

**REPORTABLE****IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD****WRIT PETITION NO. 503 OF 2021**

Appasaheb s/o Shamrao Madan
Age : 49 years, Occu.: Service,
R/o: Georai (Bazar), Tq. Badnapur,
Dist. Jalna.

...Petitioner**~ Versus ~**

- 1 The State of Maharashtra**
Through Secretary,
Department of School Education,
Mantralaya, Mumbai – 400 032.
- 2 Deputy Director of Education**
Aurangabad Division,
Aurangabad.
- 3 The Education Officer (Secondary)**
Zilla Parishad, Jalna.
- 4 Georai Shikshan Prasarak Mandal,**
Georai (Bazar), Tq. Badnapur,
Dist. Jalna.
Through its Secretary,
Pralhad Ambadas Shinde,
Age : Major, Occu: Secretary,
Georai (Bazar), Tq. Badnapur,
Dist. Jalna.
- 5 Vilas s/o Bajirao Kanhere,**
Age : Major, Occu: Agri.
R/o Georai (Bazar), Tq. Badnapur,
Dist. Jalna.
- 6 Vijay s/o Haribhau Waghmare,**
Age : 55 years, Occu: Service
as Assistant Teacher,
R/o Georai (Bazar), Tq. Badnapur,
Dist. Jalna.

...Respondents

APPEARANCES :

<i>Advocate for the Petitioner</i>	<i>Mr. V. D. Salunke</i>
<i>AGP for the Respondent Nos.1 to 3/State</i>	<i>Mr. R. S. Wani</i>
<i>Advocate for the Respondent No.4</i>	<i>Mr. N. N. Jagdale</i>
<i>Advocate for the Respondent No.5</i>	<i>Mr. Vivek Dhage</i>
<i>Advocate for the Respondent No.6</i>	<i>Mr. R. I. Wakade</i>

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME JJ.**

Date On Which The Arguments Were Heard : 12 JUNE 2024

Date On Which The Judgment Is Pronounced : 21 JUNE 2024

JUDGMENT : [Per Shailesh P. Brahme J.]

. Rule. Rule is made returnable forthwith. Heard learned Counsels for the litigating sides finally.

2. Petitioner is challenging order passed by the Deputy Director of Education, Aurangabad dated 04.03.2020 thereby confirming order dated 14.11.2019, revoking approval granted to the promotion of petitioner to the post of Head Master.

3. The petitioner and respondent no.5 and 6 are employees of respondent no.4/Educational Institution. There is no dispute about the dates of their appointment and status in the seniority list. Respondent No.6 was the senior most teacher at serial no.1 and the petitioner was at serial no.2 in the seniority list. Due to superannuation of earlier Head Master, on 31.05.2019 the post became vacant. The controversy involved in the petition pertains to promotion of the petitioner on to the post of Head Master.

4. It is the case of the petitioner that respondent no.6 gave consent for the promotion of the petitioner to the post of Head Master. He was promoted to the post of Head Master vide order dated 02.06.2019. Respondent No.3/Education Officer approved the promotion vide order dated 23.07.2019. Respondent No.5 who was not the claimant of the promotional post, made complaint to the Education Officer regarding promotion of the petitioner and approval accorded on 23.07.2019. Respondent No.3/ Education Officer revoked approval vide order dated 14.11.2019. The revocation is confirmed by respondent no.2/Deputy Director of Education, which is under challenge.

5. Learned Counsel for the petitioner Mr. V.D. Salunke submits that though respondent no.6 was senior most teacher, due to the consent given by him in writing on 23.07.2019 which is at Exhibit-G, promotion was given to the petitioner. The consent was secured in the presence of Education Officer which was a statutory compliance. He would further submit that having granted approval on 23.07.2019, the same could not have been revoked at the instance of respondent no.5 who had no locus. It is being submitted that order of revocation amounted to review and it is without jurisdiction.

6. Learned Counsel for the petitioner submits that order of promotion dated 02.06.2019 was not challenged by the respondent no.6 who could have been aggrieved, by filing appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 & Rules, 1981 (hereinafter referred to as an Act and Rules of 1981 as 'Rules'). The respondent no.2/Deputy Director of

Education virtually recorded findings in favour of petitioner vide conclusion no.4 and 7 and revocation was confirmed, which is perversity. He would submit that impugned order of Deputy Director of Education would overreach order dated 17.02.2020 passed by the Division Bench in Writ Petition No.14472/2019 and is wholly unsustainable. Lastly, it is submitted that petitioner had no remedy to challenge impugned orders by approaching School Tribunal under the Act.

7. Learned Counsel Mr. N.N. Jagdale appearing for the respondent no.4 supports the petitioner and adopts his submission.

8. Learned Counsel Mr. R.I. Wakade representing respondent no.6 repels the submission of the petitioner and refers to affidavit-in-reply. He would submit that he was senior most teacher and there was no reason for him to relinquish his claim to the promotional post. He would point out that respondent no.6 had filed applications on 02.05.2019 and 28.05.2019 disclosing his desire for being appointed to the post of Head Master after superannuation of Ms. Deshmukh. He would vehemently submit that his so called written consent was obtained on 23.07.2019 under threat and pressure. He would vehemently submit that no statutory procedure as contemplated by Rule 3(3) and the explanation appended thereto was followed and promotion of the petitioner is ex-facie illegal. He would point out the circumstances by referring to his complaints in writing on 23.07.2019 and 26.07.2019 made to the management and the Education Officer against pressure exerted on him for securing consent.

9. Learned Counsel further submits that after the revocation of approval, order of promotion was cancelled by the management vide order dated 11.11.2019 which has not been challenged by the petitioner. He would point out that since 14.11.2019, he is rendering services and discharging duties as in charge Head Master with authorization given by Education Officer vide order dated 14.11.2019. He further submits that respondent no.6 was promoted to the post of Head Master vide order dated 14.11.2019. Lastly, he would urge that the petition is not maintainable and liable to be dismissed.

10. Learned Counsel Mr. Vivek Dhage appearing for respondent no.5 makes his submission on the line that of respondent no.6 and refers to his affidavit-in-reply. Additionally he would submit that respondent no.2/Deputy Director of Education conducted hearing as per the directions issued by the Division Bench in Writ Petition No.4472/2019. He found that consent of respondent no.6 was obtained by extending threats regarding which complaints were made by him. After superannuation of Ms. Deshmukh, respondent no.6 orally refused the post of promotion and therefore petitioner was promoted. Learned Counsel would reiterate that there is a gross violation of statutory procedure. The principle that when the law requires a thing to be done in a particular manner, has to be done in that manner only and not otherwise, is violated.

11. Learned AGP appearing for the respondent nos. 1 to 3 submits that due procedure was followed by respondent no.2/Deputy Director of Education and after extending

opportunity of hearing, order of revocation of approval was confirmed. He would submit that there is total non-compliance of Rule 3(3). He would submit that so called relinquishment was not in accordance with law. As the complaint was received from the respondent no.5, respondent/Education Officer found it fit to revoke earlier order of approval.

12. We have considered rival submissions of the parties and we have gone through affidavits-in-reply and the documents produced in support of them. The parties have tried to make submissions regarding dispute in the management and rival claims to the office of the trust. We do not propose to embark on enquiry into the validity of the office bearers. We propose to decide the matter on the basis of provisions of law and relevant facts brought on record touching the impugned decisions.

13. Before we deal with the submissions of the parties on the core issue of the procedure undertaken by the management in filling up post of Head Master, it would be expedient to refer to Rule 3(3) :

“Rule 3. Qualifications and appointment of Head

(1)

(2)

(3) *The Management of a school including a night school shall fill up the post of the Head by appointing the senior-most member of the teaching staff (in accordance with the guidelines laid down in Schedule ‘F’ from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfils the conditions laid down in sub-rule (1) and who has a satisfactory record of service.*

[Explanation.- For the purpose of this rule, the Management shall communicate the occurrence 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, for

appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post :

***Provided** that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post.]*

14. We would like to record undisputed facts as follows :
- (i) In the seniority list, respondent no.6 was the senior most, at serial no.1 and petitioner was at serial no.2 at the relevant time.
 - (ii) Petitioner was promoted to the post of Head Master on 02.06.2019.
 - (iii) No objection in writing was secured from the respondent no.6 before the Education Officer on 23.07.2019.
 - (iv) Order of promotion was approved on 23.07.2019 and it was revoked on 14.11.2019 at the instance of respondent no.5.
 - (v) Respondent No.6 did not challenge either order of promotion or approval before Tribunal.

- (vi) By the intervention of High Court and the direction issued on 17.02.2020 in Writ Petition No. 4472/2019, hearing was conducted by the Deputy Director of Education and impugned order was passed.
- (vii) Respondent No.6 had submitted application claiming post of promotion on 02.05.2019 and 28.05.2019.
- (viii) Respondent No.6 submitted grievance against forceful consent on 23.07.2019 and 26.07.2019.

15. The post of Head Master became vacant due to superannuation of Ms. Deshmukh on 31.05.2019. Being the senior most teacher, respondent no.6 appears to have made representation in writing on 02.05.2019 to the Secretary/President and thereafter on 28.05.2019 to the Education Officer claiming post of Head Master which was to accrue after 31.05.2019. Thereafter no sooner his consent in writing was obtained on 23.07.2019, immediately on the same date, he made complaint in writing to the Secretary/President regarding threats and the coercion exerted on him for extracting consent. Not only that but on 26.07.2019 similar complaint was submitted by him to the Education Officer. Considering this conduct and circumstances, it is very unlikely that he would have relinquished in writing his claim to the promotional post on 23.07.2019, voluntarily.

16. A careful perusal of written relinquishment dated 23.07.2019 shows that promotion was already given to the petitioner on 02.06.2019. The alleged consent was not in handwriting of respondent no.6, but a typed one. When the promotion was already given to the petitioner on 02.06.2019, the consent on 23.07.2019 was *ex post facto*. We are of the

considered view that such *ex post facto* consent is *ex facie* dehors the explanation to Rule 3(3).

17. A statutory procedure is prescribed by Rule 3(3) and its explanation for filling up the promotional post of Head Master under the rules. After accrual of the vacancy, management is under obligation to communicate to the senior most qualified teacher eligible for promotion calling upon him to submit his willingness within a period of fifteen days from the date of receipt of communication. Thereafter, if the senior most teacher proposes to decline then he should tender his statement in writing to the Education Officer regarding his voluntary relinquishment. The senior most teacher is required to tender such statement in his own handwriting before the Education Officer within fifteen days, which should be endorsed by the Education Officer in his presence. In case of failure to submit willingness for the appointment to the promotional post or to submit a statement in his handwriting within period of fifteen days, relinquishment to the claim should be presumed.

18. The learned Counsel for the petitioner or learned Counsel for the management failed to demonstrate that the statutory procedure prescribed by explanation to Rule 3(3) of the Rules was undertaken. There is absolutely no material on record to show that a written communication was ever issued to the respondent no.6 calling upon him to submit his willingness within fifteen days. Further, there is no relinquishment by the respondent no.6 in his own handwriting within fifteen days. So called relinquishment in the present matter occurred after passing of the orders of

promotion on 02.06.2019. Before issuing orders of promotion in favour of the petitioner, the procedure of securing relinquishment was required to be followed which was not done. We have no iota of doubt that there is brazen violation of explanation to Rule 3(3).

19. Learned Counsel for the respondent no.5 is justified in contending that when the law requires a thing to be done in a particular manner, it has to be done in that manner only and not otherwise. The case in hand is governed by the statutory procedure prescribed in explanation to Rule 3(3) which ought to have been followed by the respondent/management. It is useful to refer to settled principle laid down in the matter of **Competent Authority Vs. Barangore Jute Factory and Ors.**, 2005(9) SCALE493. Paragraph No.7 is as under :

"7. So far as the question whether the impugned Notification meets the requirement of Section 3A(1) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of land in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law."

20. The procedure laid down in explanation to Rule 3(3) needs to be followed meticulously and has significance. It is designed to suppress the mischief of bypassing the legitimate claims of senior most teacher in the matters of promotion.

The procedure is not an empty formality. It provides an opportunity to the senior most eligible teacher to claim promotion to the post of headmaster. It obviates pick and choose policy of management and resultant arbitrariness. It further provides a safeguard to the right of senior most teacher to claim the post of headmaster. It is designed to suppress any coercion or undue influence being exerted on such person for relinquishing his claim to the promotional post. Ultimately the procedure subserves appointment of eligible person to vital administrative post of the school. Thus the procedure contemplated by the statute helps smooth and fair administration of the school.

21. It is further very apparent from the explanation that the Education Officer owes a duty to meticulously oversee adherence to the procedure contemplated. Tendering of the statements of relinquishment in handwriting before the Education Officer and his endorsement over it in his presence, are further safeguards to ensure promotion of the eligible persons by due statutory procedure. In that view of the matter, the earlier approval granted on 23.07.2019 was illegal and rightly rectified by its revocation on 14.11.2019. Interestingly, relinquishment of the respondent no.6 was obtained on 23.07.2019 and immediately on the same date approval was granted.

22. We have gone through the findings recorded by Deputy Director Education in the last impugned order. He was directed to hear the parties and take decision about the approval granted in favour of the petitioner. He was under obligation to specifically examine adherence to procedure

contemplated by Rule 3(3). The findings recorded by the Deputy Director of Education are not happily worded and explicit. However the conclusion cannot be faulted with. We are consciously avoiding to relegate the matter to the Deputy Director of Education to decide it afresh. Present case demonstrates *ex facie* violation of Rule 3(3). There is overwhelming material to come to conclusion that relinquishment of the respondent no.6 was not voluntary but under duress, besides that it was apparently solicited *ex post facto*.

23. Learned Counsel for the respondent no.6 refers to judgment rendered in the matter of **Nirmala Revappa Pattanshetti Vs. Mahadev Ramchandra Mali and Others**, 2006(2) Mh.L.J. 566. He refers to paragraph nos.16 and 17. We concur with the law laid down by the coordinate bench. It would be useful to refer to paragraph nos.16 and 17 which are as follows :

"16. Mr. Deshmukh, learned counsel for the appellant submitted that by no stretch of imagination the appellant could be said to have had relinquished her claim to the post of Head of the school. The last line of the letter, according to Mr. Deshmukh, does not indicate that the appellant gave up her right of promotion, as tried to be contended by Ms. Agarwal, learned counsel for respondent no.1. From perusal of the letter and its last line in particular, in our opinion, the appellant cannot be said to have had relinquished her claim to the post of Head of the school in unequivocal terms. Looking to the language of Rule 3 employed by the Legislature, the statement contemplated in the explanation appended to Sub-rule (3) of Rule 3, relinquishing claim to the post of Head, should be as clear as possible and such intention should be reflected in unequivocal terms more particularly if such senior teacher is a women. In other words, the statement not only need to be made voluntarily or with full understanding but it should be plain, unambiguous and admit only one meaning. From perusal of the statement/letter in question, we are of the opinion, that it does not fall in that category. Moreover, admittedly the statement was not made by the appellant before the so called appointment of respondent no.1. The statement/letter was obtained on 25.6.1997 whereas his appointment was made in 1987.

17. The basic requirement contemplated in the explanation appended to Sub-rule (3) of Rule 3 was that the Management requires to communicate any occurrence of vacancy of Head to the senior qualified teacher having satisfactory record of service and ask him to

submit willingness for appointment to the post of Head within a period of 15 days from the date of receipt of the communication. Indubitably, that was not done by the Management when respondent no.1 was appointed in 1987 and/or when his pay scale was revised sometime in 1994. It is pertinent to note that after the statement of the appellant dated 25.6.1997 alongwith six other teachers, who were also senior to respondent no.1, was recorded, respondent no.2 vide letter dated 5.9.1997 informed the school that after it started receiving 100% grant why an appointment of a permanent Head had not been made. The school was further informed that if an appointment of a regular Head was not made, the salary bills of the teachers would not be released. The explanation was also sought as to why an appointment of Head of the school had not been made. In view of this letter the school seems to have appointed the appellant as the Head, she being senior-most and qualified to be appointed to the said post. Her appointment was initially approved as Incharge Head and thereafter it was approved as regular Head. The charge was handed over by respondent no.1 without making any grievance whatsoever to the appellant. It is his case that he was assured by the Management that he would be appointed as Head soon after the pay bills of all the teachers, which were withheld by the education officer, were released and since that did not happen he approached the school tribunal. It may be noticed that respondent no.1 has not produced any material on record in support thereof. "

24. The upshot, we find no merit in the petition. Hence we pass following order :

ORDER

- (i) Writ Petition is dismissed.
- (ii) Rule is discharged.
- (iii) There shall be no order as to costs.

**SHAILESH P. BRAHME
JUDGE**

**MANGESH S. PATIL
JUDGE**