives service for respondent no. 1 and Mr. Badgujar waives service for Respondent No. 2. Rule made returnable forthwith. By consent of the parties, this petition is taken up for final disposal.

2. This petition is filed to challenge the Judgment and Order passed by the School Tribunal setting aside the order of promotion dated 1st June 2018 passed by petitioner no. 2-management in favour of petitioner no. 1. By the impugned order passed by the School Tribunal the order of promotion dated 1st June 2018 promoting petitioner no. 1 to the post of Head Master is quashed and set aside and petitioner no. 2 ("management") is directed to promote respondent no. 1 as Head Master with effect from 1st June 2018. The impugned order further declares that respondent no. 1 is entitled to consequential benefits

including seniority, increment, etc. since 1st June 2018. However, the claim for back wages is rejected. Petitioner no. 1 was the Assistant Teacher who was promoted to the post of Head Master by order dated 1st June 2018. Petitioner no. 2 is the management who had passed the order promoting the petitioner no. 1 to the post of Head Master. Respondent no. 1 was the Assistant Teacher, immediately below petitioner no. 1 on the seniority list, who challenged the order of promotion by contending that he was superseded.

3. Learned senior counsel for the petitioners submitted that being aggrieved by the order of promotion respondent no. 1 filed an appeal under Section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regular Act, 1977 ("MEPS Act") by contending that the petitioner no. 1 is promoted by superseding respondent no. 1 and thus prayed for declaration that order of supersession dated 1st June 2018 is illegal. Respondent no. 1 further prayed for directing the management to promote and appoint respondent no.1 as Head Master with full back wages. In the said appeal respondent no. 1 for the first time objected to the seniority list based on which the management had passed the order promoting petitioner no. 1. It was not the case of

respondent no. 1 before the tribunal that any objection was anytime raised by respondent no. 1 to the seniority list prepared by the management and signed by all the concerned teachers, including respondent no. 1.

4. Learned senior counsel for the petitioners submitted that the tribunal while allowing the appeal of respondent no. 1 adjudicated on the seniority list prepared by the management. The tribunal examined the orders of appointment of petitioner no. 1 and respondent no. 1 and the relevant dates of the educational qualifications acquired by petitioner no.1. The tribunal thus by referring to Schedule 'F' of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules") held that petitioner no. 1 could not have entered Category 'C' in the year 1993 on obtaining the degree of B.A. The tribunal referred to Schedule 'F' of the MEPS Rules and held that respondent no.1 was senior to petitioner no. 1 as he was a qualified trained teacher from the date of his appointment, hence was entitled to be promoted as Head Master with effect from 1st June 2018. The learned senior counsel for the petitioners thus, submitted that the exercise carried out by the School Tribunal in deciding the inter se

seniority was beyond the scope and jurisdiction of Section 9 of the MEPS Act.

5. In support of the said submissions, the learned senior counsel for the petitioners relied upon the relevant provisions of the MEPS Act and MEPS Rules. He submitted that Rule 12 of the MEPS Rules provides for maintaining a seniority list and in the event there is any objection to the seniority list or the changes made therein, the same are to be considered by the management. In the event there is any dispute, on the matter of inter se seniority, it has to be referred to the Education Officer for his decision. Thus, the School Tribunal has no jurisdiction to go into the question of inter se seniority between the teachers, as the powers to adjudicate the dispute on the inter se seniority is specifically conferred upon the Education Officer under Rule 12 of the MEPS Rules. If a dispute on the objection raised to the seniority list prepared by the management is referred to the Education Officer and there is an adjudication by the Education Officer, the decision of the Education Officer cannot be challenged before the Tribunal and the aggrieved party is required to challenge the same by way of filing a writ petition. However, in the event the management

acts upon the decision of the Education Officer on the inter se seniority and the consequential action of the management is challenged by the aggrieved party, the decision of the Education Officer can be challenged before the tribunal at the time of challenging the consequential action of the management. However, it is beyond the scope and jurisdiction of the Tribunal to entertain the objection on inter se seniority for the first time before the Tribunal. It is thus submitted that a dispute on inter se seniority can be adjudicated by the tribunal only as an incidental issue in the event consequential action by the management based on the decision of the Education Officer is challenged before the tribunal.

6. In support of the said submissions the learned senior counsel for the petitioners placed reliance on the decision of the full bench of this Court in the case of ***St. Ulai High School and Another Vs Devendraprasad Jagannath Singh and Another***¹. It is submitted that one of the issues before the full bench was regarding the decision of the Education Officer on the inter se seniority to be challenged before the Tribunal in an appeal under Section 9 of the MEPS Act. While

¹ 2007(1)Mh. L. J. 597

answering the said issue this Court has held that only if consequential action based on the decision of the Education Officer is challenged before the Tribunal, the same can be examined under Section 9 of the MEPS Act by the tribunal as an incidental issue. In the conclusion drawn by this Court in the said decision, it is held that the decision of the Education Officer on the issue of inter se seniority under Rule 12 of the MEPS Rules is not final and where action is taken by the management against the employee based on such a determination and where action taken by the management falls within the description contained in clauses (a) and (b) of sub-section (1) of Section 9, Appeal before the School Tribunal for challenging the action of management would be maintainable. Thus, the Tribunal will have the jurisdiction only while deciding the lawfulness of the management to adjudicate upon the correctness of the determination of the Education Officer under Rule 12 as an incidental question.

7. Learned senior counsel for the petitioners thus submitted that the scope of Section 9 is thus well settled and the Tribunal in the present case could not have gone into the issue of inter se seniority while adjudicating upon the order passed by the management for promoting

petitioner no. 1 to the post of Head Master. He submitted that the management by acting upon the seniority list maintained under Rule 12 of the MEPS Rules passed an order promoting petitioner no. 1 to the post of Head Master. Respondent no. 1 had never raised any objection to the seniority list maintained by the management. Hence, there was never any adjudication by the Education Officer as provided under sub-rule (3) of Rule 12 of the MEPS Rules. Hence, the findings recorded by the Tribunal on the seniority list are beyond the scope and jurisdiction of Section 9 of the MEPS Act.

8. The learned senior counsel for the petitioners submitted that Schedule 'F' of the MEPS Rules provides guidelines for the fixation of seniority of teachers in secondary schools. He relies upon Category 'C' and submits that the third entry of Category 'C' provides that teachers with Dip T (old two years course) on obtaining graduation degree are to be placed in Category 'C'. In the present case, petitioner no. 1 was SSC and DEd (old two years course) at the time of his appointment. He acquired a BA degree in April 1993 and thus in view of the third entry of Category 'C' of Schedule 'F' petitioner no. 1 was shown at serial no. 1 in the seniority list. So far as respondent no. 1

was concerned, he was BA and BEd at the time of his appointment on 5th November 1998. Thus before respondent no. 1 was appointed, petitioner no. 1 had already acquired a BA degree in the year 1993 and thus entered Category 'C' much before the appointment of respondent no.1. Considering the guidelines issued in Schedule 'F' of the MEPS Rules, petitioner no. 1 was rightly shown at serial no. 1 in Category 'C'. Thus, petitioner no. 1 was entitled to be promoted to the post of Head Master being the seniormost teacher.

9. Learned senior counsel for the petitioners submitted that as per the seniority list prepared by the management, petitioner no. 1 was at serial no. 2 and respondent no. 1 was at serial no. 3 in Category 'C'. In the year 2017 because of the superannuation of the Assistant Teacher who was at serial no. 1, the name of petitioner no. 1 was shown at serial no. 1 in the seniority list and respondent no. 1 was shown at serial no. 2. The seniority list prepared by the management was signed by petitioner no. 1 as well as respondent no. 1. No objections were raised to the said seniority list. Because of the superannuation of the Head Master on 31st May 2018, petitioner no. 1 who was at serial no. 1 in the seniority list became due for promotion to the post of Head

Master. Hence by order dated 1st June 2018, petitioner no. 1 was promoted to the post of Head Master with effect from 1st June 2018. The said order of promotion was approved by the Education Officer on 21st June 2018.

10. The learned senior counsel for the petitioners thus submitted that on merits of the seniority list the Tribunal has erred in considering the qualifications with reference to the date of joining of service. The Tribunal has held that since respondent no. 1 was qualified as BA and BEd at the inception of his appointment, he entered Category 'C' on the date of his joining service; however, has erroneously held that petitioner no. 1 on completing ten years of service entered Category 'C' on 24th November 1998, as at the time of appointment on 24th November 1988 he was SSC, DEd (old two years course) and in the year 1993 acquired BA degree. He thus submitted that the reliance placed by the Tribunal on the decision of this court in the case of *Ashok Narayan Sathe Vs Education Officer and Others*² would not be applicable to the facts of the present case. He submits that in the case of *Ashok Narayan Sathe*, the claim was that the degree of DEd (old

² 2007 (0) AIJEL-MH 134877

two years course) was equivalent to a BEd degree and hence the claim of seniority was since the date of appointment.

11. Learned senior counsel for the petitioners submits that in the present case, petitioner no. 1 is not claiming equivalence to the BEd degree and that his claim is based on the third entry of Category 'C' as he acquired a BA degree in the year 1993. Hence, on acquiring a BA degree petitioner no. 1 was entitled to be entered in Category 'C', as had completed DEd (old course of two years). Hence, the decision relied upon by the School Tribunal did not apply to the facts of the present case. Thus, it is submitted that even on merits the impugned order holding respondent no. 1 as senior to petitioner no. 1 is not in terms of the guidelines issued in Schedule 'F' of the MEPS Rules. It is thus submitted that the management has rightly maintained the seniority list by following the guidelines of Schedule 'F'. Since there was no dispute on the seniority list, no fault can be found in the order of promotion for promoting petitioner no. 1 to the post of Head Master as he was at serial no. 1 as per the undisputed seniority list. Hence, the learned senior counsel for the petitioners submitted that the impugned order setting aside the order of promotion is required to be

set aside and the petitioner no. 1 is entitled to be promoted to the post of Head Master as per order of promotion passed on 1st June 2018.

12. In support of his submission regarding the reliance of the petitioners on the entry of Category 'C' of Schedule 'F' for claiming seniority on acquiring a BA degree, learned senior counsel for the petitioners relied upon the decision of this court in the case of ***Sahakar Vidya Prasarak Mandal and Others vs. Dinesh Karbhari Kute***³. He submitted that the issue regarding the requirement of completion of 10 years of service as stated in the fourth entry of Category 'C' of Schedule 'F' has been interpreted in the said decision. He submitted that this court has examined the requirement of completion of 10 years in the third and fourth entry to mean that the fourth entry would require completion of 10 years of service for claiming seniority after acquiring a bachelor's degree. He thus specifically relied upon the interpretation of the said entries made in the said decision in paragraphs 26 to 32 of the said decision. He thus submitted that the argument raised on behalf of respondent no. 1 regarding the requirement of completion of 10 years is also dealt with by this Court in the aforesaid decision and

³ Writ Petition No. 1221 of 2022 (BHC)

the interpretation supports the submission on behalf of the petitioners.

13. Learned counsel for respondent no.1 supports the impugned order. He submitted that the third entry in Category 'C' to claim seniority after acquiring a graduation degree would include a requirement to complete 10 years of service. The third and fourth entries are required to be read together as 'or' is provided in between the two entries which indicates that in the case of the Dip T (old two years course) or DEd/Dip T (one year course) would also require 10 years of service for the claim to get entry under Category 'C' after obtaining the degree of graduation. Respondent no. 1 was holding a degree of BA and BEd on the date of his appointment i.e. 5th November 1998. Hence, on the date of the appointment itself, respondent no. 1 had entered Category 'C'. Petitioner no. 1 was appointed prior in time, however his educational qualification was only SSC and DEd (Old two years course). Thus, though he acquired a BA degree in the year 1993, he would be entitled to enter Category 'C' only after completion of 10 years i.e. on 23rd November 1998. Before that date, respondent no. 1 was already appointed on 5th November 1998 and considering his educational qualification he was already in

Category 'C'. Hence in any event respondent no. 1 was senior to petitioner no. 1 though he was appointed later.

14. So far as not raising any objection to the seniority list since the year 2015 is concerned, learned counsel for respondent no.1 submitted that before filing the appeal before the School Tribunal respondent no.1 had filed a dispute before the Education Officer. However, the said dispute was never adjudicated and decided by the Education Officer. He thus submitted that no fault can be found with respondent no. 1 for not raising any objection to the seniority list. He submitted that considering the guidelines issued in Schedule 'F' respondent no. 1 being qualified from the date of his appointment, the Tribunal has rightly held that respondent no. 1 is senior to petitioner no.1.

15. In support of his submissions learned counsel for respondent no. 1 also relied upon the entries in Category 'C' of Schedule 'F'. He submitted that the third entry relied upon by petitioner no. 1 would not entitle him to get entry in Category 'C' on acquiring a BA degree. He submits that the third entry in Category 'C' entitles only employees who

have acquired a graduation degree and who were already holding Dip T (old two years course). So far as petitioner no. 1 is concerned, admittedly petitioner no. 1 does not hold a degree of Dip T and that he has acquired a degree of DEd. He further submitted that even if the third entry is considered as a separate entry, petitioner no. 1 would not be entitled to claim the benefit of the same as petitioner no. 1 does not hold the degree of Dip T. With reference to the reliance placed on behalf of the petitioners to contend that the Dip.T (old two years course) is equivalent to a Diploma in Education (DEd) a letter annexed to the additional affidavit would be of no assistance to the petitioners. He submits that the petitioners' reliance on the said clarification and the subsequent amendment dated 24th March 2023 adding DEd (old two years course) in the third entry of Category 'C' of Schedule F would be of no help to the petitioners' arguments, as the said amendment is the subject matter of challenge in Writ Petition No. 11243 of 2023 pending before the Division Bench of this Court.

16. The learned counsel for respondent no. 1 thus submits that the interpretation made on behalf of the petitioners that DEd is equivalent to Dip T is not correct because D Ed is entered into Category 'C' by

way of amendment dated 24th March 2023. Hence before the amendment DEd was not treated as a qualification to claim a senior post based on the relevant third entry of Category 'C' of Schedule 'F'. He further submits that even otherwise the said amendment is under challenge. Hence, even on the merits of the seniority list, there is no substance in the argument made on behalf of the petitioners. He submits that considering the well-settled principles of law the Tribunal has rightly decided the inter se seniority and set aside the order of promotion passed by the management based upon the seniority list maintained by the management. He submits that before 2015 name of respondent no. 1 was listed above the name of petitioner no.1. Hence by relying upon subsequent changes in the seniority list made in the year 2015, the management could not have promoted petitioner no. 1 by ignoring respondent no.1's seniority based on his qualification right from the date of his appointment, which entitled him to be in Category 'C' from the date of his appointment.

17. In support of his submissions that respondent no. 1 being qualified from the date of inception is entitled to be listed at serial no. 1 in the seniority list the learned counsel for respondent no. 1 relied

upon the decision of the Hon'ble Supreme Court in the case of *Madhavi Vs Chagan*⁴. He submits that in similarly situated facts of the case, the Hon'ble Supreme Court held that on account of qualifications at the time of initial appointment, the respondent before the Hon'ble Supreme Court was not treated to be part of Category 'C' from the date of his initial appointment as he was not a trained teacher at the time of his appointment. Thus the Hon'ble Supreme Court has taken into consideration the qualification of the teacher at the time of initial appointment and entry in Category 'C' from the date of inception. Thus, the proposition of law laid down by the Hon'ble Supreme Court in the said decision would apply to the present case as respondent no. 1 was a trained teacher considering his qualification at the time of his appointment, hence was already in Category 'C' from the date of inception of his services. Thus, on account of the subsequent acquisition of graduation qualification petitioner no. 1 would not be entitled to be senior to respondent no. 1 as on the relevant date he had not completed 10 years of service as required under the third and fourth entries of Category 'C' of Schedule 'F'.

4 2020 (0) AIJEL-SC-66804

18. I have considered the aforesaid submissions. The dates of appointment of petitioner no. 1 and respondent no. 1 and their educational qualifications are not in dispute. Petitioner no. 1 was appointed as Assistant Teacher in a secondary school on 24th November 1988 and on the date of appointment, petitioner no. 1 was SSC, DEd (old two years course). Respondent no. 1 was also appointed in secondary school on 5th November 1998 with the qualification of BA and BEd. Before the appointment of respondent no. 1, petitioner no. 1 acquired a BA degree in April 1993. Thus, petitioner no. 1 claims to have entered Category 'C' on the acquisition of a BA degree in April 1993.

19. So far as the seniority list is concerned, a perusal of the seniority list of December 2015, 2016 and 2017 produced on record shows that petitioner no. 1 was shown as senior to respondent no.1. The seniority list is signed by petitioner no. 1 as well as respondent no. 1 without any protest. It is also not in dispute that there was never any objection raised on the said seniority list and there was no reference made to the inter se seniority before the Education Officer. Thus, based on the seniority list on the relevant date of 31st May 2018 when earlier Head Master superannuated, petitioner no. 1 being shown at serial no. 1 in

the seniority list was promoted to the post of Head Master. It was only after petitioner no. 1 was promoted to the post of Head Master based on the seniority list, that respondent no. 1 raised objections on the seniority list in an appeal under Section 9 of the MEPS Act filed to challenge the order of promotion.

20. So far as the scope and jurisdiction of Section 9 of the MEPS Act is concerned, learned senior counsel for the petitioners has relied upon the decision of the full bench of this Court which deals with the scope of Section 9. A perusal of the said decision indicates that the issue regarding challenge to inter se seniority under Section 9 is held to be within the scope of Section 9 as an incidental issue provided consequential action is taken by the management based on the dispute adjudicated by the Education Officer under Rule 12 of the MEPS Rules and the same is under challenge under Section 9.

21. In the present case it is not disputed that there was no adjudication made under Rule 12 regarding inter se seniority. A perusal of the provisions of the MEPS Act indicates that the power for effective adjudication on the inter se seniority is given to the Education Officer under Rule 12 of the MEPS Rules. So far as the scope and

jurisdiction of Section 9 of the MEPS Act is concerned, the School Tribunal is a creation of statute and an appeal is provided before the School Tribunal under Section 9 against such orders as stated in clauses (a) and (b) of sub-section (1) of Section 9. Sub-section (1) of Section 9 begins with a non-obstante clause which overrides anything contained in any law or contract. Thus, the non-obstante clause does not override the provisions under the MEPS Act and the Rules framed thereunder. The scheme of the MEPS Act and the Rules framed thereunder provide power to the Education Officer to decide the dispute on the inter se seniority. Thus, in the absence of any decision by the Education Officer under sub-rule (3) of Rule 12 of the MEPS Rules on the dispute on the inter se seniority, and, in the absence of challenge to any consequential action by the management based on such decision, if the Tribunal starts adjudicating the inter se seniority, the power given to the Education Officer under Rule 12 would be rendered otiose. Hence, in a given case, the order of promotion would amount to supersession if the seniority list prepared by the management under Rule 12 of the MEPS Rules is bypassed or the order of promotion is contrary to such seniority list. The issue about

the scope of jurisdiction of the School Tribunal under Section 9 is covered by the full bench decision of this Court relied upon by the learned senior counsel for the petitioners. In the said decision in paragraph 11, the scope of determination of inter se seniority by the Education Officer under Rule 12 is examined. One of the relevant questions before the full bench was framed in clause (4) in paragraph 2 which reads as under:

“(4) Can a decision of the Education Officer on the placement of a teacher in the Seniority List be challenged before the Tribunal in an appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ?”

22. In response to the aforesaid question framed in the said decision the conclusions relevant to the present case are in paragraph 11.2 which reads as under :

“11.2.The determination of inter se seniority by the Education Officer under Rule 12 is not final. An employee aggrieved by the determination under Rule 12 is at liberty to challenge that determination even before the management takes consequential action by seeking recourse to the writ jurisdiction, as was the case before

the Court in Pashte. However, once consequential action falling under clauses (a) and (b) of sub-section (1) of section 9 is taken by the management on the basis of the determination, an appeal lies under section 9 and while exercising its jurisdiction on an appeal, the Tribunal can as an incidental issue, decide the correctness of the determination of inter se seniority.”

23. Considering the scope of Rule 12 of the MEPS Rules read with Section 9 of the MEPS Act, in the concluding paragraph 13, the full bench of this Court has held in Clause (v) as under :

“(v) A decision of the Education Officer on the issue of inter se seniority under Rule 12 of the MEPS Rules is not final. Where action is taken by the management against an employee on the basis of such a determination and where the action taken falls within the description contained in clauses (a) and (b) of sub-section (1) of section 9, an appeal before the School Tribunal for challenging the action of the management would be maintainable. The Tribunal would have the jurisdiction, while deciding the lawfulness of the action of the management to adjudicate upon the correctness of the determination of the Education Officer under Rule 12 as an incidental question. Where no consequential action has been taken by the management, on the basis of the determination of the

Education Officer, it would be open to the employee concerned, to seek recourse to his remedies against the decision under Rule 12 in accordance with law.”

24. Thus, in view of the aforesaid decision it is clear that the School Tribunal under Section 9 can examine the issue of inter se seniority in the event there is an adjudication made by the Education Officer under Rule 12 of the MEPS Rules and the management passes an order based on the said adjudication. Thus, an employee aggrieved by the consequential action by the management can raise a dispute on the decision of the Education Officer on the inter se seniority as an incidental issue while challenging the consequential action of the management before the School Tribunal.

25. In the present case admittedly, there is no adjudication made by the Education Officer under Rule 12 of the MEPS Rules. Though as per the undisputed seniority list maintained by the management under Rule 12 of the MEPS Rules, the management passed the order of promotion of petitioner no. 1, the School Tribunal has held that respondent no. 1 was entitled to be promoted as he entered Category 'C' right from the inception. The School Tribunal has further held that

petitioner no. 1 would not be entitled to enter Category 'C' without completing 10 years of service in view of the fourth entry of Category 'C' of Schedule 'F' of the MEPS Rules. Thus, an adjudication by the School Tribunal on the inter se seniority is beyond the scope of Section 9 of the MEPS Act. Since there was no decision by the Education Officer under Rule 12 on the inter se seniority, the tribunal had limited jurisdiction under Section 9 as provided by the statute. The issue of inter se seniority is vested with the Education Officer under Rule 12 of the MEPS Rules. Thus, the findings recorded by the Tribunal on inter se seniority while dealing with an appeal under Section 9 would be beyond the scope and jurisdiction of Section 9.

26. Thus, considering the undisputed seniority list showing petitioner no. 1 at serial no. 1 in the seniority list maintained as per Rule 12 of the MEPS Rules, the order of promotion passed by the management cannot be faulted and would not amount to supersession of respondent no. 1. The contention raised by the learned counsel for respondent no. 1 that the relevant objection is already filed by respondent no. 1 before the Education Officer raising dispute on the seniority list would not be of any assistance to respondent no. 1 in as

much as according to respondent no. 1 the said objection is raised after the order of promotion is passed by the management and no attempts are made by respondent no. 1 for getting the objection decided.

27. It appears that respondent no. 1 filed an appeal before the School Tribunal on 28th August 2018. Paragraph 8 of the Appeal Memo indicates that on 30th July 2018 respondent, no. 1 submitted his written request letter to the Education Officer as per Rule 12 raising a dispute on the seniority list. Thus, it appears that though the said objections were pending before the Education Officer, the School Tribunal proceeded to adjudicate upon the inter se seniority which is the domain of the Education Officer as specified in Rule 12 of the MEPS Rules. Thus, in view of the well-settled proposition of law as discussed above the findings recorded by the Tribunal on the inter se seniority are beyond the scope and jurisdiction of Section 9. Thus, the Tribunal erred in setting aside the order of promotion passed by the management based on the undisputed seniority list maintained as per Rule 12 of the MEPS Rules.

28. Hence, it is not necessary to examine the controversy raised on the merits of inter se seniority which is the domain of the Education Officer and in the present case dispute on inter se seniority was never referred to the Education Officer under sub-rule (3) of Rule 12, before the order of promotion was passed by the management. Thus, the order of promotion is based on the undisputed seniority list. The alleged claim of respondent no. 1 of filing such a dispute before the Education Officer, is admittedly never pursued by him. However, both parties have extensively argued on the merits of the seniority list, hence, it is necessary to refer to the arguments.

29. The controversy in the present case is regarding entering Category 'C' based on the third entry of Category 'C' on the ground of acquiring a BA degree. Petitioner no. 1 with a qualification of SSC and DEd was appointed before respondent no. 1. Given the third entry of Category 'C' of Schedule 'F' petitioner no. 1 claims to have entered Category 'C' after acquiring a BA degree in April 1993. Respondent no. 1 claims to have entered Category 'C' from the date of his appointment i.e. from 5th November 1998 considering his qualifications of BA and BEd. The argument of respondent no. 1 is that petitioner no. 1 had a

degree of DEd (old two years course) and would fall in the fourth entry of Category 'C' and thus would enter Category 'C' only after completing 10 years of service. This argument is twofold. Firstly, it is based on the distinction of the degree of DipT and DEd, in as much as the third entry in Category 'C' does not refer to DEd and it refers only to DipT. Secondly the words "or its equivalent" are absent in the third entry unlike the first and the second entry; hence, the third and fourth entries are to be read together, requiring the petitioner no. 1 to complete 10 years of service for claiming entry in Category 'C'. Thus, it is argued on behalf of respondent no. 1 that petitioner no. 1 would enter Category 'C' on completion of 10 years of service i.e. on 23rd November 1998 i.e. after respondent no. 1's appointment on 5th November 1998; thus respondent no. 1 is senior to petitioner no. 1 by around 18 days.

30. However, the fact remains that petitioner no. 1 acquired a BA degree in April 1993 i.e. much before the date of appointment of respondent no.1. Thus, the point of consideration is whether completion of 10 years of service is a requirement for petitioner no. 1 to enter Category 'C' or whether petitioner no. 1 would enter Category

‘C’ in April 1993 on acquiring BA degree as categorized in the third entry of Category ‘C’ in as much as petitioner possessed degree of DEd (old two years course) which is equivalent to DipT referred to in third entry of Category ‘C’.

31. Category ‘C’ of Schedule ‘F’ provides for guidelines for fixing of seniority. The third entry of Category ‘C’ provides that an employee with a graduation degree and DipT (old two years course) would enter Category ‘C’. The argument on the requirement of completion of 10 years for claiming entry in Category ‘C’ after obtaining a graduation degree by an assistant teacher with a DEd degree is considered by this Court in the decision of ***Sahakar Vidya Prasarak Mandal***. The relevant observations of this Court on the said entries are in paragraphs 26 to 32 which read as under :

(26) The controversy between the parties revolves around the question as to whether the respondent No. 1's case, for the purpose of seniority, would fall within the third entry or the fourth entry after he acquired the qualification of B.A. in the month of August, 1990. In the opinion of the learned Presiding Officer School Tribunal since the respondent No. 1 had S.C.C.. D.Ed (two years course), the respondent No. 1

entered the third entry after he acquired the qualification of B.A. in August, 1990. and, therefore, the petitioner No. 4, who was appointed as an Assistant Teacher in the year 1991, was junior to respondent No. 1.

(27) Mr. Bandiwadekar strenuously submitted the aforesaid approach of the learned Presiding Officer School Tribunal is incorrect. It was nobodies case that Dip.T (old two years course) was equivalent to D.Ed (two years course). Mr. Bandiwadekar further submitted that the learned Presiding Officer School Tribunal also lost sight of the fact that in first two entries of category "C" the expression, "or its equivalent" has been used and which is conspicuous by its absence in the third entry. Thus the learned School Tribunal committed a manifest error in equating D.Ed. (two years course) with Dip.T (old two years course).

(28) The guidelines contained in Schedule "F" are required to be read as whole. Construing the entries in a particular category in isolation may lead to anomalous consequences. The Notes appended bill the categories further elucidate the intent of the entries in the guidelines. The contrast between Note 1 and Note 2 is unmistakable. Note 1 declares that for the purpose of category C. D and E teachers with S.T.C., T.D., Jr. P.T.C Dip., T., Dip. Ed. (post S.S.C. one year course) qualifications appointed on or after 1" October, 1970 shall be

considered as untrained and their seniority shall be fixed in the "F" or "G" category of untrained teachers, as the case may be. In contrast under Note 2. the training qualification of, (1)- D.Ed. (two years course). (2)- T.D. (Bombay University) and (3)-Dip. Ed. (Nagpur University), which can be secured two years after S.C.C. examination, shall be considered as training qualification for the purpose of seniority even after 1" October, 1970.

(29) A conjoint reading of Notes 1 and 2 would indicate that the training qualifications described under Note 2 constitute a class by themselves and are required be reckoned for the purpose of seniority even if they are acquired post 1 October, 1970. Secondly, such interpretation is required to be given which gives play to operate both Note 1 and Note 2.

(30) This position becomes more clear if the training qualifications subsumed in the third entry are considered. It contains the qualification B.A/B.Sc. / B.Com. Dip.T (old two years course) whereas the forth entry contains post graduate training qualifications of S.T.C./Dip.Ed./Dip.T. (One year course). Again the distinction between two years training qualification course and one year course is maintained and treated differently by putting those qualifications in the succeeding entries. Note 4, thus, ordains that the categories mentioned under guideline 2 represent the ladder of seniority

and have been mentioned in descending order.

(31) If the entries within Category "C" are considered in juxtaposition with Note 1 and 2, the view taken by the learned Presiding Officer School Tribunal that after acquisition of B.A qualification, the respondent No. 2, with two years D.Ed. Course, catapulted himself to the third entry in Category "C" from Category "F" (of untrained graduate teachers) becomes justifiable. Any other view would render D.Ed. (two years course) not covered by any of the entries in Category "C".

(32) The absence of the expression, "or its equivalent" in third entry in Category "C", pressed into service by Mr. Bandiwadekar, in my view, is not of determinative significance. Note 2 removes the ambiguity. It expressly provides that the three specified training qualifications including D.Ed. (two years course) shall be considered as training qualifications for the purpose of seniority even after 1 October, 1970. Omission of these three qualifications in Note 1 which subsumes in its fold all the training qualifications (post S.C.C. 1 year course) also indicates that they were to be treated at a higher pedestal. I am therefore persuaded to hold that the learned Presiding Officer School Tribunal was justified in reckoning the case of respondent No. 1 as falling within the ambit of the third entry.

emphasis applied

32. Given the aforesaid settled position, I do not find it necessary to further examine the point raised by the learned counsel for respondent no. 1. The petitioners have relied on the letter dated 16th April 2022 clarifying that DipT is equivalent to DEd. The amendment made effective from 24th March 2023 adding DEd in the third entry supports the clarification issued in the said letter dated 16th April 2022. Learned counsel for respondent no. 1 has submitted that the said amendment is under challenge in this Court, hence the same cannot be relied upon. There is no interim relief granted in the pending challenge in this Court. Hence, the amendment will hold the field till the same is set aside or declared invalid. Thus, I do not see any reason to disbelieve the argument of the petitioners that petitioner no. 1 was entitled to be entered into Category 'C' on completion of graduation in the year 1993 as he already possesses a DEd degree which is equivalent to DipT as clarified in the aforesaid letter and in view of the proposition of law laid down by this Court in the decision of ***Sahakar Vidya Prasarak Mandal***.

33. Reliance placed by the learned counsel for respondent no. 1 on the decision of the Hon'ble Supreme Court in the case of ***Madhavi*** is also of no assistance to the argument made on behalf of respondent

no.1 as facts of the present case are different. The controversy in the said case was regarding the distinction between clauses 1 and 2 of Schedule 'F' applicable for primary school and secondary school respectively. The Hon'ble Supreme Court set aside the order of the High Court accepting the claim of seniority of a secondary school teacher based on a decision of the High Court dealing with clause 1 of Schedule 'F' applicable to primary school. Thus, the Hon'ble Supreme Court in the decision of *Madhavi* upheld the promotion of the secondary school teacher to the post of Head Master who had entered category 'C' at the time of initial appointment being a trained teacher, and, the claim of seniority of the teacher appointed later and subsequently acquiring a degree for being a trained teacher was not accepted.

34. So far as the present case is concerned, the controversy is on the third and fourth entry of Category 'C' as recorded above. Thus, once it is accepted that petitioner no. 1 on acquiring a BA degree would fall in the third entry of Category 'C', he enters Category 'C' before the date of appointment of respondent no. 1. Thus, no fault can be found in the seniority list maintained by the management under

Rule 12 of the MEPS Rules. Thus, there cannot be any fault found even in the order of promotion of petitioner no. 1 to the post of Head Master based on the said seniority list. For the aforesaid reasons, the principles of law laid down in the said decision of ***Sahakar Vidya Prasarak Mandal*** are squarely applicable to the present case. Thus, even on the merits of the inter se seniority the reasons and findings recorded by the Tribunal are not in accordance with the guidelines in Schedule 'F' of the MEPS Rules.

35. So far as the reliance placed by the tribunal on the decision of this Court in the case of ***Ashok Narayan Sathe*** is concerned the proposition of law laid down in the said decision would not apply to the facts of the present case. As recorded in paragraph 5 of the said decision, the claim for seniority was based on the argument that the petitioner therein had completed DEd (2 years) and it was equivalent to a BEd degree. This Court in paragraph 7 held that it was necessary to possess both a BA degree as well a BEd qualification to be considered as a trained graduate teacher and the other alternative was that the petitioner therein ought to have been a graduate holding a DEd (1 year course) with 10 years of service. Thus, the requirement of

10 years of service appears to have been stated regarding DEd (1 year course) as recorded in paragraph 7 of the said decision. In the present case, petitioner no. 1 possesses a DEd (two years old course) degree and he is not claiming any equivalence to a BEd degree. Thus, in the case of **Ashok Sathe**, there is no decision on a controversy that is involved in the present case regarding the third entry of Category 'C' based on acquiring a BA degree by petitioner no. 1 who possessed a degree of DEd (old two years course). Thus, in the present case, reliance by the Tribunal on the decision in the case of **Ashok Sathe** is misplaced.

36. Thus, I find merit in the arguments raised on behalf of the petitioners. For the reasons recorded above the arguments raised on behalf of respondent no. 1 to support the impugned judgment and order of the School Tribunal have no substance. Thus, for the reasons recorded above, the petition is allowed by passing the following order :

- (i) Judgment and Order dated 25th March 2021 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No. 51 of 2019 is quashed and set aside and Appeal No. 51

of 2019 filed by respondent no. 1 is dismissed. Consequently, the Order of promotion dated 1st June 2018 passed by management and approved on 21st June 2018 stands confirmed.

(ii) Petition is allowed in the above terms.

37. At this stage learned counsel for respondent no. 1 requests to stay the implementation of this order. He submits that in view of the impugned order respondent no. 1 is already working as Head Master. Hence, to enable respondent no. 1 to challenge this order before the Apex Court implementation of this order be stayed for four weeks.

38. Learned senior counsel appearing for the petitioners opposes the said request on two grounds. Firstly, he submits that the approval to the appointment of respondent no. 1 to the post of Head Master was subject to the final outcome of any legal proceedings. Secondly, he submits that petitioner no. 1 is due to retire on 31st May 2024. Thus, serious prejudice would be caused to petitioner no. 1 in the event a stay is granted to the implementation of this order. He submits that before the impugned order, petitioner no. 1 was working as Head

Master and his appointment was also approved by the Education Officer on 21st June 2018. Thus, from the date of his promotion i.e. from 1st June 2018 till the impugned judgment and order dated 25th March 2021 petitioner no. 1 was working as Head Master. He submits that since petitioner no. 1 is due to retire on 31st May 2024, any stay of this order will disentitle the petitioner no. 1 to the said post of Head Master and would deprive him of superannuating on the said post to which he is entitled in view of the present order and the order passed by the management promoting him.

39. Considering the urgency in the matter regarding the date of retirement of petitioner no. 1 and considering the short issue involved in the matter, the petition was taken up for final disposal at the admission stage. Learned senior counsel for the petitioners is right in submitting that any stay to the implementation of this order would render the effect of this order infructuous as petitioner no. 1 is retiring on 31st May 2024. It is not in dispute that respondent no. 1 is shown as next to the petitioner no. 1 in the seniority list. Hence, even if this order is implemented and the petitioner no. 1 is reinstated to the post of Head Master he is due to retire on 31st May 2024 and hence

thereafter respondent no. 1 would be due for promotion to the post of Head Master. Hence, no prejudice would be caused to respondent no. 1. In the event respondent no. 1 succeeds in the challenge to the present order, he would be entitled to monetary benefits if any. However, if the implementation of this order is stayed, petitioner no. 1 would be deprived of the post as he is retiring on 31st May 2024. Hence, considering the peculiar facts of the present case, I do not find it in the interest of justice to stay the implementation of this order. Hence prayer for stay is rejected.

[GAURI GODSE, J.]