



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2381 OF 2019

PETITIONER : **Surendra Manohar Deshmukh,**
Age about 55 years, Occ: Service, R/o.
Court Road, Camp Amravati, Distt :
Amravati.

(Ori. Res.No.4)

..VERSUS..

RESPONDENTS : 1. **Akola Education Society,** Akola,
through its President/Secretary, Tq. and
District : Akola.

(Ori. Res.No.1)

2. **New English High School,** Akola, Tq.
and District : Akola, through its
Headmaster.

(Ori. Res.No.2)

3 **The Education Officer (Secondary)**
Zilla Parishad, Akola, Tq. and District :
Akola.

(Ori. Res.No.3)

4 **Murtizapur High School Murtizapur,**
Murtizapur, Tq. Murtizapur, District :
Akola.

5 **Sanjay S/o Parshuram Phadnaik,**
Aged about 56 years, Occ : Service,
R/o Near State Bank Konkanwadi,
Murtizapur, Tq. Murtizapur, District :
Akola.

(Ori. Appellant)

Dr. Renuka S. Sirpurkar, Advocate for Petitioner.
Mr A. A. Madiwale, AGP for Respondent/State.
Mr R. S. Phadnaik, Advocate for Respondent No.5.

CORAM : SIDDHESHWAR SUNDARRAO THOMBRE
DATE : 19th NOVEMBER, 2025.

ORAL JUDGMENT

. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsels for the parties at the stage of admission.

3. By this petition, the petitioner challenges the order dated 07.02.2019 passed in Appeal No.34 of 2015 by the learned School Tribunal, Amravati, whereby the appeal filed by the present respondent No.5 – original appellant came to be allowed and Tribunal directed the Management to treat the original appellant as deemed to have been promoted as Headmaster on 01.04.2015 till the date of his superannuation. It further directed the respondents to take necessary entries of the said notional promotion and deemed date in the service book which will also be applicable for pensionary benefits as Headmaster. The Tribunal also directed the respondents to pay all the salary and other emolument difference/arrears to the original appellant as

well as pensionary benefits as per the said order and directed the entire amount to be paid within three months from the date of impugned order.

4. Dr. Renuka Sirpurkar, learned counsel for the petitioner submits that as the petitioner possessed the qualification of B.Com and B.Ed and was appointed as an Assistant Teacher on 13.08.1990 by the respondents – Management. Whereas, the respondent No.5 was appointed on 29.08.1988, possessed the qualification of B.A., B.P.Ed. It is contended that the respondent No.5 was not qualified to be appointed as Headmaster, as he did not have qualification of B.A. and B.Ed. She further submits that Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as, “MEPS Rules, 1981), prescribes qualification for the post of Headmaster. Therefore, although respondent No.5 was appointed prior to the petitioner, i.e., on 29.08.1988, he did not possess the required qualification for promotion. She further submits that respondent No.5 did not have any teaching experience. Although, this fact was specifically

denied in a written statement, the learned School Tribunal recorded findings only to support the claim of respondent No.5 by referring to Rule 3 of the MEPS Rules, 1981.

5. She also submits that the Tribunal relied upon the judgment of this Court in the matter of *Laxman Khanderao Ekhande v. State of Maharashtra and Others*, reported in *2007(1) Mh.L.J. 860*. However, she points out that in that case, the appointments were admittedly made prior to the coming into force of the 1981 Rules, and therefore, the said judgment is not applicable to the present case. She further submits that the learned Tribunal relied upon a Government Resolution to hold that respondent No.5 was senior since he possessed a B.A. degree. However, the Rules and the Schedule appended thereto have not been amended, and hence, the Government Resolution cannot override the specific provisions of the Rules. As the Rules do not permit respondent No.5 to be promoted as Headmaster, the learned Tribunal erred in relying solely upon the Government Resolution while allowing the appeal.

6. Per contra, Mr. Rajesh S. Phadnaik, learned counsel for the respondent No.5 submits that the respondent No.5 – original appellant possessed the prescribed qualifications for promotion to the post of Headmaster. However, although the petitioner was junior to respondent No.5, he was promoted, and therefore, the petitioner was compelled to approach the learned School Tribunal. He further submits that in the appeal, respondent No.5 has specifically averred that in addition to his qualifications, he possessed teaching experience in economics and history and therefore, his case squarely falls within the scope of the Government Resolution. He also submits that this Court, in Writ Petition No.1121 of 2013, in the matter of Pandit s/o. Rajaram Wankhade vs. The State of Maharashtra and Others decided on 11.06.2019, has considered a similar set of facts, whereas the judgment of Laxman Khanderao Ekhande (supra) relied upon by the petitioner has been overruled.

7. I have considered the rival submissions advanced by both the parties. To decide the issue involved, it is necessary to mention Rule 3(1) of the MEPS Rules, 1981 :

“3. Qualifications and appointment of Head -

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

[(a) of a school having Standards I to VIII as per the norms and the standards provided in the Schedule under the heading 'NORMS AND STANDARDS FOR A SCHOOL' appended to the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009):

Provided *that, the senior most teacher who has not put less than five years of service, shall be appointed as the head of the primary school;]*

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education:

Provided *that, in the case of a person to be appointed as the Head of a night secondary school-*

(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and

(ii) the experience laid down in clause (b) of sub-rule (1) may be as a part-time teacher.”

8. It was the case of respondent No.5 before the learned School Tribunal that he possessed teaching experience in addition to possessing the qualification of B.P.Ed., and that he was senior to the petitioner. He was appointed in service on 29.08.1988. However, despite his seniority, the management appointed the petitioner as Headmaster. In addition, respondent

No.5 had specifically averred in the appeal memo before the learned School Tribunal that he possessed teaching experience also. Upon perusal of the written statement filed on behalf of the petitioner, it reveals that there is no specific denial to that effect. The learned School Tribunal, which noted that respondent No.5 was senior to the petitioner, possessed the requisite qualification of B.A., B.P.Ed., and also had teaching experience. The learned Tribunal recorded findings that, considering the Government Resolution, respondent No.5 satisfied the essential conditions of Rule 3(b). Therefore, it held that the Management had wrongly denied him promotion, thereby causing injustice to respondent No.5. After considering the facts, as well as the material placed on record, the learned School Tribunal concluded that respondent No.5 was entitled to promotion.

9. Therefore, after considering the grounds of petition, averments of respective counsels and findings recorded by the learned Tribunal, I find no reason to interfere with the order dated 07.02.2019 passed in Appeal No.34 of 2015 by the learned

School Tribunal, Amravati, under Article 227 of the Constitution. Hence, I proceed to pass the following order :

ORDER

i) Writ Petition No.2381 of 2019 is **dismissed**. No order as to costs.

ii) It is, however, an undisputed fact that the petitioner had already worked as the Headmaster from 24.03.2015 to 30.11.2022. Considering that he has already discharged duties in that post and now superannuated, the respondents are hereby directed not to recover any amount which was paid to the petitioner.

10. Rule is discharged accordingly.

(SIDDHESHWAR S. THOMBRE, J.)