



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

WRIT PETITION NO. 6956/2024

(DANDKARANYA EDUCATION & CULTURAL DEVELOPMENT RESEARCH INSTITUTE, GADCHIROLI &
ANOTHER **VERSUS** STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's order

Shri R.M. Ahirrao, Counsel for the petitioners.

Shri N.R. Patil, Assistant Government Pleader for the respondent nos.1 to 3.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : DECEMBER 18, 2024

P. C.

Heard the learned counsel for the parties.

2. This writ petition is by the petitioner no.1-Dandakaranya Education and Cultural Development Research Institute, Gadchiroli (for short, 'the petitioner no.1-Institute') questioning the orders impugned dated February 14, 2024 at Annexure-A and February 22, 2024 at Annexure-B, whereby the provisional approval granted in favour of the respondent no.4 for promotion to the post of Headmaster of the petitioner no.2-Vidyabharti High School Gogaon (for short, 'the petitioner no.2-School') came to be cancelled and directions are issued to the petitioner no.1-Institute for submitting the fresh proposal.

3. The facts necessary for deciding the writ petition are as under:-

The petitioner no.1-Institute which administers the petitioner no.2-School published a seniority list thereby depicting that the respondent no.4 is senior to the respondent nos.5 and 6. The said seniority list was enclosed alongwith the proposal for grant of approval to the promotion of the respondent no.4 on the post of Headmaster. As a sequel of which the respondent no.3-Education Officer was pleased to grant provisional approval to the said promotion of the respondent no.4 on the post of Headmaster. The respondent nos.5 and 6 claiming to be senior to the respondent no.4 accordingly lodged a complaint which led to the respondent no.3-Education Officer causing an enquiry in the matter. Passing of the impugned order dated February 14, 2024 is the outcome of the said enquiry. *Vide* the impugned orders, provisional approval granted to the promotion of the respondent no.4 to the post of Headmaster of petitioner no.2-School came to be cancelled with a direction to submit fresh proposal as per the seniority list for promoting appropriate candidate to the post of Headmaster.

4. It appears that on January 06, 2024 the respondent no.6 and on January 19, 2024 the respondent no.5, both Assistant Teachers with the petitioner no.2-School, preferred complaints stating that as per the Seniority List of 2022-23, the respondent nos.5 and 6 were shown at Serial Numbers 18 and 31 respectively whereas, the respondent no.4 was shown at Serial Number 41 which led to the passing of the impugned order of cancellation of approval.

5. Amongst others, the contentions canvassed by Shri R.M. Ahirrao, learned counsel for the petitioners are, order impugned is without jurisdiction and since the issue pertains to supersession the petitioners have remedy under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service), 1977 (for short, 'the Act of 1977') before the School Tribunal. According to him, once Shri A.W. Uikey had given up his claim for being appointed to the post of Headmaster, it was for the petitioner no.1-Institute to promote the appropriate person to head the petitioner no.2-School. In such an eventuality, it was not open for the respondent no.3-Education Officer to cancel the approval and direct the reversion of the respondent no.4. It is also submitted that the issue of grant of promotion by determining the seniority was not within the ambit of the respondent no.3-Education Officer. So as to substantiate his contentions, the counsel for the petitioners has drawn support from the seniority list to claim that the promotion was carried out in an appropriate manner.

6. As against above, Shri N.R. Patil, learned Assistant Government Pleader has supported the impugned order and has prayed that the writ petition preferred by the petitioners is liable to be dismissed.

7. We have appreciated the rival contentions of the counsel for the parties in the light of provisions of Section 9 of the Act of 1977.

8. If we consider the nature of the impugned order, the respondent no.3-Education Officer had informed the petitioner no.1-Institute about cancellation of the provisional approval granted in favour of the respondent no.4 for promotion to the post of Headmaster of the petitioner no.2-School. As such, the respondent no.3-Education Officer cannot be said to have adjudicated as to whether the employees are reduced in rank. Both the impugned orders in categorical terms deal with seniority maintained by the petitioners of its employees who are entitled for promotion to the post of Headmaster. The decision of the respondent no.3-Education Officer is based on the seniority list which was produced on record of the respondent no.3 so also before this Court. The promotion to the post of Headmaster has to be by seniority. It is not the case of the petitioners that the respondent no.4 is senior to the respondent nos.5 and 6. In this background, merely because provisional approval was granted to the promotion of the respondent no.4 as Headmaster of the petitioner no.2-School, that by itself will not lead to a conclusion that the respondent no.3-Education Officer has in any way interfered with the administration of the petitioner no.2-School thereby deciding the seniority. The seniority is admittedly decided by the petitioners themselves and the order of withdrawal of approval is based on cogent reasons based on appreciation of material on record viz. Seniority list, which cannot be faulted with.

9. In view of the above, since the writ petition is devoid of any merits, the same stands dismissed with no order as to costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

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