



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4466 OF 2024

1. Manovikas Shikshan Sanstha,
Kandhar, Tq. Kandhar
District Latur.
Through its Secretary
2. Nagesh Vitthalrao Bandewar,
Age: 55 years, Occu. Service,
R/o Manovikas Vidyalaya,
Kandhar, Tq. Kandhar,
District Latur.

.....PETITIONER

(No.1 is orig. Resp.No.1
and No.2 is orig. Resp. No.4)

VERSUS

1. Prakash s/o Appasaheb Patange,
Age: 56 years, Occu: Service,
R/o Manovikas Vidyalaya,
Kandhar, Tq. Kandhar,
District Latur.
2. Education Officer (Secondary)
Zilla Parishad, Nanded.

.....RESPONDENT

(Resp.No.1 is orig. Appellant
and Resp. No.2 is Orig. Resp. No.2)

Mr. S. S. Thombre, Advocate for the Petitioners
Mr. V. S. Badakh, AGP for Respondent-State
Mr. B. B. Shinde, Advocate for Respondent no.1

CORAM : ROHIT W. JOSHI, J.

DATED : 14TH JULY, 2025

ORAL JUDGMENT :-

. The petitioner was appointed in service in the year 1989. On the date of appointment in service, petitioner was holding the qualification of SSC-ATD and fell under category E in Schedule F, appended to the The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The petitioner acquired the qualification of B.Ed. in the year 2000 and accordingly, entered in the category 'C' in the year 2000. Against this, the respondent no.1 was appointed in service in the year 1991 and was holding the qualification of M.Sc.-B.Ed, as on the date of his appointment and was in the category 'C' in the year 1991, on the date of his appointment.

2. The respondent no.1 is in category 'C' since the date of his appointment. In view of the above, it cannot be disputed that the respondent no.1 is senior than the petitioner. However, the petitioner was promoted to the post of Supervisor and subsequently to the post of Assistant Head Master, superseding the respondent no.1.

3. In view of the above, the respondent no.1 filed appeal

under Section 9 of the The Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977, before the School Tribunal, Latur being Appeal No.5 of 2021. The said appeal came to be allowed vide judgment dated 07.02.2024.

4. The management and the promoted candidate are the petitioners in the present petition who have challenged the said judgment.

5. The first contention of learned Advocate Mr. Thombre is that the promotion order was never challenged before the learned Tribunal, rather, the orders granting approval issued by the Education Officer to the petitioner no.2 on the promotional post were challenged by the respondent no.1. The contention of the learned Counsel for the petitioner is that since, promotion was not challenged, the appeal itself was not maintainable. As regards merits of the matter, the learned Advocate contends that the petitioner no.2 was holding requisite qualification for appointment to the post of Assistant Teacher-Primary on the date of his initial appointment and seniority needs to be counted from the date

of initial appointment. His contention is that the petitioner no.2 was therefore senior than the respondent no.1.

6. As regards seniority, the contention of the learned Counsel for the petitioner cannot be accepted in view of express language of the MEPS Rules. The Schedule 'F' provides for various categories of teachers. Each category is arranged in the Schedule in the descending order meaning thereby that the person whose name is included in a higher category, is senior than the person whose name is entered in a lower category.

7. The respondent no.2, who had directly entered service in category 'C' in the year 1991, itself, is therefore, senior than the petitioner no.2 who had entered category 'C' only in the year 2000 on acquiring B.Ed. Qualification. Prior to this, the petitioner no.2 was in category 'E', which ranks lower than category 'C'.

8. As regards maintainability of appeal, perusal of Section 9 of the Act provides that an appeal shall lie before School Tribunal at the behest of an employee who is dismissed or removed or whose services are otherwise terminated or who is

reduced in rank or who is superseded by the management.

9. Perusal of the pleadings in the memorandum of appeal will demonstrate that the appellant/respondent has raised a grievance about supersession in as much as he contends that the petitioner was granted promotion ignoring his claim although he was senior than the petitioner no.2. It is well settled that when an controversy falls within jurisdiction of a Court or Tribunal, it has the discretion to mould the relief appropriately if the person seeking relief is otherwise entitled to it. If a person is entitled to a relief, it must be granted to him even if the prayer is not appropriately worded. It is also well settled that writ jurisdiction of this Court is a matter of discretion and interference with orders passed by Subordinate Courts or Tribunals is not permissible unless a case of violation of rights, either statutory or fundamental is made out by the petitioner. It will be unjust to show any indulgence in favour of the petitioner only on the basis of technicalities when the facts on record clearly demonstrate that the respondent no.1 was senior and was therefore entitled to be promoted to the post of Supervisor and subsequently as

Assistant Head Master.

10. In view of the findings recorded above, no case for interference is made out. The Writ Petition is **dismissed** as such.

11. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)

Rushikesh/2025