



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 8971 OF 2024

Girish Suresh Jambhalikar )  
 Aged 54 Years, Occ. Service as Head Master, )  
 Private School, Khasbag, Kolhapur – 416 012 )... Petitioner

Versus

- 1 The State of Maharashtra )  
 Through the Secretary, )  
 School Education Department, Mantralaya, )  
 Mumbai – 400 032 )
- 2 The Education Officer )  
 (Secondary), Zilla Parishad, Kolhapur )
- 3 The Private Education Society, Kolhapur, )  
 C/o. Private High School, Khasbag, )  
 Kolhapur-416 012 )  
 Through its Chairman / Secretary. )
- 4 Private High School, Khasbag, Kolhapur -416 012, )  
 Through its Head Master. )
- 5 Narayan Gopal Motakatte )  
 Aged 54 Yrs., Service as Assistant Teacher at Private )  
 School, Khasbag, Kolhapur – 416 012 )... Respondents

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- Mr. Narendra V. Bandiwadekar, Senior Advocate a/w. Vinayak Kumbhar and Mr. Aniket S. Phapale i/b. Ms. Ashwini N. Bandiwadekar, Advocates for the Petitioner.
- Mr. P. G. Sawant, AGP for Respondent Nos. 1 and 2 – State.
- Mr. Sagar Mane, Advocate for Respondent No.3.
- Mr. Chetan Gajanan Patil, Advocate for Respondent No.5.

CORAM : R. M. JOSHI, J.

DATED : 23<sup>rd</sup> SEPTEMBER, 2024.

**Judgment :**

1. This petition takes exception to the order passed by the Education Officer whereby it was directed to the respondent Management to update seniority list of the teachers and to grant promotion of headmaster to respondent No.5.

2. The facts which led to filing of this petition can be narrated in brief as under:

3. As per the case of Petitioner he passed B.Sc. in November 1991 and B.Ed. in the year 1993. He was appointed as a full time Assistant Teacher on 10.07.1995 in the school run by respondent No.3 Management. Petitioner on the basis of his qualifications entered Category 'C' of Schedule 'F' of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "**MEPS Act**") on the date of the said appointment itself. It is further contended that the respondent No.5 was appointed as a Assistant Teacher with qualification of S.S.C. and D.Ed. and was untrained teacher for secondary school. This respondent passed qualification of B.A. in the year 1993 and B.Ed. In 2003, and as such he entered category-C of Schedule-F under the M.E.P.S. Rules, 1981, in the year 2003. Thus, it is case of the petitioner that respondent No.5 was junior to him in the service as Assistant Teacher. It is contended that on 01.06.2022 seniority list was published and on the

basis of the said seniority list on 01.06.2022 petitioner came to be promoted as Supervisor in respondent No.4 school. The said promotion was approved by respondent No.2 vide order dated 26.07.2022. Respondent No.5 never challenged the said order of promotion before any competent Court. On the basis of the promotion of post of Supervisor, petitioner was further appointed to the post of Incharge headmaster. At this stage, respondent No.5 challenged the seniority list before Education Officer. Education Officer by impugned order dated 29.04.2024 has issued direction to update seniority list as well as further direction was issued to promote respondent No. 5 to the post of Headmaster.

4. Learned counsel for the petitioner submits that respondent No.5 did not challenge the seniority list for all these years and it is only after the petitioner was promoted to the post of headmaster, by invoking Rule 12 of MEPS Rules, exception is sought to be taken to the said order of promotion, which according to him is not permissible in law. To support this submission reliance is placed on following Judgments :

- (i) **Umesh Balkrishna Vispute Vs. State of Maharashtra and Ors. (2000(4) Mh.L. J.)**

(Held- while deciding issue of supersession in appeal under Section 9 of MEPS Act, School Tribunal can look into seniority list, as incidental question.

- (ii) **Bhagwant Sheshrao Borale Vs. Education Officer, (Secondary), Zilla Parishad, Buldhana and Ors. (2009(6) Mh.L.J.)**

(Held – Once promotion is granted and appointment is made, the question of seniority must be decided by Tribunal and Education Officer will have no jurisdiction to fix seniority.

- (iii) **Salim Gulab Mulla Vs. State of Maharashtra and Ors. 2016 (6) Mh.L.J.**  
(Held – In case of promotion already granted by management Education Officer does not have jurisdiction to determine alleged seniority under Rule 1(c).
- (iv) **Nildhwaj Motiramji Kamble Vs. State of Maharashtra, Through its President and Ors. (2022 SCC OnLine Bom 138)**  
(Held – Judgment in the case of Umesh Balkrishna (supra) is followed)
- (v) **Vidyalata Nilkanth Patil Vs. Chairman / Secretary, Shikshan Prasarak Samiti and Ors. (W.P. 7923 of 2015)**  
(Held – Education Officer acted without jurisdiction in determining the seniority under Rule 12, in view of petitioner already been promoted)

By referring to the facts of the present case it is argued that at earlier point of time respondent No. 5 had raised exception to the seniority list as well as his supersession by other employee before the school Tribunal by filing appeal under Section 9 of MEPS Act, but appeal was withdrawn and that respondent No.5 has practically waived his right to take objection with regard to the seniority list. It is thus his submission that on the basis of seniority list published, petitioner was given promotion of supervisor, Assistant Head Master and Incharge Head Master. According to him only for the reason of application of code of conduct, regular post was not given but practically claim of petitioner to post of Head Master is accepted and he is promoted. Thus it is his submission that in view of law settled by judgments (supra) in the facts of the case, it was not open for the Education Officer to pass impugned order and the same

deserves interference.

5. Learned counsel for the contesting respondent No.5 opposed the said submissions mainly relying upon the judgment of the Coordinate Bench of this Court dated 26.03.2024 passed in ***Krishna Mahadu Gasti Vs. Mahesh Shamrao Deshmukh and Anr. in Writ Petition No. 2952 of 2021.*** It is his submission that the learned Single Judge of this Court has held that it is not open for the School Tribunal to consider the correctness of the seniority list unless the said issue has been determined by Education Officer at first instance. In this regard, reference is made to the observations made by the said Court in paragraph Nos. 24 and 25 of the Judgment. He further placed reliance on the judgment of the Coordinate Bench of this Court ***reported in 2023(3) BOM.C.R.390*** in the case of ***Sahakar Viday Prasarak Mandal & Ors. Vs. Dinesh Karbhari Kute and Anr.*** and a reference is made particularly to paragraph No. 22 of the said judgment. He further placed reliance on the judgment of the full bench of this Court in the case of ***St. Ulai High School and another Vs. Devendraprasad Jagannath Singh reported in 2007(1) Mh.L.J. 597.*** He also drew attention of this Court to Rule 12 which according to him entrusts the sole jurisdiction with the Education Officer to decide the dispute in the matter of inter se seniority. It is his submission that the respondent No.5 has at all point of times took objection to the seniority list

by passing endorsement thereon and that in view of Sub Rule 3 of Rule 12, it was obligation of the management to refer the dispute to the Education Officer for his decision. Since the same was not referred to by Management, ultimately Respondent No.5 was required to move before Education Officer. He submits that on merits this is a case wherein there is wrongful denial of seniority and consequential promotion to the petitioner and hence this aspect would weigh in the decision of the case. On these amongst other submissions, he supports impugned order.

6. Since, it is sought to be argued on behalf of the respondent No.5 that it was obligation on the part of the management to refer the dispute in respect of inter se seniority to the Education Officer for his decision under Rule 12. It is relevant to take note of Rule 12 which is reproduced below :

**“Seniority List**

(1) Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule “F”. The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.”

7. A bare perusal of the said Rule clearly indicates that the management is obliged to prepare and maintain a seniority list of teaching

staff including the headmaster and Assistant headmaster and also of non teaching staff in the school in accordance with the finding laid down in Schedule 'F'. The seniority list so prepared is required to be circulated amongst the members of staff concerned and their signatures having received a copy of the list is to be obtained. In the present case there is no dispute with regard to the fact that the seniority list in compliance of this rule was duly prepared and published and signatures of all concerned staff are obtained thereon. This is not the case wherein any subsequent change has been made in the seniority list in order to notify the said change to the staff members concerned. Though, Sub Rule 2 requires the management to take into consideration to the objections to the seniority list, however, as it appears from the record no specific objection was raised by the respondent No.5 to the seniority list in order to consider the same. Sub Rule 3 provides that dispute if any in the matter of inter se seniority shall be referred to the Education Officer for his decision. This however does not create an embargo on employees to raise such dispute to Education Officer nor casts obligation on the management to refer such dispute for the decision to the Education Officer. It is always open for the member of the staff teaching / non teaching to raise such dispute before the Education Officer. Thus, merely because the respondent management has not referred the dispute to the Education Officer, respondent No.5 was never

prevented from taking up this dispute before Education Officer for decision.

8. Admittedly, after the publication of seniority list, Petitioner was granted promotion of Supervisor on 26.07.2022 and Assistant Headmaster on 25.08.2022. Later on owing to code of conduct appointment of petitioner is made Incharge Head Master. These proposals have received due approval from the Education Officer. It is thereafter on 15.03.2024 an application was moved seeking direction to the management for appointment of respondent No.5 as Headmaster. Though it is sought to be argued on behalf of respondent No.5 that the application was mainly for raising challenge to the seniority list, it was open for the Education Officer to decide incidental issue of promotion. In this regard, it is relevant to take note of the applications moved by respondent No.5 before the Education Officer. It would be relevant to reproduce the contents of the application dated 15.03.2024, which reads thus:

“मी वरील नियमानुसार ज्येष्ठ असून सुद्धा संस्थेने माझ्यापेक्षा सेवेने कनिष्ठ असलेले अध्यापक श्री. सतीश जयवंतराव भोसले (खुला प्रवर्ग) यांची दि. 01/07/2022 रोजी मुख्याध्यापक पदावर नेमणूक केली. त्यामुळे नाईलाजाने मला मे. पिठासन अधिकारी शाळा न्यायाधिकरण, कोल्हापूर यांचेकडे खटला दाखल करावा लागला. हा खटला अद्याप प्रलंबित आहे. यानंतर 01/08/2023 रोजी माझे प्रतिवादी असलेले श्री. धनंजय विठ्ठल बेदे (ST) यांना उच्च न्यायालयाकडून कास्ट व्हॅलिडीटी सर्टिफिकेट मिळाले. तेव्हाही माझे प्रमोशन डावलून नूतन मराठी विद्यालय हायस्कूल मध्ये त्यांना मुख्याध्यापक पद देण्यात आले. यानंतर माझ्यापेक्षा सेवेने कनिष्ठ असलेले अध्यापक श्री. व्ही. के. शिंदे यांना दि. 01/01/24 रोजी आपल्या मार्फत सुनावणी होऊन, आपल्या निर्णयानुसार मुख्याध्यापक पद देण्यात आले. सदर सर्व शिक्षकांची संस्थेतील नेमणूक माझ्या नंतरची आहे, त्यामुळे ते सर्वजण माझ्यापेक्षा कनिष्ठ आहेत.

सध्या दिनांक 01/04/2024 रोजी प्रायव्हेट हायस्कूलमध्ये मुख्याध्यापक पद रिक्त होणार आहे. वरील संदर्भानुसार, मी सर्वात सेवाजेष्ठ असून तसेच वारंवार संस्थेकडून दुर्लक्षित होऊन माझे वारंवार अन्याय झालेला आहे. कृपया संस्थेची सेवा जेष्ठता यादी अद्यावत करण्याचे आदेश आपल्या कार्यालयाकडून यावेत. तसेच माझ्या अर्जाचा विचार होऊन आपल्याकडून



सुनावणी घेण्यात यावी व मला न्याय मिळावा. ही विनंती.”

9. One more application is filed on 01.04.2024 before Education Officer, the relevant portion of which is reproduced below :

“दिनांक 01/04/2024 रोजी प्रायव्हेट हायस्कूलमध्ये मुख्याध्यापक पद रिक्त झाले आहे. वरील नियमानुसार सदर पदासाठी वैधरित्या मीच पात्र व योग्य आहे. हे पद मलाच मिळाले पाहिजे परंतु सदर पदासाठी संस्थेने श्री. जी. एस. जांभळीकर यांची अवैधरित्या प्रभारी मुख्याध्यापक पदी निवड केली आहे. प्रभारी मुख्याध्यापक पदाच्या मान्यतेसाठी जी सेवा जेष्ठता यादी जोडलेली आहे. ती पूर्ण चुकीची आहे. त्यामुळे प्रभारी मुख्याध्यापक पदाच्या मंजुरीसाठी माझी हरकत आहे. शाळेतील कर्मचा—यांचे वेतन थांबू नये यासाठी प्रभारी मुख्याध्यापक पदाच्या मंजुरीसाठी आपल्या कार्यालयाकडे प्रस्ताव सादर झाल्यास त्यास कृपया मंजुरी देऊ नये मा. संचालक शिक्षण विभाग, महाराष्ट्र शासन यांच्या पत्रानुसार प्रथम संस्थेस नवीन सेवा जेष्ठता यादी तयार करण्यास आपल्या कार्यालयाकडून आदेश द्यावेत. तसेच सदर पदासंदर्भात सुनावणी घेऊन मला न्याय द्यावा ही आपणास कळकळीची विनंती आहे.”

Perusal of these applications made to Education Officer clearly show that respondent No.5 has raised objection to the grant of promotion of petitioner to the post of Incharge Head Master and it is further prayed that no approval be granted to such proposal, if received. Undeniably, there is an approval granted by Education Department to the appointment of petitioner as Incharge Head Master and only thereafter application was entertained and decided by Education Officer, by passing impugned order. Similarly, it appears from text of impugned order that respondent No.5 had filed appeal before School Tribunal, which was withdrawn subsequently. This appeal was filed under Section 9(b) of the Act, which deals with the dispute with regard to supersession by management making an appointment to the post by promotion and filing of such dispute presupposes that respondent No.5 being aggrieved by his supersession had

filed the said appeal.

10. With regard to the power of the Education Officer to decide the dispute about seniority and as to whether such power can be exercised after act of supersession. This Court in the case of *Salim GulabMulla Vs. State of Maharashtra and others, reported in 2016(6) Mh.L.J.* relying upon judgment of Division Bench has held in paragraph No.51 as under :

“51. Insofar as submission of the learned counsel for the petitioner that when the petitioner filed representation before the education officer for determination of seniority after this court granted liberty to the petitioner to avail of appropriate remedy is concerned no objection was raised by the petitioner is concerned, even if the petitioner did not raise any objection before the education officer not to determine the seniority in view of the petitioner already having been promoted to the post of headmaster and the said appointment was in place, the same would not confer any jurisdiction upon the education officer to decide the seniority issue though the petitioner was already promoted to the post of headmaster. This court in case of *Vidyalata Nilkanth Patil (supra)* has held that since the education officer had no jurisdiction to determine the seniority after promotion of the employee already having been made, even if an objection is not raised by the employee before the education officer not to determine the seniority between him and another employee, the same would not confer any jurisdiction in the education officer to adjudicate upon the seniority after promotion to the post was already made.”

While passing above judgment, Court has taken into consideration judgments in case of :

(1) *Bhagwant Sheshrao Borale Vs. Education Officer, (Secondary), Zilla Parishad, Buldhana and Ors., 2009(6) Mh.L. J. 478*

(2) *Vidyalata Nilkanth Patil vs. Chairman/Secretary, Shikshan Prasarak Samiti, Badapokharan and ors.*

(3) *St. Ulai High School and Anr. vs. Devendraprasad Jagannath Singh, 2007(1) Mh.L.J. (F.B.) 597*

(4) **Anjali Jayant Khati vs. Bal Mandir Sanstha and ors.** 2008 Mh.L.J. Online 2 = 2009(1) Bom.C.R. 206

(5) **Sumangala w/o Manoharrao Sakharkar vs. State of Maharashtra and ors.** , 2010(1) Mh.L.J. 63

(6) **Umesh B. Vispute vs. State of Maharashtra and others,** 2000(4) Mh.L.J. 564

11. The Division Bench of this Court has referred to judgment in the case of *Saroj Pujari vs. Education Officer, Nagpur* in W.P. No. 546 of 1989 was taken into account. In the said Judgment it is held that the question of seniority will have to be decided by the Tribunal for rendering a finding as to whether the petitioner has been superseded or not by the appointment of respondent No.4. Thus, it is in no uncertain terms held that Tribunal has jurisdiction to decide the question of seniority incidentally.

12. It would be relevant to take into consideration the judgment of Co-ordinate Bench in the case of *Krishna Mahadu Gasti (supra)*. In the said case there was a challenge before the School Tribunal of the order of promotion dated 01.06.2018 passed by the Management and the said order of promotion was set aside and the Management was directed to promote respondent No.1 therein as Headmaster w.e.f. 01.06.2018. After considering the facts of the relevant provisions of the Act, it is held in paragraph No. 20 of judgment which reads thus;

20. So far as the scope and jurisdiction of Section 9 of the MEPS Act is concerned, learned senior counsel for the petitioners has relied upon the decision of the full bench of this Court which deals with the scope of Section 9. A perusal of the said decision indicates that the issue

regarding challenge to inter se seniority under Section 9 is held to be within the scope of Section 9 as an incidental issue provided consequential action is taken by the management based on the dispute adjudicated by the Education Officer under Rule 12 of the MEPS Rules and the same is under challenge under Section 9.

Thereafter considering the Rule 12, it is held in paragraph Nos. 24 and 25 as under:

24 . Thus, in view of the aforesaid decision it is clear that the School Tribunal under Section 9 can examine the issue of inter se seniority in the event there is an adjudication made by the Education Officer under Rule 12 of the MEPS Rules and the management passes an order based on the said adjudication. Thus, an employee aggrieved by the consequential action by the management can raise a dispute on the decision of the Education Officer on the inter se seniority as an incidental issue while challenging the consequential action of the management before the School Tribunal.

25. In the present case admittedly, there is no adjudication made by the Education Officer under Rule 12 of the MEPS Rules. Though as per the undisputed seniority list maintained by the management under Rule 12 of the MEPS Rules, the management passed the order of promotion of petitioner no. 1, the School Tribunal has held that respondent no. 1 was entitled to be promoted as he entered Category 'C' right from the inception. The School Tribunal has further held that petitioner no. 1 would not be entitled to enter Category 'C' without completing 10 years of service in view of the fourth entry of Category 'C' of Schedule 'F' of the MEPS Rules. Thus, an adjudication by the School Tribunal on the inter se seniority is beyond the scope of Section 9 of the MEPS Act. Since there was no decision by the Education Officer under Rule 12 on the inter se seniority, the tribunal had limited jurisdiction under Section 9 as provided by the statute. The issue of inter se seniority is vested with the Education Officer under Rule 12 of the MEPS Rules. Thus, the findings recorded by the Tribunal on inter se seniority while dealing with an appeal under Section 9 would be beyond the scope and jurisdiction of Section 9.

It is relevant to note that the Judgment of the Division Bench of this Court was not brought to the notice of the learned Single Judge while passing the said order. Perusal of the judgment of the Division Bench clearly indicates that it is within the jurisdiction of the Tribunal to decide

the question of seniority for rendering a finding as to whether the person has been superseded or not by the appointment of another person, as incidental issue.

**13.** At this stage, it would be relevant to take into consideration provisions of Section 9 of MEPS Act which reads 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 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 made 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.** This provision starts with non obstante clause and as such this provision would take precedence over any law including the rules framed under this act itself. Pertinently non obstante clause does not say any other law, meaning thereby this provision supersedes even any contrary provision in the instant Act. It is thus clear that the powers of the School Tribunal in order to decide the dispute in respect of supersession by the management while making appointment to any post by promotion is notwithstanding anything contained in law or contract for the time being in force. The jurisdiction of Tribunal is wide enough to decide the issue of seniority as incidental issue. Thus it does not stand to any reason to hold that Rule 12 will supersede the powers of School Tribunal to decide the issue of seniority which involved in a case wherein the supersession by way of promotion has been challenged by filing appeal under Section 9. Thus it does not stand to reason to hold that the Tribunal would not get a jurisdiction at the first instance to decide issue of seniority and it can only be done after the Education Officer decides the same.

**15.** As against this, Rule 12 clearly indicates that the jurisdiction of the Education Officer being strictly limited to the dispute in the matter of inter-se seniority between the employees, by no stretch of imagination, it

can be said that the Education Officer possesses powers to pass any order in respect of the claim of any employee about his supersession being done by the management even incidentally.

16. Thus permitting an employee after the promotion has been granted on the basis of seniority list, to take exception to the seniority list under Rule 12 before the Education Officer will lead to a situation of permitting him to challenge the grant of promotion may be incidentally. However, by doing there would be enlargement of scope of Rule 12, wherein issue about the supersession cannot be decided even incidentally. It is never contemplated by the statute and in no circumstances even indirectly the Education Officer can be said to have jurisdiction to decide the issue of the promotion granted by the management. Conversely, there is no such embargo in Section 9 for Tribunal to decide the said issue. Since the issue has been squarely covered by the Judgment of the Division Bench of this Court, this Court is unable to agree with the view taken in the Judgment of *Krishna Gasti (supra)*.

17. The above discussion clearly indicates that in the instant case the Education Officer has entertained the application under Rule 12 for objection to the seniority for the purpose of challenge to the promotion of petitioner as in-charge headmaster. The application made by the respondent No.5 as well as order impugned clearly indicate the application

was not even simplicitor to take exception to seniority list only. Thus, Education Officer has exceeded his jurisdiction. Having regard to the aforestated facts, the order passed by Education Officer cannot sustain and as such is hereby set aside.

**18.** However, liberty is granted to the respondent No.5 to take exception to the seniority list as well as his supersession by filing an appeal under Section 9 of the Act before School Tribunal. If such appeal is filed within a period of four week from today, issue of limitation shall not be raised. Needless to say that School Tribunal on filing of such appeal is expected to decide the appeal on merits without getting influenced by the observations of this Court.

**19.** Writ Petition is allowed in aforestated terms.

**( R. M. JOSHI, J.)**

SONALI  
SATISH  
KILAJE

Digitally  
Signed by  
SONALI  
SATISH  
KILAJE  
Date:  
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