



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1708 OF 2024

(Ku. Kiran d/o Ramkrushna Kamble Vs. Dr. Babasaheb Ambedkar Education Society,
thr. its President Sulbha Laxmanrao Ambhore (before marriage) Sau. Sulbha Ashok
Kamble (after marriage) and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. A. M. Deshpande, Advocate with Mr. P. R. Agrawal, Advocate for
Petitioner.

Mr. A. D. Mohgaonkar, Advocate with Ms. Radhika Bajaj, Advocate for
Respondent Nos.2 & 3.

Ms. S. S. Jachak, Addl GP for Respondent No.4/State.

CORAM: BHARAT P. DESHPANDE, J.

DATE: 11th MARCH, 2024.

Heard learned counsel for the parties.

2. Mrs. S. S. Jachak, learned Additional Government
Pleader appears for respondent No.4/State.

3. The challenge in the present petition is order
dated 11.01.2024 by which the petitioner was demoted
from the post of Headmistress of the School to the post of
Teacher and at the same time, respondent No.3 is promoted
to the post of Headmistress.

4. Learned counsel for the petitioner would submit
that such order amounts to inflicting major punishment
without conducting any enquiry or without considering the
approval from the Education Department with regard to

reduction of rank and interference with the seniority list. It is further submitted by the learned counsel for the petitioner that the management is not having any power to consider the representation of respondent No.3 and while doing so reduce the rank of the petitioner, promote respondent No.3 and interfere with the seniority list.

5. Mr. Mohgaonkar, learned counsel appearing for the respondent – management as well as respondent No.3 would submit that as per Rule 24, a representation was received from respondent No.3 and accordingly this aspect was considered in view of the Supreme Court judgment, and accordingly after receipt of reply from the petitioner, the impugned order was passed.

6. Mr. Mohgaonkar, learned counsel submits that there is no misconduct committed by the petitioner and hence, there is no question of any enquiry. While placing reliance in the case of *Maharashtra Shikshan Sanstha, Nagpur and another v. Education Officer, Zilla Parishad, Nagpur and others* reported in *1995(1) Mh.L.J. 875*, he would submit that by way of interim relief, which the petitioner is seeking, this Court should not interfere in the Tribunal's order as it would be amounting to granting final relief.

7. Learned counsel for the petitioner referred to Full Bench decision in the case of *Namdeo v. The State of Maharashtra and others* reported in *2023(2) Mh.L.J. 598*

wherein the reference to point no.(i) is answered thereby mentioning that the Deputy Director of Education had no power to reduce the rank of the employee – teacher, whose approval was already granted. The Full Bench observed that since respondent No.5 was aggrieved by the appointment of the petitioner as Headmaster, the only remedy available to him was to prefer an appeal under section 9(1)(b) of the Maharashtra Employees of Private Schools (Conditions of Service) Act and the Deputy Director of Education could not have recalled the earlier order of approval granted by the Education Officer to the petitioner's appointment.

8. Learned counsel for the petitioner would submit that the decision of the Full Bench and the answer given to point no.(i) is squarely applicable to the facts and circumstances of the matter.

9. The impugned order dated 11.01.2024 is an order passed by the management thereby reduction in rank qua the petitioner and promotion of the respondent No.3. Similarly, the order itself shows that the petitioner on reduction of rank from the post of Headmistress to Teacher, is also reduced in the pay scale to S15-41800-132300/-. Similarly, respondent No.3 is promoted to the post of Headmistress w.e.f. 13.01.2024 on a pay scale S-17-47600-151100/-.

10. Mr. Mohgaonkar, learned counsel, on instructions, submits that the pay scale of the petitioner is protected and

she will be paid the same salary which she was getting as a Headmistress.

11. The question before this Court and also before the Tribunal is not only about reduction of rank and pay scale on the basis of representation filed by respondent No.3 but the powers of the management to act on such representation and that too after a period of five years. The petitioner was promoted to the post of Headmistress in the year 2018. In the year 2023 the representation is filed by respondent No.3. The issue before the management was to follow the judgment of the Apex Court, in ***Viman Vamal Awale v. Gangadhar Makhriya Charitable Trust and others*** reported in ***(2014) 13 SCC 219***, wherein question with regard to seniority on the basis of educational qualification was considered.

12. In the present matter, it is admitted fact that the petitioner on the date of her appointment was qualified as SSC D.Ed. and she acquired B.A. degree only in the year 1999 and B.Ed. in 2003 and further M.A. in 2013 whereas respondent No.3 was qualified as M.A. B.Ed. on the date of her appointment i.e. 03.02.1992.

13. However, the management considered the petitioner as senior to respondent No.3 and accordingly posted her as Headmistress in the year 2018. Subsequently, the Government issued Government Resolution and accordingly representation was made by

respondent No.3 under Rule 24 of the MEPS Rules. A show cause notice was issued to the petitioner wherein she filed detailed reply. The management discussed the representation and the reply of the petitioner and decided to demote the petitioner and promote respondent No.3 by common order.

14. The petitioner challenged it before the School Tribunal and sought interim relief which was rejected vide order dated 04.03.2024.

15. The impugned order passed by the Tribunal would go to show that there is absolutely no discussion with regard to the powers of management to reduce the petitioner in seniority as well as in rank and also about the pay scale only on the basis of representation filed by respondent No.3.

16. In the present matter, the question is that respondent No.3 was aggrieved by the promotion of petitioner and therefore, she ought to have filed proceeding before the Tribunal challenging the decision of the management.

17. Even otherwise, the order passed by the management, in no other words, would clearly show that it is by way of inflicting a major punishment and that too without conducting even an enquiry or giving proper opportunity to the petitioner. Admittedly, a show cause

notice was issued to the petitioner on receipt of representation filed by respondent No.3. The petitioner replied to such show cause notice objecting it, however, no personal hearing was given to the petitioner. When a decision is taken to reduce the petitioner in rank, in seniority and in the pay scale, it amounts to inflicting a major penalty. The School Tribunal has completely failed to consider the above aspect.

18. In the case of ***Maharashtra Shikshan Sanstha, Nagpur*** (supra) the Division Bench of this Court has clearly observed that the powers under Section 11 of MEPS Act could be exercised in exceptional cases and of extreme hardship. Such interim relief should not be normally granted when it amounts to granting the final relief. Thus, *prima facie* it is considered that the petitioner was reduced in rank, seniority and the pay scale which clearly amounts to imposing punishment of major misconduct. Record clearly goes to show that the management passed such order and that too without following the principles of natural justice and thus the petitioner is entitled for the interim relief as prayed in the present petition as per prayer clause (ii), as this matter is considered as exceptional in nature and extreme hardship is going to cause to her.

19. The order, which, I propose to pass is:

[i] Since the appeal is pending before the School Tribunal, it would be desirable to

direct School Tribunal to dispose of such appeal as early as possible and within a period of two months from the date of receipt of the order of this Court.

[ii] Till the disposal of such appeal, ad-interim relief in terms of prayer clause (ii) shall continue.

[iii] It is made clear that the Tribunal should not be influenced by the observations of this Court and decide the matter on merit.

20. The petition stands disposed of in the above terms.

(BHARAT P. DESHPANDE, J.)