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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2005 OF 2008

Sou. Yogita Vishwanath Thanage, Age: 34 years,
Occ : Service, R/o Block No.9, Municipal Colony,
Near T. V. Centre, Savedi, Ahmednagar,
Tq. & Dist. Ahmednagar.

....PETITIONER

VERSUS

1. The Administrative Officer,
Municipal School Board,
Ahmednagar, Tq. & Dist. Ahmednagar.
2. The Secretary, Anand Education Society,
Ahmednagar, Nilkanth Narayan Sole,
Age: 63 years, occ: Retired, R/o Anandnagar,
Gulmohor Road, Savedi, Ahmednagar.
3. Ravindra Chandrakant Ashtekar, Age: 34 years,
Occ : Service, R/o Panchwati Nagar,
Pipeline Road, Ahmednagar.

....RESPONDENTS

Mr R. N.Dhorde, Senior Advocate i/b Mr P. S. Dighe, Advocate for Petitioner
Mr D. R. Korade Patil, Advocate for respondent No.1
Mr P. G. Tambade, Advocate for respondent No.2
Mr S. S. Jadhavar, Advocate for respondent No.3

CORAM : PRAFULLA S. KHUBALKAR, J.

RESERVED ON : 8th July, 2025

PRONOUNCED ON : 19th September 2025

JUDGMENT :-

1. Heard learned Senior Advocate Mr Dhorde, instructed by
Advocate Mr P. S. Dighe appearing for the petitioner; Advocate Mr
Korade Patil, learned counsel for respondent No.1, Advocate Mr
Tambade, learned counsel for respondent No.2 and Advocate Mr
Jadhavar, learned counsel for respondent No.3.

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2. The instant petition challenging the order dated 07/02/2008 was admitted by this Court by order dated 06/02/2009 with interim relief in terms of prayer clauses (C) & (E) of the petition, restraining respondent No.3 from acting as Headmaster of the school run by respondent No.2, and to allow the petitioner to act as Headmaster. The petition is now taken up for final hearing by consent of the respective parties.

3. The petitioner has challenged the order dated 07/02/2008, passed by the School Tribunal, Solapur in Appeal No.49/2007, by which the appeal filed by respondent No.3 herein was allowed, holding entitlement of respondent No.3 for the post of Headmaster and setting aside the order dated 15/06/2007, issued by the Chairman and Vice Chairman of the Management. The petitioner who claims to be eligible for the post of Headmistress on the strength of her seniority, has filed the instant petition assailing the order passed by the School Tribunal.

4. The petitioner has challenged the impugned order firstly on the ground that the appointment of respondent No.3 on the post of Headmaster was contrary to the provisions of law and was thus illegal. Secondly, respondent No.3 was not entitled to hold the post of Headmaster in view of his resignation from that post. Thirdly that, the appeal filed by respondent No.3 before the School Tribunal was not maintainable for non-joinder of necessary parties and the conduct of respondent No.3 necessitated adverse inference against her.

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5. The factual background of the controversy involved in the petition is briefly stated below :-

- (i) On 01/12/1996, the petitioner was appointed as Assistant Teacher in the School run by respondent No.2/Anand Education Society, Ahmednagar and was placed at Sr. No.3 in seniority list.
- (ii) On 02/06/1997, respondent No.3 was appointed as Assistant Teacher, however, he was also given an appointment order dated 01/06/1998 on probation for a period of two years.
- (iii) On 30/05/2000, the Management appointed respondent No.3 as Headmaster.
- (iv) Respondent No.3 tendered his resignation from the post of Headmaster on 03/03/2007.
- (v) On 23/03/2007, a lady teacher viz. Smt. Jadhav, who was senior to the petitioner conveyed in writing to the Management that she does not want to work on the post of Headmistress.
- (vi) On 23/03/2007, the petitioner submitted an application to the Management conveying her readiness to work as Headmistress.

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- (vii) On 05/05/2007, another teacher viz. Smt. Kulkarni (Smt. Joshi) also informed in writing that she is not interested to accept the post of Headmistress.
- (viii) On 15/06/2007, a letter was issued to respondent No.3 signed by the Chairman and Vice Chairman, conveying him about acceptance of his resignation and relieving from the post of Headmaster. By this letter, respondent No.3 was directed to handover the charge of the post of Headmaster to the petitioner.
- (ix) On 16/06/2007, the President of the Management issued appointment order to the present petitioner promoting her as Headmistress.
- (x) On 05/07/2007, respondent No.3 filed Appeal before the School Tribunal challenging the letter dated 15/06/2007 issued by the Chairman and Vice Chairman, by which he was asked to work as Assistant Teacher. By this appeal, respondent No.3 also challenged appointment of the present petitioner as Headmistress. He challenged this order/letter dated 15/06/2007 alleging thereby that this letter amounts to 'reduction in rank' for him to the post of Assistant Teacher.
- (xi) On 05/07/2007, the School Tribunal granted stay to the letter dated 15/06/2007.

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(xii) The School Tribunal allowed the appeal by judgment and order dated 07/02/2008 holding thereby that respondent No.3 is entitled to remain on the post of Headmaster.

(xiii) Feeling aggrieved by the consequences of removal of petitioner from the post of Head Master, assailing the judgment and order passed by the School Tribunal,, the instant petition came to be filed on 01/03/2008.

6. By order dated 06/02/2009 in this petition, Rule was granted with interim relief directing the petitioner to work as Headmistress.

7. The interim relief passed in this writ petition was challenged by way of letters patent appeal bearing Letters Patent Appeal No.29/2009.

8. On 10/03/2009, the Education Officer (Primary) granted approval to the petitioner's appointment as Headmistress.

9. On 12/03/2009, Letters Patent Appeal No.29/2009 came to be dismissed by this Court.

10. Pertinently, by virtue of interim order dated 06.02.2009 passed by this court while admitting the instant petition, interim relief was granted and resultantly it was directed that the petitioner shall work as Headmaster of the School run by the respondent no.2. It is informed during the course of arguments that in accordance with this order the

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petitioner worked on the post of Headmaster till December 2012. In January 2013, a chargesheet was issued to the petitioner with respect to 9 charges and after enquiry the petitioner was terminated by order dated 09.04.2013, which was subject matter of challenge in a separate appeal before the School Tribunal vide Appeal no. 48/2015. By judgment and order dated 29.04.2016 the appeal was partly allowed setting aside the termination order dated 09.04.2013 and directing the management to conduct fresh enquiry. The petitioner has challenged the direction to conduct fresh enquiry by way of separate Writ Petition, bearing W.P. No. 7760 of 2016, which is being separately decided.

11. In this background the submissions advanced by the parties are being considered.

12. Learned Senior Advocate Mr Dhorde appearing for the petitioner raised several grounds to challenge the impugned order. He vehemently submitted that the appointment of respondent No.3 as Headmaster itself was grossly illegal in view of Rule 3(1)(a) of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (for short 'the MEPS Rules') and submitted that, since respondent No.3 was appointed on the post of Headmaster before acquiring the qualification of completing five years service, his appointment was contrary to Rule 3 read with Rule 12 of the MEPS Rules.

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13. He also invited attention to the reply submitted by the Administrative Officer of the Municipal School Board, who was arrayed as respondent No.1 in appeal, in which, after narrating the factual position, it is categorically mentioned that the appointment of respondent No.3 was illegal being contrary to Rules 3 and 12 of the MEPS Rules. He further submitted that, the respondent No.3 had tendered his resignation dated 03/03/2007, which was never withdrawn and in fact has been treated to have been accepted. He submitted that, in view of resignation of respondent No.3, the Management had called for 'no objection' from other senior teachers in the seniority list viz. Smt. Anupama Sudam Jadhav and Smt. S. S. Joshi and in view of their refusal to accept the post of Headmaster, the petitioner was given the appointment. He therefore, submitted that, after having tendered resignation voluntarily, respondent No.3 had no right to claim the post of Headmaster. On the basis of these submissions, learned Senior Advocate for the petitioner vehemently submitted that the challenge raised by respondent No.3 by way of appeal before the School Tribunal was absolutely unsustainable.

14. Learned Senior Advocate Mr Dhorde also made vehement submissions to demonstrate that the petitioner had possessed the necessary qualification for the post of Headmaster and on the date of her appointment, she was qualified as per Rule 3 and Schedule 'B' of the

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MEPS Rules. He further submitted that, although the appeal memo before the School Tribunal contains a challenge to the promotion of the petitioner on the post of Headmistress, the appellant (respondent No.3 herein) failed to demonstrate any illegality in the appointment of the petitioner herein. He vehemently submitted that the challenge to letter dated 15/06/2007, raised in the appeal necessarily involved challenge to the appointment of this petitioner as Headmistress, which was without any substance. This apart, he raised serious challenge to the maintainability of the appeal before the School Tribunal on the ground of non-joinder of necessary parties, since the President and the Vice President of the Trust, who had issued letter dated 15/06/2007 were not joined as party respondents.

15. After narrating all the sequence of events on the basis of above mentioned contentions, it is vehemently submitted that the School Tribunal recorded perverse findings holding that the respondent No.3 was entitled to hold the post of Headmaster, particularly in view of the fact that there is no dispute about the resignation having been tendered by respondent No.3, pursuant to which, the Management asked the other senior ladies about their readiness for the post of Headmaster and consequently, issued appointment order in favour of the petitioner.

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16. Opposing the petition, Advocate Mr Jadhavar, learned counsel for respondent No.3 raised serious objection about locus of the petitioner to challenge the impugned order. He vehemently submitted that respondent No.3 had challenged the order of his 'reduction in rank' by the Management pursuant to letter dated 15/06/2007. He submitted that the challenge to legality of this order/letter was a controversy in between respondent No.3 and the Management and since the Management has not filed any writ petition, the petition filed at the instance of the petitioner is not maintainable. As regard the issue of resignation tendered by respondent No.3, he submitted that the Secretary of the Management had issued a letter dated 20/04/2007 to respondent No.3, conveying thereby that the Management had passed a resolution dated 15/04/2007, by which, the resignation was not accepted. On the basis of this letter, he submitted that, since the letter of respondent No.3 was not accepted by the Management, the subsequent letter dated 15/06/2007, issued by the President and Vice President accepting his resignation was apparently unsustainable in law. It is pertinent to note that, during the course of arguments, learned counsel Mr Jadhavar appearing for respondent No.3 has filed on record a pursis dated 01/07/2025 accompanied with the two documents viz. the letter dated 20/04/2007, issued by the Secretary of the Management and letter dated 15/06/2007, issued by the President and Vice President.

17. He also submitted that the challenge before the School Tribunal involved the issue of 'reduction in rank' of respondent No.3 and not the issue of inter se seniority between the petitioner and respondent No.3 and as such, the petitioner is not entitled to claim any relief regarding legality of her appointment as Headmistress.

18. In support of his submissions, Advocate Mr Jadhavar relied upon the judgments in the matter of **Chandrabhaga Nagorao Pathrabe Vs. Education Officer (Secondary), Zilla Parishad and others, 2024 DGLS (Bom.) 3591** and **Namdeo s/o Vishnu Sase Vs. State of Maharashtra and others, 2023 (2) Mh.L.J. 598**, and submitted that the challenge to maintainability of the appeal, as raised by the petitioner is baseless since the appeal raised a challenge to 'reduction in rank', which could have been raised only before the School Tribunal. He, therefore, submitted that the appeal filed by respondent No.3 before the School Tribunal was related to the dispute in between respondent No.3 and the Management, in which the petitioner herein was not entitled to claim any relief. He also submitted that, in this controversy, the eligibility of the petitioner for the post of Headmaster was never in picture and the challenge raised by the petitioner to the impugned order is thus unsustainable.

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19. In view of the above mentioned factual setup and the submissions advanced, the controversy now falls for my consideration.

20. It is undisputed fact that the petitioner was appointed on 01/12/1996 on the post of Assistant Teacher, whereas respondent No.3 was appointed on 02/06/1997 on the post of Assistant Teacher. After respondent No.3 tendered his resignation on 03/03/2007, the petitioner had submitted his application dated 23/03/2007 for appointment on the post of Headmistress. In view of communications issued by the other two senior lady teachers conveying that they were not ready for working as Headmistress, the petitioner was appointed as the Headmaster on 16/06/2007. Pertinent to note that, although respondent No.3 is relying on letter dated 20/04/2007 purportedly issued by the Secretary of the Management, the petitioner was appointed by an order dated 16/06/2007, which is not questioned anywhere. The tenor of memorandum of appeal filed by respondent No.3 before the School Tribunal including the grounds raised therein clearly show that respondent No.3 had raised his grievance against the letter dated 15/06/2007, which was issued by the President and Vice President accepting his resignation. Even during course of arguments, learned counsel for respondent No.3 repeatedly submitted that the petitioner was arrayed as respondent No.3 to the appeal only because the appellant was directed to handover the charge to the petitioner herein by way of

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letter dated 15/06/2007 and the challenge to her promotion vide prayer clause (C) was only by way of consequence of 'reduction in rank' of respondent No.3. It is most crucial to note that, although respondent No.3 has heavily relied upon letter dated 20/04/2007, issued by the Secretary, nothing was placed on record by respondent No.3 (appellant) before the School Tribunal or by the Management about the status of the petitioner herein, who was appointed as Headmistress. As such, a simple communication through letter dated 20/04/2007, issued by the Secretary of the Management cannot be made the basis to conclusively arrive at any conclusion.

21. In this regard, it is crucial to note that during the proceedings before the School Tribunal, the petitioner had submitted application on 16/08/2007 for directions to the Management to produce all the relevant documents including seniority list of permanent teachers, proceeding book of the year 2006-2007, etc., however, the same was not produced. This application was allowed by the School Tribunal directing the Management to produce the documents. The petitioner had filed another application dated 11/10/2007 seeking direction to respondent No.2/Management to comply with the order dated 16/08/2007, passed by the School Tribunal directing production of the record.

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22. By observing non-compliance with the order dated 16/08/2007 and failure of respondent No.2 to produce the record, the School Tribunal has passed the order dated 15/11/2007, observing thereby that, despite the order to produce the documents, in view of failure of respondent No.2/Management to produce relevant record, adverse inference can be drawn at the stage of final hearing. In view of these circumstances, it becomes clear that the Secretary of the Management had failed to produce the relevant record including proceeding book of the minutes of the meetings held in the year 2006-2007, thereby depriving the petitioner herein to raise any contention in that regard. Under these circumstances, the reliance placed by the learned counsel for respondent No.3 on letter dated 20/04/2007, issued by the Secretary appears to be misplaced.

23. The petitioner's contention about eligibility and entitlement of respondent No.3 to hold the post of Headmaster needs to be tested by considering provisions of Rule 3 of MEPS Rules, which reads as under:-

“3. Qualifications and appointment of Head :-

(1) A person to be appointed as the Head-

(a)(i) of a primary school having an enrollment of students above 200 or having Standards I to VII shall be the seniormost trained teacher who has put in not less than five years service; and

(ii) of any other primary school shall be the seniormost teacher in the school;”

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Considering this provision of law, in the instant matter, undisputedly in the year 2000, respondent No.3 did not fulfill the statutory requirement to hold the post of Headmaster. This aspect is also clarified by the reply filed by the Administrative Officer of the Municipal School Board before the School Tribunal specifically stating thereby that the appointment of respondent No.3 was contrary to Rules and further that respondent No.3 (petitioner herein) could have been appointed since there was no post of Headmaster available at the relevant time. In this regard, respondent No.3 was not able to point out anything to establish his fulfillment of eligibility as per Rule 3 of the MEPS Rules. The impugned order passed by the School Tribunal does not deal with this crucial aspect. As such, in absence of any illegality being demonstrated, the appointment of petitioner on the post of Headmaster was not required to be disturbed. The impugned order passed by the School Tribunal, holding the respondent no.3 entitled for the post of Headmaster consequently disturbing the entitlement of the petitioner for the said post, is therefore unsustainable in law.

24. As regards the objection to maintainability of the petition filed at the instance of the petitioner, as raised by the respondents, it has to be noted that in the appeal before the Tribunal the respondent no.3 has raised a challenge to the promotion of petitioner on the post of Headmaster by prayer clause (c) of the memorandum of appeal before

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the School Tribunal. As such, in the wake of the grounds and the prayer clause, the petitioner's appointment as Headmaster was in fact questioned. Further, in view of the final order passed by the tribunal, which is impugned herein, the respondent no.3 is held entitled to hold the post of Headmaster and consequently the petitioner who was holding the post on the basis of an appointment order, would be prejudicially affected. As such, it has to be held that the petitioner is the person aggrieved by the judgment of the School Tribunal and is thus entitled to challenge the same. The objection is therefore unsustainable

25. A perusal of the impugned order shows that the School Tribunal has focused its discussion only on the letter dated 15/06/2007 and while deciding the entitlement of respondent No.3 for post of Headmaster, grossly ignored the consequential effect on the appointment of the petitioner as Headmistress. It is also crucial to note that, although respondent No.3 had challenged the letter dated 15/06/2007 issued by the President and Vice President, while raising challenge to this letter/order, the Secretary of the institution was arrayed as party respondent. In this regard learned counsel for respondent No.3 submitted that the Secretary is the proper authority to represent the Management and the impleadment of the Secretary to the appeal cannot be faulted with. It is relevant to note that the impugned order was signed by the President and Vice President of the Management. In view

of this peculiar situation non impleadment of the President or Vice President assumes importance. Although in regular course, the Management is represented through its Secretary, however, in the wake of impugned letter being issued by the President and Vice President, these authorities were required to be joined as party respondent to the appeal. As a result of non impleadment of the President and Vice President, who had issued the impugned letter, the challenge to its legality remained uncontested.

26. In the wake of controversy raised in the appeal, the School Tribunal had directed the Secretary of the Management to produce the relevant record by passing specific order dated 16/08/2007. The failure on the part of the Secretary of the Management to produce relevant record warranted an adverse inference against the Secretary. Although the School Tribunal observed by order dated 15/11/2007 that adverse inference can be drawn at the stage of final hearing, however, while deciding the appeal finally, the School Tribunal has completely lost sight of this conduct on the part of the Secretary.

27. Having regard to all the above mentioned aspects, the impugned order passed by the School Tribunal is clearly unsustainable in law. The findings recorded by the School Tribunal about legality of letter/order dated 15/06/2007, without considering the provisions of

Rule 3 of MEPS Rules are also unsustainable in law. A perusal of the impugned order shows that, while deciding case about alleged 'reduction in rank', the School Tribunal has held respondent No.3 entitled to remain on the post of Headmaster, without dealing with the most crucial issue about appointment of the petitioner herein, who was holding the post of Headmaster. The inferences drawn by the School Tribunal about letter/order dated 15/06/2007, by ignoring the crucial issue of non-joinder of necessary parties and conduct of the Management to suppress relevant documents, do not stand to the scrutiny of law. For all these reasons, the impugned order passed by the School Tribunal is unsustainable and deserves to be quashed and set aside.

28. In the light of above mentioned factual and legal aspects, the following order is passed:-

- I. Writ Petition is allowed.
- II. The order dated 07/02/2008, passed by the School Tribunal in appeal No.49/2007 is quashed and set aside.
- III. Consequently, it is held that the petitioner is entitled for all the emoluments of the post of Head Master for the period for which the petitioner has actually worked on that post.

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29. Rule is made absolute in above terms. No order as to costs.
In view of disposal of the writ petition, pending civil applications, if any,
also stand disposed of.

(PRAFULLA S. KHUBALKAR, J.)

sjk