



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13493 OF 2021

1. Sangita Josef Shinde,
Age-43 years, Occu.-Service,
R/o. Purnwadnagar, ward No.7
Shirampur, Tal. Shrirampur,
District Ahmednagar

...PETITIONER

VERSUS

1. The President,
Laxminarayan Pratishtan,
Shrishivajinagar, Rahuri,
Tal. Rahuri, Dist. Ahmednagar.
2. The Head Master,
Shri.Sangamneshwar Madhyamik Vidyalaya,
Wanjulpoi, Tq. Rahuri,
District Ahmednagar.
3. The Head Master,
Shri. Sant Mauli Madhyamik Vidyalaya,
Pathare, Tal. Rahuri,
District Ahmednagar.
4. Shri. Magar Santosh Bhausahab
Age Major, Occu: Service,
C/o Shri. Sant Mauli Madhyamik Vidyalaya,
Pathare, Tq. Rahudi,
District Ahmednagar.

5. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
Tal. And District Ahmednagar.
6. The State of Maharashtra,
Through its Jt. Director, Pune Region,
Office of Joint Director Education,
Pune Division, Pune-1.

...RESPONDENTS

Advocate for the petitioner : Mr. Uday S. Malte,
Advocate for Respondent No.4 : Mr. R. R. Karpe,
AGP for Respondent No. 6 : Mr. K. N. Lokhande

CORAM : KISHORE C. SANT, J.
RESERVED ON : 21th JANUARY 2025
PRONOUNCED ON : 05th MARCH 2025

ORDER :-

1. Heard the learned Advocate for the parties and taken up for final disposal by consent of the parties.
2. This writ petition is by a teacher whose appeal before the School Tribunal came to be dismissed turning down her challenge to an appointment of respondent No.4 as Head Master to the School. It is the case of the petitioner that she is superseded while giving appointment to respondent No.4 as Head Master to Respondent No.2-School.

3. The facts in short are that, the petitioner joined service is qualified as B.A., M.A., B.Ed. She belongs to Scheduled Cast. She joined the service as assistant teacher on 13.06.2006 on a clear vacant post reserved for Scheduled Cast category. After completing probation period, she became permanent teacher. In 2015, she came to be transferred to another school i.e. Respondent No.3 which was not receiving grant in aid.

4. When she was in service, Head Master retired on 31.05.2015, by that time she had completed about 9 years of service. As per roaster, the post of Head Master was reserved for Scheduled Caste person. She also happened to be senior most assistant teacher. She was therefore, entitled to be appointed as Head Mistress. The respondents, however, appointed respondent No.4 as Head Master from 14.09.2016 at respondent No.2-School. The petitioner therefore approached the School Tribunal by filing an appeal.

5. The respondent No.1 is the President of the Management.

Respondent No. 2 is the Head Master of School where she works. Respondent No.3 is the Head Master of another School of the same Management. Respondent No.4 is the person who is appointed as Head Master to respondent No.3-School. Respondent No.5 is the Education Officer.

6. The respondents appeared in the appeal by filing the say. It is the case of the respondents that the post was filled in by giving an advertisement. Before giving an advertisement, the Education Officer and the Deputy director of Education had granted approval and no objection. Pursuant to the advertisement, 11 persons applied. The petitioner was not having the experience of 5 years, as the Education Officer had granted approval to her service on 20.01.2016 from 01.07.2015. She was working in respondent No.2 School which is non granted and it is for this reason, she could not have been appointed as Head Mistress.

7. The learned Presiding Officer, School Tribunal dismissed the appeal and therefore the petitioner is before this Court.

8. Learned Advocate Mr. Malte vehemently argued that, it is an admitted position that the petitioner was appointed as Assistant Teacher in 2006 in respondent No.3-School. Thereafter, without any reason, she was transferred to respondent No.2-School which is non-grant school. She had worked for more than 5 years. Her appointment is also approved and she was having sufficient experience. There is no dispute about her qualification. When she was possessing requisite qualification and requisite experience, she should have been promoted as Head Mistress. The act of the Management of issuing advertisement and to fill up the post by direct recruitment was against the rules. During the course of argument, the another ground taken is that, respondent No.4 is having three children and thus, was not entitled to be appointed as Assistant Teacher. The petitioner has specifically brought on record the names of three children. It is the case that, the Management has failed to follow Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The School Tribunal failed to appreciate all these facts in proper perspective. He further submits that,

after an advertisement, the petitioner had raised an objection. She had made representation on 11.03.2016 itself to the Administrative officer of the Management praying for giving her promotion to the post of Head Mistress. She had also made detailed representation on 12.03.2016 to the Joint Director (Education) Pune and Education Officer (Secondary) Z.P., Ahmednagar, on which the Joint Director (Education) Pune and Education Officer (Secondary) Z.P., Ahmednagar has made an endorsement that the appointment be made as per seniority list and as per roster point. He thus submits that still the respondent-Management went on with the recruitment process. He relies upon the judgment in the case of *Salim Gulab Mulla vs. State of Maharashtra and others* reported in 2017 (1) Bom. Lc 180.

9. The learned Advocate Mr. Karpe for Respondent No.4 submits that, the Management had sought permission from the Deputy Director of Education. The Joint Director Education, Pune Division, Pune, on 26.02.2016 granted permission to fill up the post of Head Master by calling advertisement. Thereafter, an advertisement was issued and by

following proper procedure, respondent No.4 came to be appointed. Now, the approval is granted on 19.08.2016. So far as the petitioner is concerned, he submits that, she was transferred to respondent No.3 School on 01.07.2015 which is unaided school. Approval to her appointment is granted on 20.01.2016. The petitioner did not participated in the appointment procedure. He thus justified the order passed by the learned Member School Tribunal. Learned Advocate supports the judgment. He submits that, the authorities had approved the advertisement. The appointment is made pursuant to such advertisement. No interference is required.

10. During the course of argument, reliance is placed on Rule 12 of the Rules, 1981 which requires the Management to prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and Non-teaching staff in this school in accordance with the guidelines laid down in Schedule F. Schedule F provides for guidelines for fixing assistant teachers in the primary school. It provides that the seniority of primary school teachers in secondary school and

junior colleges shall be based on continuous officiation counted from from the date of joining service as prescribed under Schedule B of secondary school and junior colleges. The petitioner thus has to show that she was senior most teacher in the Respondent-School.

11. The petitioner relied upon the judgment in the case of *Salim* (supra), it is held that, when the question of seniority is to be considered, the same is to be settled by the Education Officer. The Education Officer in such cases has no jurisdiction to fix seniority and delete the persons already promoted. This Court finds that, the judgment is therefore not applicable. The only reliance of the petitioner on the judgment is for the purpose to show that the seniority is to be determined on the basis of date of appointment and not on the basis of date of approval.

12. On the basis of this judgment, this Court finds some substance in the argument of the petitioner that the seniority is to be determined on the basis of date of appointment. Whereas, the respondents have stated that the approval was granted in 2016. The argument of the respondents

is found to be against this judgment. Services need to be counted from the date of initial appointment rather than the date of approval. There is no dispute about the proposition that the services to be counted on the basis of continuous officiation. There is no dispute about the qualification of the petitioner. The question in the present case is as to from which date the service of the petitioner is to be counted. The fact remains that she did not object her transfer to the unaided school.

13. Another question that requires consideration is as to whether the petitioner, at any point of time, whether objected the advertisement or the selection process to fill up the post of Head Master to respondent No.2-school. There is nothing on record that the petitioner ever objected the advertisement and the proceedings. There is also nothing on record to show that, she participated in the process of selection pursuant to the advertisement. In both the cases, there was some scope for the petitioner to agitate these grounds. This Court finds substance in the argument of Mr. Karpe that the petitioner did not object to the selection process and allowed the selection process to go on. The judgment in the case of

Salim (supra) in this fact would not help the petitioner. In the said judgment, this court had recorded that the seniority was counted on the basis of the date of approval to the petitioner. In that case, it was held to be perverse. In the present case, the petitioner was working in respondent No.3 school, whereas the respondent No.4 is appointed to respondent No.2-school. It has also come on record that, the respondent No.4 was having experience as in-charge Head Master since 2008. The School Tribunal while recording the finding, has considered all these aspects. Considering all above aspects, this Court finds that no case is made out calling for interference at the hands of this Court.

14. The petition therefore deserves to be dismissed and the same is hereby dismissed with no order as to costs.

[KISHORE C. SANT, J.]