

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No. 9636 of 2019

Sou. Fatima Shabbir Shaikh
R/o. Plot No.155, Ambedkar Housing
Society, A/P Jaysingpur,
Tal. Shirol, Dist. Kolhapur 416 401. ... Petitioner.

V/s.

- 1) The State of Maharashtra
Through the Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 400 032.
- 2) The Director of Vocational Education
and Training,
Maharashtra State, Mumbai.
- 3) The Joint Director of Vocational
Education and Training, Pune.
- 4) Latthe Education Society,
Sangli, Rajnemi Campus,
Timber Area, Sangli – 416 416.
Through its Chairman/Secretary ... Respondents

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

Mr. B.V. Samant, Additional Government Pleader a/w. Mr. A.C.
Bhadang, AGP, for Respondent Nos. 1 to 3-State.

Mr. Nilesh Wable a/w. Ms. Rutuja Khatmode i/b. Umesh Mankapure
for Respondent No.4.

**CORAM: NITIN JAMDAR AND
M.M. SATHAYE, J.J.**

DATE: 28 June 2024.

JUDGMENT (PER NITIN JAMDAR, J) :

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal.

2. The Petitioner has challenged the action of the Respondent-employer in reverting and reducing the Petitioner in rank from the post of Principal to the post of Mathematics Instructor. Petitioner has sought a direction to the Respondent-employer to reinstate the Petitioner on the post of Principal with all consequential benefits.

3. The Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Director of Vocational Education and Training Institute. Respondent No.3 is the Joint Director of Vocational Education and Training, and Respondent No.4 - the Education Society, is the employer of the Petitioner.

4. Respondent No.4 - Education institute is registered under the Bombay Public Trust Act, 1950 and Societies Registration Act, 1960.

It operates several educational units, including the Industrial Training Institute at Jaysingpur. The permission is granted to Respondent No.4 - Education Society to run the Industrial Training Institute on an unaided basis.

5. On 1 February 2008, Respondent No.4 published an advertisement in the newspaper inviting applications for the post of Principal to be filled in at the Jaysingpur Industrial Training Institute. The advertisement stipulated the educational qualifications per All India Council for Technical Education norms. The Petitioner applied for the post of Principal. An interview was conducted. Petitioner was selected and was appointed by order dated 25 November 2008 with effect from 1 December 2008 as a Principal on probation. In the meeting held on 9 January 2010 of the Managing Council of Respondent No.4, a resolution was passed to confirm the Petitioner's probation period after the expiry of one year. Accordingly, the Petitioner was confirmed as a permanent employee from 1 December 2009. After that, the Petitioner continued to work with the Respondent No.4.

6. On 30 May 2019, the Managing Committee of Respondent No.4 passed a resolution that Petitioner be reverted with effect from 1 June 2019 from the post of Principal of Industrial Technical Institute and be posted as a Mathematics Instructor for administrative convenience. Pursuant to this resolution, Respondent No.4 passed an order on 31 May 2019 reverting/reducing the

Petitioner in rank from the post of Principal to Mathematics Instructor.

7. Challenging the order dated 31 May 2019 of reverting/reducing the Petitioner in rank, the Petitioner has filed the present Petition praying for the following reliefs:

“(b) By a suitable writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned order dated 31.5.2019 (Exhibit-E) issued by the Respondent No.4, thereby reverting/reducing in rank the Petitioner from the post of Principal of Jaysingpur Industrial Training Institute, Jaysingpur, Tal. Shirol, Dist. Kolhapur w.e.f. 1.6.2019 and accordingly the Respondent No.4 may be directed to forthwith reinstate the Petitioner in the said post of Principal with all consequential benefits such as continuity of service, payment of full back wages from the date of the impugned order till the reinstatement in the said post, etc.”

(d) By a suitable writ, order or direction, this Hon’ble Court be pleased to direct the Respondent No.4 to pay to the Petitioner the salary and allowances in the post of Principal of its Jaysingpur Industrial Training Institute, Jaysingpur, Tal. Shirol, Dist. Kolhapur in accordance with the pay scale prescribed for the said post by the DGET, New Delhi and the Respondent No.1, and accordingly to pay all the differential amount to the Petitioner from 1.12.2008 after deducting the amount paid to the Petitioner from the said date till today.

8. Reply affidavit is filed on behalf of Respondent No.4. No reply is filed by Respondent Nos. 1 to 3.

9. We have heard Mr. Narendra Bandiwadekar, the learned Senior Advocate appearing for the Petitioner, Mr. B.V.Samant, Additional Government Pleader and Mr. Nilesh Wable with Ms. Rutuja Khatmode, learned counsel for Respondent No.4 – Education Society.

10. The learned Senior Advocate for the Petitioner submitted that the impugned order dated 31 May 2019 is entirely illegal and perverse. The learned Advocate submitted that no opportunity of showing cause was given to the Petitioner before reverting/reducing the Petitioner in rank. He submitted that the Petitioner was appointed directly to the post of Principal, and the Petitioner could not have been reduced to the lower post of Mathematics Instructor, which post the Petitioner never held. The learned counsel for the Petitioner submitted that the Petitioner was not paid a salary as per applicable pay commissions, not only for the post of the Principal but even after passing the order of reversion. In the reply affidavit, Respondent No.4 has taken a stand that it is a certified minority institution and, therefore, it is an absolute right to appoint Principal or Head Master of their choice. The learned counsel for Respondent No.4 sought to contend that the work of the Petitioner was unsatisfactory and Petitioner was informed regarding the same.

Therefore, there is no illegality in the impugned order.

11. In the oral arguments, the learned AGP raised a contention regarding the availability of alternate remedy to the Petitioner, contending that the appeal is maintainable under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short '**Act of 1977**') against the order of reduction in rank. Firstly, this Petition has been pending since 2019 and has been adjourned from time to time. Throughout the entire hearing, this argument was never raised. This argument of availability of alternate remedy is not raised in the reply affidavit filed by Respondent No.4, nor is it advanced in the oral arguments by Respondent No.4.

12. Section 9 of the Act of 1977 provides a remedy of appeal to any employee in a private school. The phrase 'Private School' is defined under Section 2(20) of the Act of 1977 as a recognised school established or administered by a Management other than the Government or a local authority. The expression 'recognised' is also defined under the Act of 1977 in Section 2(21) as a school recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or any of such Boards. The expressions 'Director', 'Divisional Board' and 'State Board' have been defined under the Act of 1977 under sub-Sections (6), (6-A) and 25 of Section 2 as under:

“(6) ‘Director’ means the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art as the case may be, appointed as such by the State Government.”

“(2(6-A) ‘Divisional Board’ means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Education boards Act, 1965.”

“(25) ‘State Board’ means -

(a) The Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;

(b) The Board of Technical Examinations, Maharashtra State;

(c) The Maharashtra State Board of Vocational Examinations or

(d) The Art Examinations Committee.”

Therefore, only if the private school is recognised by the authorities falling under Section 2(21) would an employee of such school have the right to file an appeal before the school Tribunal under Section 9 of the Act of 1977.

13. The question as to whether the industrial training institutes fall within the ambit of the phrase 'recognised' of Section 2 came up for consideration of this Court in the case of *St. Francis Industrial Training Institute & ors. vs. P.J. Jose & ors.*¹. This Court examined

¹ 2007(1) Bom. C.R. 675

the scheme for establishing and regulating industrial training institutes in detail. Stand was taken before the Court in the affidavit filed by the District Vocational Training officer was that the Director of Vocational Education and Training only grants prior permission for commencing the vocational process in private unaided training centers, and after scrutiny is carried out of the course of studies, recognition is granted by the Director General of Employment and Training. The Court examined the scheme for establishing an Industrial and Training Institute, which was notified by the Government of India and the Ministry of Labour through the Directorate General of Employment and Training. One of the functions of the National Council for Vocational Training is to recognise training institutes run by Government or private agencies for the grant of National Trade Certificates and lay down the conditions for such recognition. Therefore, an industrial training institute is not recognised by the Director of Technical Education or the Director of Vocational Education and Training. The Court, therefore, concluded that the industrial training institute could not be recorded as a private school within the meaning of Section 2(20) because it was not recognised by any authorities as stipulated under Section 2(21) of the Act. That being the position, Respondent No.4 has rightly not raised any objection based on the availability of appellate remedy to the Petitioner under Section 9 of the Act of 1977. The oral submission made by the learned AGP, therefore, is without any substance.

14. Turning to the challenge to the impugned order, the order dated 31 May 2019 gives no reasons whatsoever except referring to the resolution passed on 30 May 2019. It directs that the Petitioner is 'reverted' from 1 June 2019 from the post of Principal to the Mathematic Instructor. The impugned order does not refer to any show-cause notice nor any enquiry. The Petitioner applied to the advertisement issued for the post of Principal and appointed as a Principal. The Petitioner was not promoted to the post of Principal. The expression reduction in rank and reversion refers to the hierarchy in services. The reduction in rank postulates reversion from a higher to a lower post. The Hon'ble Supreme Court in the case of *P.V. Srinivas Sastry & ors. v/s. Comptroller & Auditor General & ors.*² considered the question whether the reduction from a higher to a lower post can be to a post where the employee never held. The Hon'ble Supreme Court laid down that a person directly appointed to a particular post cannot be reverted to the lower post that the employee never held. While imposing the punishment of reduction in rank, the order must have nexus with the post held by the delinquent employee, from which he had been promoted to the post from which he is being reverted. If such an employee never held a post or was never a member of that cadre, such an employee cannot be reverted to a lower cadre to which he did not belong or to a lower post, which the employee never held.

This law laid down by the Hon'ble Supreme Court in the case of

2 (1993) 1 Supreme Court Cases 419

P.V.Srinivasa (supra) is squarely applicable to the facts of the case. Petitioner was not promoted from the post of Mathematics Instructor to the Principal so the Petitioner could be reverted to the post. Petitioner was directly appointed as a Principal and, therefore, the impugned order reverting the Petitioner from the post of Principal to Mathematics Instructor is bad-in-law.

15. The main plank of the argument of Respondent No.4 in the affidavit and oral arguments is that the Petitioner is a certified minority educational institute. It is contended that the certificate of minority educational institute was granted to Respondent No.4 by Maharashtra Government on 4 February 2010. The reliance is placed by Respondent No.4 on the decision of the Hon'ble Supreme Court in the case of *Malankara Syrian Catholic College vs. T. Jose*³. Firstly, there is a difference between the prerogative of minority educational institutes to appoint a person of their choice as the Head of the Institution and the right of the minority education institutions to take punitive action against the Head or the employee. Secondly, the rights of minority institutions regarding the Head of the school are not absolute and unquestionable. In the case of *IVC Da Conceicao vs. State of Goa*⁴ the question arose regarding the process of appointment as Principal in the minority institution and the powers of the judicial review. The Supreme Court considered the decision in the case of *Malankara Syrian Catholic College vs. T. Jose*

3 2007 (1) SCC 386

4 2019(2) Mh.L.J.

and, in para-9, observed thus:

“We have given our anxious consideration to the rival submissions. There is no dispute with the proposition laid down in the case of T. Jose (supra), that right to choose a principal is a part of a right of minority institution under Article 30(1) of the Constitution and the said right is not affected merely because aid is extended by the State to a minority institution. In T. Jose (supra), this Court held that section 57(3) of the Kerala University Act, 1974 which required appointment of senior most lecturer as Principal did not apply to a minority institution. However, the decision of this Court cannot be read as laying down a principle that a minority institution could act arbitrarily or unfairly in dealing with the selection out of the eligible candidates. The minority institution may not be compelled to go by seniority alone, but it must follow a criteria which is rational.

The Supreme Court then referred to the decision of the Full Bench of the Kerala High Court in Belsi M. vs. Corporate Management of Latin Catholic Schools, Diocese of Neyyattinkara. It noted the question the Full Bench had posed for consideration. The question was whether the judgment delivered in T. Jose, (Malankara), dispensed with the requirement of fair procedure in selecting the headmaster of a school in a minority educational institution. The Supreme Court noted and approved the observation of the Full Bench that the procedure adopted must have to be fair and cannot be absurd. The Supreme Court then observed that the power of judicial review under Article 226 is available to go into the question whether the action of an aided educational minority institution is transparent and fair.

It observed that despite the autonomy under Article 30 of the Constitution of India, the exercise of power by a minority institution discharging public functions is open to judicial review. Then, the reference was made to the decision of the Constitutional Bench in T.M.A. Pai Foundation and ors. vs. State of Karnataka and ors. The Supreme Court quoted the paragraphs from the said decision and more particularly referred to the observations in paragraph 232 of the decision of the Constitution Bench where a question was posed as to what grounds the staff and teachers, if aggrieved, can challenge the arbitrary decisions of the management. Considering the status of the minority institutions, the grounds available under labour laws were held to be too wide, and it was held to be appropriate if adverse decisions of the management are tested on the grounds of breach of the principles of natural justice and fair play or any regulation made in that respect.”

Therefore, even in the case of the selection of the Head of the school, the Hon'ble Supreme Court held that the principle laid down in the case of *Malankara* cannot be read as an absolute right of the minority institution.

16. On the aspect of taking punitive action against the employee once appointed by the minority educational institute, the learned Single Judge of this Court in the case of *J.H. Podar High School & anr. v/s. State of Maharashtra and others*⁵ held that the minority institutions have the prerogative to appoint a person of their choice as a head of the institution, but once the appointment is made, the

5 2004(2) Mh.L.J.

institution is deemed to have exercised that choice, and if the minority institution wants to remove or take punitive action against such a person, then the due process of law will have to be followed.

17. As stated earlier, no show-cause notice was given to the Petitioner. In the reply affidavit, Respondent No.4 has sought to build a case of negligence on the part of Respondent No.4. Some correspondence is annexed to the affidavit-in-reply addressed by the students making certain grievances about the functioning of the institute. However, no notice was issued to the Petitioner regarding the proposed punitive action. No explanation of the Petitioner is called for, and directly, an order of reversion/rejection in rank was passed. The order of reversion or reduction in rank does not give any reasons now sought to be placed on record by reply. The action of Respondent No.4 is in breach of the principles of natural justice and fairness while passing the impugned order by not giving any opportunity or issuing any show-cause notice to the Petitioner. The impugned order, therefore, is bad-in-law on this count as well. The above two grounds are established from the record and do entail any adjudication on facts. The action of the Respondent is grossly arbitrary. The impugned order is liable to be quashed and set aside as being illegal and in breach of the principles of natural justice.

18. The Petitioner had also raised an issue regarding non-payment of salary as per the due pay scale both on the post of Principal and Mathematic Instructor. According to the Petitioner, the pay scales as

applicable have not been paid to the Petitioner. D.A. has not been correctly paid for the post of Principal and the Mathematic Instructor. The Petitioner has contended that the Petitioner's salary at the time of passing the impugned order ought to have been approximately Rs. 45,000/- when the Petitioner was being paid only Rs. 29,800/-. It is contended that even on the post, the Petitioner was working after the impugned order, and the amount is not paid as legally due. Respondent No.4 has contested his claim and has sought to contend that Petitioner has been paid the salary as per the pay scale applicable with regular allowances and has sought to rely upon salary/pay slip. However, this calculation, as suggested by the counsel for the Petitioner, can be more appropriately done by an independent authority as it will entail adjudication of factual positions upon ascertainment of record. The Respondent No.3 - Joint Director will carry out the necessary calculations as regards the amounts payable to the Petitioner after giving an opportunity to both the Petitioner and Respondent No.4.

19. As a result, the Petitioner is entitled to succeed. Rule is made absolute in terms of prayer clause(b).

20. Respondent No.3 will determine the differential amount payable to the Petitioner as prayed for in prayer clause (d) of this Petition. Respondent No.3 - Joint Director will call for the Petitioner and representative of Respondent No.4 with all necessary

documents, determine the quantum within 12 weeks from today, and issue necessary directions to Respondent No. 4 accordingly.

21. Respondent No. 4 will implement this order within a period of six weeks from today.

22. Writ Petition stands disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

L.S. Panjwani, P.S.