

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3100 OF 2024

Dadasaheb Annasaheb Chougale

.. Petitioner

Versus

President Ichalkarnji Education Society
and ors

.. Respondents

...

Mr.Yogeshwar Bhate i/b Anand Shalgaonkar for the petitioner.

Mr.Chetan Patil for respondent.

Ms. D.S. Deshmukh, AGP for the State.

CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.

DATED : 2nd JANUARY, 2025

P.C:-

1. The petition is filed by the petitioner appointed as Assistant teacher with the respondent no.2, who claims that he possessed the qualification of B.A. (English) and D.Ed (two years course) at the time of his appointment, which he subsequently improved by obtaining a B.Ed. degree with first class/distinction and a M.A. (Education) degree.

At the time the petitioner was appointed, it is his case that he was qualified to be appointed as he was equipped with a D.Ed. degree and on the date of his appointment i.e. 13/07/1994, he was entitled to be included in category 'C' and by acquiring a D.Ed. degree on 15/05/1996, he improved his qualification.

His grievance is against respondent no.6, Sau. Kamble Ashwini Mohankumar, who was appointed on 26/06/1998, with a qualification of B.A., B.P.Ed., and who came to be promoted to the post of Assistant Headmaster, which received approval from the Education Officer on 30/08/2021.

2. The grievance raised by the petitioner in the petition is about the incorrect preparation of seniority list, as according to him, his date of appointment is 13/07/1994, whereas the date of appointment of respondent no.6 is 26/06/1998, but she has been shown at serial no.1, in the seniority list prepared for the year 2021-22, by the respondent no.1, whereas he is shown at serial no.8.

Acting upon the seniority list so prepared for which an objection was raised by the petitioner on 2/06/2021 in writing to the respondent no.1, she came to be promoted, but when the Education Officer granted approval to the promotion, it was subject to the specific stipulation that in case if the promotion is not in accordance with the seniority list or roster, in that case, she shall be liable to be reverted and if it is found that there is any discrepancy in the proposal that is forwarded in respect of her promotion, the promotion/appointment shall be cancelled.

3. Upon the objection raised by the petitioner on 2/06/2021, the Education Officer immediately sprung into action and issued notice on 20/12/2021, to the Management as well as the respondent no.6, with reference to the representation/objection raised by the petitioner and scheduled a hearing for the said purpose on 27/12/2021.

Pursuant to the said hearing, on 30/11/2022, the Education Officer (Secondary), Zilla Parishad Kolhapur, issued directions to the effect that the seniority list shall be upgraded, by considering the government circular dated 3/05/2019, as well as the circular dated 19/10/2019, by taking into consideration that the qualification of D.Ed. (2 years course) was found to be eligible for being included in Schedule 'F'.

In pursuance of the said directions contained in the government circular, the Education Officer directed the Management to prepare the seniority list by taking into consideration the significant aspect.

Since, no action was taken on the communication dated 30/11/2022, the Education Officer reiterated the direction in his communication dated 8/11/2024, which is placed before us by the learned counsel appearing for the petitioner.

4. The petitioner in the wake of the aforesaid events, seek a relief directing the respondent nos.1 and 2 to process the seniority proposal as per the order dated 30/11/2022, passed by the Education Officer in respect of the petitioner and by way of interim order, it is also prayed that the respondent nos.1 and 2 may be directed to start the provisional seniority list of the petitioner therein.

Responding to the said relief, Mr. Chetan Patil, who represent the Management as well as respondent no.6, who has been promoted to the post of Assistant Headmaster has raised a preliminary objection about the maintainability of the Writ Petition by placing reliance upon the decision of this Court in case of *Umesh*

Balkrishna Vispute vs State of Maharashtra, 2000(4) Mh.L.J. 564, as well as the decision in *Nildhwaj Motiramji Kamble vs State of Maharashtra and ors (2022) SCC Online Bombay 138*, to press his submission, that if the petitioner is aggrieved by the action of supersession of the respondent no.6, the remedy available to the petitioner, is to approach the School Tribunal by invoking Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'the Act of 1977').

5. On perusal of the authoritative pronouncement on the aforesaid effect, we have no difficulty in agreeing with the findings recorded therein, to the effect that the exercise of power by the Education Officer under Rule 12 (3) is limited as far as the fixation of inter se dispute is concerned. However, since Section 9, of the Act of 1977, begins with non obstante clause, the decision of the Education Officer shall not bind the School Tribunal and undisputedly the School Tribunal is entitled and rather the only forum to examine the grievance of the appellant as regards his supersession.

6. The petitioner before us has not raised a challenge to the supersession or to the appointment/promotion order of respondent no.6, which is subsequently approved by the Education Officer on 30/08/2021, and admittedly the respondent no.6 from the date of her appointment is holding the post of Assistant Headmaster, a promotional post.

The limited relief sought by the petitioner is about the inaction on part of the Management to act upon the directions of the Education Officer, in the year 30/11/2022, and its reiteration in the subsequent communication dated 8/11/2024.

7. Considering the limited grievance raised by the petitioner, despite the position of law having been clearly laid down in the aforesaid two decisions, on which Mr. Patil, has placed reliance, we do not think that the relief sought by the petitioner, for issuing writ of mandamus to the Management, to act upon the direction of the Education Officer issued in the two communications is anyway forbidden, as it is distinct from raising challenge to his supersession.

What we have noted from the pleadings in the petition is that the petitioner has not raised any challenge to the promotion issued in favour of the respondent no.6, based on the seniority list which was operated, which according to the petitioner is wrongly formulated, nor he has raised any challenge to the seniority list, except that he had preferred a representation to the Education Officer and acting upon the same the Education Officer has directed the Management to prepare the seniority list vide its letter dated 30/11/2022, which till date, the Management has not complied with.

Though we agree with Mr. Patil, that the issue of supersession will clearly lie before the School Tribunal, a relief prayed in the petition seeking implementation of the directions issued by the Education Officer definitely will fall within the purview of our writ jurisdiction and since we find that the respondent Management has failed to abide by the directions issued by the Education Officer, we issue a writ of mandamus to ensure the compliance of the communication dated 30/11/2022, reiterated in its communication 8/11/2024, within period of four weeks from today.

With the aforesaid direction, present Writ Petition is disposed off.

No order as to cost.

(ASHWIN D. BHOBE, J)

(BHARATI DANGRE, J)

ORDER STANDS CORRECTED AS PER ORDER DATED 3/01/2024.

Ashish