



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 2172 OF 2021

- 1] Mahatma Fule Shikshan Sanstha,
Anjangaon Surji, Through its President,
Tah. Anjangaon Surji, District – Amravati.
- 2] The Incharge Headmaster, Savitribai Fule
Kanya Vidyalaya, Anjangaon Surji,
Tah. Anjangaon Surji, District – Amravati.
- 3] Sanjay Bapurao Dindokar,
aged about 56 years, Occ. Service,
R/o C/o Savitribai Fule Kanya Vidyalaya
Anjangaon Surji, Tah. Anjangaon Surji,
District – Amravati.

...PETITIONERS

Versus

- 1] Ku. Savita Rangraoji Ingale,
aged about 50 years, Occ. Service,
R/o Anjangaon Surji, Tah. Anjangaon Surji,
District – Amravati.
- 2] The Education Officer (Secondary),
Zilla Parishad, Amravati.

...RESPONDENTS

Shri Anand Parchure, Counsel for the petitioners.
Ms Radhika Bajaj, Counsel for respondent no.1.
Shri S.B. Bissa, A.G.P. for respondent no.2.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 10, 2024

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally

by consent of the learned Counsel for the parties.

2] The challenge is to judgment and order dated 19/4/2021 passed by the School Tribunal, Amravati, in Appeal No. 28/2018. Petitioner no.1 is a Society, who runs petitioner no.2 – School. Petitioner no.3 is the Headmaster of petitioner no.2 – School. Respondent no.1 is a teacher and respondent no.2 is the Education Officer. The School, run by the Society, is a Girls’ School and is receiving 100% grant from the State Exchequer.

3] Petitioner no.3 was the senior-most teacher at the relevant time. Respondent no.1 was fourth in the rank of seniority. Petitioner no.3 was a male teacher, whereas respondent no.1 was a lady teacher.

4] The School Tribunal has relied upon sub-rule (4) of Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “Rules of 1981”), which reads thus :

“In the case of a girls’ secondary school or Junior College of Education for Women, the senior-most lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that school irrespective of her seniority vis-a-vis the male teachers.”

The School Tribunal was of the view that only senior-most lady teacher, fulfilling the eligibility criteria given in Clause (b) of sub-rule (1) of Rule 3, could have been appointed as Headmaster in Girls’ School, irrespective of her seniority *vis-a-vis* the male teachers.

5] A plea was raised before the School Tribunal, so also before this Court by the petitioners, that respondent no.1 was not having satisfactory record of service and she was a physical education teacher. As regards plea of her education, the Tribunal found that even physical education teacher is entitled for promotion as Head of the School. So far as satisfactory record is concerned, the School Tribunal found no merit in the said plea for want of supporting documents.

6] The learned Counsel for the petitioners could not show any document or cogent evidence to support the petitioners' plea that respondent no.1's record was not satisfactory.

7] Be that as it may, sub-rule (4) of Rule 3 of the Rules of 1981 categorically provide that in case of Girls' Secondary School, the senior-most lady teacher, fulfilling the conditions laid down in Clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as Head of the School, irrespective of her seniority *vis-a-vis* the male teachers. Further, Rule 3 or any other Rule of the Rules of 1981 does not permit the Management to appoint a male teacher as Head of the Girls' School. Rather, sub-rule (5)(a) of Rule 3 provides that if a suitable teacher is not available to fill in the post of Head of a School, the Management shall, with the prior permission of the Education Officer in case of Primary Schools, or of the Deputy Director in case of other Schools, advertise the post and select and appoint a person possessing the requisite qualifications and experience. Thus, the emphasis is on the appointment of

lady teacher as Head of the Girls' School.

8] The learned Counsel for respondent no.1 has relied upon the judgment of a Division Bench of this Court in the case of *Vasant Ambadas Hanchate, Solapur Vs. State of Maharashtra and others* [1985 Mh.L.J. 699], wherein the challenge was to the provisions of Rule 3(4) of the Rules of 1981. While dismissing the challenge, the Court observed, in paragraphs 6, 7 and 8, as under :

“6. It is a historical fact that women have been suppressed and subjected to indignities for generations. Both in family and society her status has been secondary. She has always been treated, at best, as a secondary human being. She is most depressed of all the depressed classes. Though in law and theory women enjoy equal status with men, their status in actual life has essentially remained secondary. Nature has also been unfair to the fair sex and partial to the unfair sex. Even in this advanced scientific age the social status of a woman has not materially changed. Therefore, even today women seek protection from men. This is the reason as to why even today independent schools for girls have their own place in the educational system. There are certain problems of that age group which cannot be discussed with a male Head Master without embarrassment. To some extent shyness is natural at that age. Some of the problems which require discussion with the Head of the institution involve physical, intellectual, moral and emotional questions. Though adults might discuss these

problems with men, children are not adults. Sometimes one sex gains its experience in a different way and interprets it differently from the other. Therefore, it can be guided in a better way by someone who has traversed the same path. This seems to be the reason for incorporating an exception in sub-rule (4) of rule 3 of the Rules.

7. Treating unequals equally is not equality. Hence an exception to the equality clause for the benefit of women is enacted in Article 15(3). When unequals are to attain equality, certain special measures become necessary. The intrinsic or initial handicaps, biological or otherwise and the historical inequality implicit in our conditioned culture demand certain special provisions for women to neutralise the ancient inequality. Such special provisions are also necessary to rescue them from initial disabilities and advance their interest. Article 39 by clauses (d) and (e) lays down certain principles of policy to be followed by the State. Article 42 enjoins on the State as duty to provide for humane conditions of work and maternity relief. Such special provisions for women are part and parcel of the equality clause so as to equalise the unequal starting points. The goal of Articles 14 and 16 is limited to equality among comparables; a necessary implication of which is possibility of reasonable classification, having nexus with the object sought to be achieved. As already observed, sex inequality, present socio economic conditions and initial handicaps seem to be the reasons for running independent schools for girls. In these schools only girls are admitted. Therefore, to carry out the same object the legislature thought it fit that the Head of the girls' school should be a woman teacher. This is after all a policy decision with which one may agree or may not agree. But there is a rationale behind this provision. This has been made to achieve the object of proper and efficient administration of the girls' school. Hence it is not possible for us to accept the contention of the petitioners that the discrimination is any way irrational or is based solely and only on the ground of sex. The

exception or restriction is not based solely on the ground of sex, but is enacted in the interest of better and efficient administration of the girls' school.

8. It was not disputed by the learned Counsel for the petitioners that if a total ban is imposed on the recruitment of male teachers in the girls' schools, it was wholly permissible under Articles 14, 15 and 16 of the Constitution of India. It was also not disputed that the bar on admission of male students in the girls' schools is also perfectly valid and reasonable. However, it was contended that once employment in the girls' schools is thrown open to male teachers, further discrimination in the matter of appointment to the post of Head of the institution is unreasonable. As already observed, as Head of the institution, the Head Mistress has to carry out certain administrative and academic responsibilities with which an ordinary teacher is not burdened. Therefore, the Head should be such a person who will be able to understand the special problems of the girl students. These problems could very well be understood by a person who has traversed the same path and is conversant with them. It appears that this rule is based on the past experience in the field. To say the least, having regard to the special features of girls' school or the problems of the girl students and the present social conditions, we are unable to find any unreasonableness or arbitrariness in the said provision. Therefore, we entirely agree with the view taken by the earlier Division Bench in Vinayak Sudame's case."

As could be seen, the High Court has assigned various reasons why should the senior-most lady teacher, fulfilling the conditions laid down in the Rules, be appointed as the Head of the Girls' School.

9] Considering the aforesaid proposition of law read with Rules 3(4) and 3(5) of the Rules of 1981, I do not find any reason to interfere with the impugned judgment.

10] The learned Counsel for the petitioners submitted that from the Academic Session 2018-19 onwards, the post of Headmaster itself has been not sanctioned by the Education Officer because of reduction in students strength and, therefore, directions to appoint respondent no.1 on the post of Headmaster, cannot be implemented.

11] The learned Counsel for respondent no.1 has rightly pointed out that this plea was never taken by the petitioners before the School Tribunal.

12] In any case, the challenge was to the order of promotion dated 1/1/2017 by which petitioner no.3 was appointed as Headmaster. Once, substance is found in the plea taken by respondent no.1, she will be entitled for promotion to the post of Headmaster with effect from 1/1/2017, at which time, the post of Headmaster was in existence.

13] There is, thus, no substance in the challenge. The petition is accordingly dismissed. Rule is discharged.

JUDGE

Sumit