

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3104 OF 2024

Damodar Kashinath Mhase

....*Petitioner*

: *Versus* :

1. The President/Secretary,
Jyotiba Education Society
2. The Headmaster,
Baburao MA. Pawar Mahdyamik
Vidyalaya
3. Education Officer, (Secondary)
Pune Zilla Parishad
4. Deputy Director of Education, Pune
5. Vijay Manikrao Chavan

....*Respondents*

Mr. Rahul S. Kadam, with Mr. Shardul Diwan, and Mr. Vedant Babar, for
the Petitioner.

Mr. Sugandh B. Deshmukh, for Respondent Nos.1 and 2.

Mr. J.P. Patil, AGP for Respondent Nos.3 and 4.

Mr. Prathamesh Bhargude, for Respondent No.5.

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 7 March 2025.

Judgment Pronounced on : 19 March 2025.

JUDGMENT :

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the petition is taken up for hearing and final disposal.

2) By this petition, Petitioner challenges the judgment and order dated 3 March 2023 passed by the Presiding Officer, School

Tribunal, Pune dismissing Appeal No. 4 of 2022 filed by the Petitioner challenging the reversion order dated 27 December 2021 reverting him from the post of Headmaster to that of Assistant Teacher.

3) Respondent No. 1 is a Trust, which owns and operates Respondent No. 2-School. Petitioner was appointed as Assistant Teacher in Respondent No.2-School on 1 January 2005 in open category on non-grant-in-aid basis. Approval was granted to Petitioner's appointment by the Education Officer on 29 October 2005. On 2 May 2010, the Management appointed Petitioner as Headmaster of Respondent No.2-School and approval to his appointment as Head was given by the Education Officer on 28 October 2010. By order dated 27 December 2021, Respondent No.1-Management informed the Petitioner that he was reverted from the position as Head to that of Assistant Teacher and that Respondent No.5 was appointed as in-charge Headmaster and directed Petitioner to handover charge of the post of Headmaster to Respondent No.5 and work as Assistant Teacher in the School. Petitioner filed Appeal No. 4/2022 in School Tribunal at Pune challenging the communication dated 27 December 2021. The Appeal was resisted by the Respondent-Management as well as by Respondent No.5 by filing their Written Statement. The Tribunal, however proceeded to dismiss the Appeal preferred by the Petitioner by judgment and order dated 3 March 2023, which is the subject matter of challenge in the present petition.

4) Mr. Kadam, the learned counsel appearing for the Petitioner would submit that the Petitioner was promoted to the post of Headmaster on 2 May 2010 after following the due process of law. That he worked as Headmaster continuously without any disturbance for over 11 years and could not be reverted to the post of Assistant Teacher. That Petitioner's appointment to the post of Headmaster was

approved by the Education Officer after satisfying himself that he was due and eligible to be appointed as Headmaster. That the Education Officer conducted the necessary enquiry for ascertainment of Petitioner's turn to be appointed as Headmaster. That the responsibility of procuring NOCs from senior teachers is not on the teacher but on the management who had forwarded proposal seeking approval for Petitioner's appointment. He would submit that the claim of Respondent No.5 for being appointed as Headmaster was clearly time barred as he never questioned correctness of the order dated 2 May 2010 promoting Petitioner to the post of Headmaster. Since the period of limitation to challenge the order dated 2 May 2010 was over and since Appeal of Respondent No.5 challenging Petitioner's promotion would have been dismissed on the ground of limitation, he used the route of management for seeking reversion of the Petitioner which was clearly unwarranted. He would rely upon judgment of Division Bench of this Court in Somsingh Chandrasingh Thakur Versus. Head Master, Captain R.M. Oak School¹, in support of his contention that the Management could not have aided Respondent No.5 in circumventing the period of limitation for filing of Appeal challenging Petitioner's promotion as Headmaster. He would therefore pray for setting aside the order passed by the School Tribunal as well as the order of Petitioner's reversion.

5) The petition is opposed by Mr. Deshmukh, the learned counsel appearing on behalf of Respondent Nos.1 and 2-management submitting that the Petitioner was erroneously promoted as Headmaster ignoring the claim of teachers senior to him. That the promotion was based on fraud and deceit as Petitioner raised fallacious claim of having secured NOCs of senior teachers for grabbing the position as Headmaster. He would rely upon Rule 3 of the Maharashtra

¹ 2005 (4) Mh.L.J. 946

Employees of Private Schools (Conditions of Service) Rules, 1981 (**MEPS Rules**) in support of his contention that Petitioner could not have been appointed as a Headmaster without securing NOCs in writing from the senior teachers before the Education Officer. He would submit that no such NOCs were secured by the Petitioner. That permitting Petitioner to continue on the post of Headmaster would have amounted to perpetuating the illegality. That the management has rightly corrected the error by ensuring that the senior teacher is appointed as Headmaster. He would pray for dismissal of the petition.

6) Mr. Bargude, the learned counsel appearing for Respondent No.5 would also oppose the petition submitting that the very promotion of the Petitioner was based on falsehood. He would submit that the Appeal Memo filed by the Petitioner before the Tribunal contained an averment of submission of NOCs of senior teachers, which is found to be factually incorrect. That Respondent No.5 was the seniormost teacher at the relevant time for being appointed as Headmaster. That the Management had committed a mistake in promoting the Petitioner as Headmaster without securing NOC from Respondent No.5. He would invite my attention to the relevant Clauses of the approval order which clearly envisaged cancellation of approval if any misrepresentation was detected. He would submit that no interference is warranted in the findings recorded by the School Tribunal. He would accordingly pray for dismissal of the petition.

7) Mr. Patil, the learned AGP appearing for the Respondent-State would also oppose the petition and support the order passed by the School Tribunal.

8) Rival contentions of the parties now fall for my consideration.

9) The issue that arises for consideration in the present petition is whether the Respondent-management could have reverted the Petitioner from the position of Headmaster to that of Assistant Teacher when the contesting candidate (*Respondent No.5*) had not challenged the order of his promotion. To paraphrase, when a senior employee acquiesces in the promotion of his junior by not challenging the promotion order for over a decade, whether the employer can revert the junior employee and indirectly aid the senior employee to achieve something, which he cannot directly achieve by filing Appeal before the School Tribunal on account of expiry of period of limitation.

10) The issue arises in the light of admitted position that Respondent No.5 is senior to the Petitioner in the seniority list of Assistant Teacher. Despite Respondent No. 5 and two others being senior to Petitioner, the management decided to promote Petitioner to the post of Headmaster and effected his promotion by order dated 2 May 2010. It sent a proposal to the Education Officer seeking approval to his appointment on the post of Headmaster. Rule 3 of the MEPS Rules deals with qualifications for appointment as Head. Under Explanation to sub-rule (3) of Rule 3, the Management is required to communicate availability of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, can be disregarded only if he gives statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. Thus a teacher junior to the senior-most teacher can be considered

for appointment of Head only in the event of the senior-most teacher relinquishing his/her claim for being appointed as Head in writing before the Education Officer. In the present case, none of the parties have produced any writing from Respondent No.5 that he had relinquished his claim for being appointed as a Head. Therefore, it is difficult to comprehend at this stage the exact reason why management took a decision to send proposal for approval for appointment of the Petitioner as Head, which was apparently made in ignorance of claim of senior-most teacher being Respondent No.5.

11) Both, Mr. Deshmukh and Mr. Bhargude have sought to criticize the Petitioner for not producing NOC of Respondent No.5 before the Education Officer. In my view, the responsibility of procuring such NOC is not on the junior teacher but the same is on the management. It is the decision of the management to promote a particular teacher as Head and under Explanation to sub-rule (3) of Rule 3, it is the responsibility of the Management to procure relinquishment of claim in writing from the senior-most teacher and present the same before the Education Officer. In the present case, promotion of the Petitioner has taken place in the year 2010 and it is difficult to comprehend at this stage as to why the management took a decision to promote Petitioner in ignorance of claim of Respondent No.5. It is not known whether the Management obtained in writing relinquishment of claim by Respondent No.5 at the relevant time.

12) Petitioner pleaded in his Appeal memo that '*at the relevant time, Assistant Teachers namely Shri. Vijay Manikrao Chavan, Shri. Anil Ambadas Choughule and Shri. Dadasaheb Vishwanath Dhakane though appointed prior to the Appellant have relinquished their right/claim to the post of Headmaster forever*'. However, he has not produced any documentary evidence of such relinquishment either before the Tribunal or

alongwith the present petition. A common Written Statement was filed by Respondent Nos.1, 2 and 5 contending that the said Teachers had not relinquished their claim to the post of Headmaster. However, the management did not explain in the Written Statement as to how proposal for Petitioner's appointment as Headmaster was sent in absence of relinquishment of claims by the senior-most teachers.

13) At the same time, it must be observed that Respondent No.5 or the other senior teachers (*Anil Chougule and D.S. Dhekane*) did not challenge Petitioner's promotion to the post of Head by filing Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (**the Act**). Section 9 of the Act provides thus :

9. Right of appeal to Tribunal to employees of private schools.

(1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the management; or

(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8];

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may, entertain an appeal to it after the expiry of the said period of thirty or sixty days, as the case may be if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of [five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

14) Thus, a teacher who is superseded by the management while making an appointment to any post by promotion is entitled to file Appeal under the provisions of Section 9 before the School Tribunal. The period of limitation prescribed under sub-section (2) of Section 9 is 30 days with power being conferred on the Tribunal to condone the delay in filing the Appeal. Petitioner's appointment as Head was made on 2 May 2010 by ignoring the claims of Respondent No.5 and other two teachers. They ought to have challenged the said order of promotion by filing Appeal before the School Tribunal either within the prescribed period of limitation or atleast within reasonable time. The three teachers, including Respondent No.5, however simply slept over their claim and acquiesced in the position that Petitioner was promoted to the post of Head on 2 May 2010. Till the Management issued communication dated 27 December 2021, no steps were taken by the said three teachers to challenge Petitioner's promotion as Head. The issue that arises for consideration is whether Respondent No.5 could have used the machinery of the management for the purpose of circumventing the objection of delay and laches in challenging Petitioner's promotion as Head. The answer to the question appears, to my mind, to be emphatically in negative. Having not questioned the promotion of the Petitioner for over 11 years, the remedy of Respondent No.5 to claim promotion to the post of Head was clearly barred. If Respondent No.5 was to approach the Tribunal challenging Petitioner's promotion as Head in the year 2021, his Appeal would have met the fate of dismissal on the ground of limitation as no Court/Tribunal would have condoned delay of 11 years in filing Appeal challenging supersession.

15) The school management or employer usually acts as a neutral umpire in seniority disputes between the teachers. For some unknown reasons, the Respondent-management had taken a decision to promote Petitioner as Headmaster in the year 2010 by ignoring the claims of Respondent No.5 and of two senior teachers. In such circumstances, whether the management could have taken any steps for reverting the Petitioner after delay of 11 years for the purpose of aiding Respondent No.5 who had simply slept over his right, becomes questionable. What is done by the management in the present case is to aid Respondent No.5 in circumventing the objection of delay and instead Respondent No.5 approaching the Tribunal to challenge promotion of the Petitioner, the management has forced the Petitioner to approach the Tribunal by filing Appeal to challenge his reversion order. Thus, what could not be directly achieved by Respondent No.5 is offered on a platter by the Respondent-Management to him by issuing a vague communication dated 27 December 2021.

16) Coming to the merits of the communication dated 27 December 2021, the same reads thus :

दिनांक: २७ डिसेंबर २०२१.

प्रा. देवयानी पवार

एम.कॉम., बी.एड., एम.ए.

प्रति,

डी. के. म्हसे (मुख्याध्यापक)

बा.मा. पवार माध्यमिक व उच्च माध्यमिक विद्यालय

बिरदवडी, चाकण ता. खेड जि.पुणे

विषय :- पदावनत केल्याबाबत

संदर्भ :- संस्थेच्या कार्यकारी मंडळाने मंजूर केलेल्या ठराव क्र. २ दिनांक २६/१२/२०२१ च्या सभेत

उपरोक्त ठरावाप्रमाणे आपणांस मुख्याध्यापक बा. मा. पवार विद्यालय बिरदवडी ता. खेड जि. पुणे या पदावरून दिनांक-२८/१२/२०२१ पासून पदावनत करून आपले मूळ सहाय्यक शिक्षक या पदावर करण्यात आले आहे. म्हणून शाळेतील सहाय्यक शिक्षक श्री. व्ही. एम. चव्हाण यांना प्रभारी

मुख्याध्यापक नेमण्यात आल्यामुळे आपण मुख्याध्यापक पदाचा कारभार त्यांना दिनांक- २८/१२/२०२१ पासून हस्तांतरित करावा असे स्पष्ट आदेश आपणांस देण्यात येत आहेत.

आपण वरील तारखेपासून शाळेत सहाय्यक शिक्षकाचे काम करावे. जर आपण श्री. व्ही. एम. चव्हाण यांच्याकडे नियमानुसार मुख्याध्यापक पदाचा सर्व कार्यभार सोपविला नाही किंवा आपले सहाय्यक शिक्षकाचे कर्तव्य पार पाडले नाही तर येत्या महिन्यापासून आपले वेतन थांबविण्यात येईल आणि आपण आदेशाचे पालन न केल्यामुळे गैरवर्तुणीकीबद्दल दोषी ठरवून कार्यवाहीस पात्र ठराल आणि आपले सहाय्यक शिक्षकाचेही हक्क गमावून बसाल याची आपण नोंद घ्यावी.

अध्यक्ष
ज्योतिबा एज्युकेशन सोसायटी
विरदवडी, ता खेड, जि पुणे

17) The communication dated 27 December 2021 refers to Resolution No. 2 dated 26 December 2021 and states that decision was taken to revert the Petitioner w.e.f. 28 December 2021 from the post of Headmaster to the post of Assistant Teacher. The Resolution dated 26 December 2021 has not been placed on record by any of the parties. Otherwise also, the communication dated 27 December 2021 does not specify a single reason why the Petitioner was reverted from the post of Headmaster to that of Assistant Teacher. Admittedly, no show cause notice was issued to the Petitioner before effecting his reversion. In my view, the reversion of the Petitioner was thus in gross violation of principles of natural justice and on this ground alone, the impugned communication dated 27 December 2021 ought to have been set aside by the School Tribunal. Petitioner was promoted on the post of Head on a regular basis on 10 May 2010. The Education Officer had granted approval to his appointment. In such circumstances, the bare minimum that was expected to be followed by the Respondent-management was to issue atleast a show cause notice to the Petitioner by communicating the reasons why his reversion was proposed. He ought to have been granted opportunity of representing his case. After 11 long years, the Petitioner could not be unceremoniously reverted in breach of principles of natural justice.

18) Thus, there are two fundamental flaws in the communication dated 27 December 2021. Firstly, the said communication is aimed at achieving something for Respondent No.5 in an indirect manner, which he could not have achieved directly by filing Appeal before the School Tribunal. Secondly, the communication seeking to effect reversion of the Petitioner was issued in gross violation of principles of natural justice.

19) True it is that the employer has right to take corrective action in respect of an erroneous order by following due process of law. In ordinary course, this Court would not have interfered in the management's decision of correcting its past action where NOC of senior teachers was apparently not obtained while effecting Petitioner's promotion. However, if such action was to be taken within a reasonable time, the action of the management could not have interfered by a Court of law. As observed above, the management or the employer is expected to act as a neutral umpire in seniority disputes between the employees. Though Respondent No.5 and the other two teachers possibly did not execute any writing relinquishing their claims of promotion as Head in 2010 their subsequent conduct of maintaining silence for over 11 years speaks volumes about acquiescence on their part in Petitioner functioning as the Head. All the three senior-most teachers accepted the position of working under the Petitioner for 11 long years without any demur. They cannot now turn around and insist that they had never relinquished their claim under Explanation to sub-rule (3) of Rule (3) and on that technical ground, the promotion of the Petitioner effected 11 years ago must be set at naught. Having themselves not exercised any remedy of filing Appeal against the promotion of the Petitioner as Head, they cannot use the route of management in getting over the hurdle of delay and laches on their

part in exercise of their remedy. If the employer is permitted to upset promotions which have been settled for long time thereby aiding the other employees, who simply slept over their rights and remedies, there would be no finality to the claims of seniority and promotion. There is an objective behind prescribing period of limitation for raising challenges to the claim of supersession. The objective is to ensure that there is a finality to the issue of promotions and seniority, which cannot be kept boiling forever so that a sense of clarity and definitiveness is achieved for smooth functioning of the establishment. It is incomprehensible that a person is allowed to function on the post for 11 years and is then asked to unceremoniously vacate the post after noticing some technical flaw in the order of his promotion. The employer needs to be careful in ensuring that while unseating a promoted candidate after expiry of long period time, it is actually not aiding the other employees in achieving something which they cannot achieve directly by approaching Courts or Tribunals.

20) In catena of judgments, the Apex Court has held that the a promotion cannot be disturbed after passage of substantial time. It would be apposite to make a quick reference to couple of judgments. The Constitution Bench in *Rabindranath Bose Versus. Union of India*², the Apex Court invoked 'sit back' theory and held as under :

33. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. **It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.** It was on this ground that this Court in Jaisinghani case observed that the order in that case would not affect Class II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments and promotions made after 1950. In this case, we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out

² (1970) 1 SCC 84

Class II officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent Assistant Commissioners of Income Tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone.

(emphasis and underling added)

21) In *Nayagarh Coop. Central Bank Ltd. Versus. Narayan Rath*³, it is held as under:

4. The writ petition filed by Respondent 1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Cooperative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Cooperative Bank but against the order passed by the Registrar disapproving the appointment of Respondent 1 as secretary of the Bank. **It was not open to the Registrar, in our opinion, to set aside Respondent 1's appointment as a secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years.**

(emphasis added)

22) Reliance by Mr. Kadam on judgment of this Court in *Somsingh Chandrasingh Thakur* is also apposite. In para-23 of the judgment it is held as under:

23. In the present case, as pointed out above, we are not saying for a moment that the concerned post could go by the roster. We however cannot ignore the fact that the appellant was promoted as an Assistant Head Master way back in the year 1984 and nobody protested against the same. In view of that promotion, he was on a position higher than that of respondent No. 4 who is otherwise the seniormost teacher. He occupied that post until October/November, 1992, i.e. over eight years when he became Head Master. Mr. Apte submitted that the appellant is taking advantage of his posting after the interim order. The submission is not correct. The appellant was to be appointed only if he was entitled as per the rules as recorded in the minutes. It cannot be said that he was appointed on the post of Head Master on the strength of the interim order passed in the earlier writ petition filed by Smt. Duraphe. The interim order did not mandate that the appellant should be appointed as the Head Master. The 2nd respondent Management did not oppose his posting as Head Master nor did anybody nor the Education Officer. We do not find anything on record to indicate that anybody or for that matter respondent No. 4 objected except the bald assertion of the 2nd respondent

³ (1977) 3 SCC 576

Management in its written statement to the School Tribunal that the respondent No. 4 had objected to the appellant's elevation as Head Master and which was not supported by any document whatsoever. There is nothing to indicate that the appellant did not discharge his duties as Head Master satisfactorily where he worked over 10 and half years. He was being demoted to the post of Assistant Teacher after working in higher posts over 18 years. The School Management appointed the appellant as the Head Master on an isolated post in the year 1992 in spite of the judgment in *Chakradhar Paswan* rendered in 1988. If it decided to implement it, the same had to be done prospectively. The management was undoubtedly in error in reducing him from the post of Head Master to that of Assistant Teacher in 2003 after allowing him to work for over 18 years as Assistant Head Master and Head Master. The School Tribunal has ignored this fact of delayed action on the part of the Management. In view of the observations of the Apex Court in *Mudhol's case* (supra), in our view, it was improper and unjustified to disturb the appellant from the post of Head Master which he was occupying for such a long time. The learned Single Judge has also committed an error of law in ignoring this aspect.

23) The School Tribunal, in my view, have completely erred in not appreciating the above position of law and has erroneously harped on the issue of absence of NOCs of the three senior teachers in writing. The Tribunal has not given any consideration to the fact that no show cause notice was issued to the Petitioner while reverting him after 11 long years. It has ignored the position in law that promotion granted a decade ago cannot be disturbed. The Tribunal, in my view, has completely misdirected itself while dismissing Petitioner's Appeal. The order passed by the Tribunal is thus indefensible and liable to be set aside.

24) The petition accordingly succeeds and I proceed to pass the following order :

- (i) Judgment and Order dated 3 March 2023 passed by the Presiding Officer, School Tribunal, Pune in Appeal No.4/2022 is set aside. Petitioner's Appeal No.4/2022 filed before the School Tribunal is allowed in terms of prayer clause (b) therein which reads thus :

(b) The impugned order dated 27/12/2021 passed by the Respondent No.1 by reducing the rank of the Appellant from the post of Headmaster in the Respondent No.2 School to Assistant Teacher be declared as illegal, bad in the eyes of law, ultra-virus and being void be set aside and further the services of the appellant as Headmaster of Resp. No.2 School be reinstated with all the arrears and wages from the date of order of Reduction in Rank and necessary effect be given in interest of justice.

(ii) Accordingly, the Petitioner shall be reinstated as Headmaster w.e.f. 28 December 2022 with all consequential benefits.

25) The Writ Petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

26) After the judgment is pronounced, Mr. Deshmukh, the learned counsel appearing for the management as well as Mr. Bhargude, the learned counsel appearing for Respondent No.5 would pray for stay of the judgment for a period of eight weeks. The request is opposed by Mr. Kadam, the learned counsel appearing for the Petitioner. Considering the facts and circumstances of the case, judgment and order shall remain stayed for a period of six weeks.

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[SANDEEP V. MARNE, J.]