



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

WRIT PETITION NO. 3278 OF 2016

Ku.Chandrabhaga Nagorao Pathrabe
Age : 54 years, Occ : Service,
Headmistress, Smt. Annapurnabai
Deshmukh Madhyamik Kanya Shala,
Lakadganj Nagpur, Dist. Nagpur.

.. **Petitioner**

Versus

- 1) Education Officer (Secondary),
Zilla Parishad, Nagpur
- 2) Vinayakrao Deshmukh High School
Society, Nagpur C/o Vinayakrao
Deshmukh High School, Lakadganj,
Nagpur through its Secretary
- 3) Shri Anil Ganpatrao Admane,
Age : Major, R/o New Shukrawari
Near Jankibai Dharmashala, Nagpur
- 4) Shri Omprakash Ghude, Age : Major,
C/o Zilla Prishad (Secondary) Nagpur

.. **Respondents**

Mr. S.D.Chande, Advocate for petitioner.

Mr. A.M.Kadukar, Assistant Government Pleader for respondent No.1.

Mr. A.D.Mohgaonkar, Advocate for respondent No.2.

CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.

DATED : AUGUST 22, 2024

ORAL JUDGMENT (Per : Nitin W. Sambre, J.)

Heard finally by consent of the learned counsel
appearing for the parties.

(2) On 01/08/1988, the petitioner was appointed as a "Assistant Teacher" from the Scheduled Tribe category in the respondent No.2 School. Such appointment was duly approved by the respondent No.1 Education Officer. It appears that the respondent No.3 raised an objection to the promotion of the petitioner on the post of "Headmistress". As a sequel of above, the respondent No.1 Education Officer, which post was manned by respondent No.4 caused notices to the petitioner, respondent No.2, respondent No.3 and passed the impugned order thereby making observations that the promotion of the petitioner was illegal, while cancelling the recognition granted.

(3) It is the contention of Mr.Chande, learned Counsel for the petitioner that it is not open for the Education Officer to decide and make an observations as to legality of promotion of the petitioner on the post of "Headmistress". According to him, the person aggrieved by such promotion has every right to question the promotion of the petitioner like by the respondent No.3 before the School Tribunal and not before the Education Officer. His contention is that the respondent No.1 Education Officer sans the jurisdiction to make observation about legality of the promotion of the petitioner to the post of "Headmistress" being illegal.

(4) As against above, Mr.Kadukar, learned Assistant Government Pleader submits that the petitioner has tendered resignation, which was accepted on 28/03/2018. The interim relief

order passed by this Court is already vacated. As a sequel of which the proposal of the petitioner for grant of pension is processed for the post of "Assistant Teacher", vide the impugned order. As such, it is urged that the petition has rendered infructuous. It is further claimed that since the order is passed after hearing the parties, no illegality could be noticed in the matter.

(5) The aforesaid argument are duly endorsed by Mr.Mohgaonkar, learned Counsel appearing for respondent No.2. However, the respondent No.2 claims that the proposal for grant of pension for the post of "Headmistress" was submitted and at the level of respondent No.1 Education Officer, same was processed for the post of "Assistant Teacher". As such, it is claimed that the Court may pass an appropriate order in the matter.

(6) None appears for respondent Nos.3 and 4.

(7) We have considered the rival claims.

(8) The admitted position from the record is, the petitioner was claiming to be belonging to "Halba" Scheduled Tribe and based on her qualification, she was appointed on 01/08/1988 in the respondent No.2 School as "Assistant Teacher".

(9) There also existed sanctioned post of "Deputy Headmistress" in the said School and as per 50 point roster, said post can be earmarked for Scheduled Tribe category as could be noticed and

inferred from para 2 of the impugned order. Since the petitioner was belonging to Scheduled Tribe category, her claim for promotion for the said post was duly considered and granted vide order dated 04/05/1995. In the aforesaid background, after the post of "Headmistress" fell vacant, the petitioner was promoted on the post of "Headmistress" vide order dated 04/05/2000 with effect from 08/05/2000.

(10) As far as both these postings in the form of promotions of the petitioner viz. the "Deputy Headmistress" and the "Headmistress" are concerned, the then Education Officer has duly granted approval vide order dated 01/07/1995 and order dated 18/08/2003 respectively. The respondent No.3, who has raised an objection before the respondent No.1 Education Officer has never questioned said promotion orders before the Competent Forum. Rather the respondent No.3 appears to have approached the respondent No.1 with a grievance that as per seniority list, he is senior to the petitioner and the post of the "Headmistress" ought not to have been filled in by promoting the petitioner on the said post as the petitioner's entry in the service was from Scheduled Tribe category and she has failed to produce validity certificate. It appears that the Education Officer after hearing the parties proceeded not only to cancel the approval, but also the appointments of the petitioner on the posts of "Deputy Headmistress" and "Headmistress" by promotion were held to be

illegal. Consequently, since the approval was granted, it appears that the petitioner proceeded to submit her resignation from the post of "Headmistress", which was duly accepted by the respondent Management with effect from 28/03/2018.

(11) It appears that there was an interim order in operation in the matter, as a sequel of which the respondent No.2 was justified in submitting the proposal of the petitioner for release of the pension for the post of "Headmistress", however, the respondent No.1 has proceeded to grant pension for the post of "Assistant Teacher".

(12) If we appreciate the entire gamut of the matter in the backdrop of the narration of events, it is apparent that the proposals dated 22/07/1995 and 14/08/1995 for promotion of the petitioner on the post of "Deputy Headmistress" was granted by the respondent No.1 vide order dated 01/07/1995.

(13) It appears that the petitioner has failed to submit the validity certificate, however, her services appears to have been protected by virtue of Government Resolution dated 15/06/1995. As a sequel of above, the candidature of the petitioner was considered and she was granted promotion to the post of "Headmistress" vide order dated 04/05/2000 in the Open category and same was approved by the Education Officer vide order dated 18/08/2003. The petitioner as such, continued to work on the post of "Deputy Headmistress" and "Headmistress" from the period 1995 and 2003 onwards till the date of

submission of her resignation on 28/03/2018.

(14) We are surprised to note that the Education Officer i.e. respondent No.1 which post was manned by the respondent No.4, after much delay, suddenly started entertaining the objection of respondent No.3, as regards the promotion of the petitioner that too after the lapse of almost 20 years and not only proceeded to cancel the approval, but also made an observations that the promotions are illegal.

(15) While dealing with the aforesaid issue at the outset, we are required to make ourselves sensitive to the principle of acquiescence. Apart from above, the powers appear to have been exercised by respondent No.1 by taking recourse to the principle of equity. We do not see any equity in the matter, particularly having regard to conduct of respondent No.3, as he has approached the Education Officer, who has no authority to look into the matter of promotion after a period of 20 years who had proceeded to upset such order of promotion on the post of "Deputy Headmistress" and "Headmistress" by making observation on the merit of orders of promotion and not on the issue of grant of approval.

(16) In the aforesaid background, we are of the view that the impugned order dated 03/06/2016 passed by the respondent No.1, thereby cancelling approval to the promotion of the petitioner on the post of "Deputy Headmistress" and "Headmistress" has to be held without jurisdiction to the extent of making an observation that the

promotion of the petitioner being illegal.

(17) Furthermore once it is held that the respondent Education Officer has no authority to entertain the issue of illegal promotion granted in favour of the petitioner, the question of cancellation of approval also ought not to have been gone into at the said stage unless Competent Authority holds that the petitioner's promotion to the post of "Deputy Headmistress" and "Headmistress" were illegal. In support of above observations reliance can be placed on provision of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

(18) Once the respondent No.1 Education Officer has recorded finding that the reservation roaster was not got approved by the Management from the Backward Class Cell and further recorded finding that the post of "Headmistress" could have been filled in from the Scheduled Tribe category in view of the roaster to that effect being available, there was no reason to upset the promotion of the petitioner to the post of "Deputy Headmistress".

(19) That being so, we deem it appropriate to quash and set aside the impugned order dated 03/06/2016.

(20) We hereby declared that the petitioner's resignation was accepted on 28/03/2018 from the post of "Headmistress", she is entitled for all the terminal benefits of the said post from the date of her resignation.

(21) We direct the respondent Management to submit appropriate proposal to the respondent No.1 Education Officer, who in turn shall process the same and release all the terminal benefits to the petitioner to which she is entitled for the post of "Headmistress" in the backdrop of the aforesaid observation, as expeditiously as possible and in any case within a period of **four months** from the date of submission of such proposal. As such, the petition stands allowed. No order as to costs.

(22) Pending applications, if any stands disposed of.

(23) Rule is made absolute in the above terms.

[**ABHAY J. MANTRI, J.]**

[**NITIN W. SAMBRE, J.]**

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