
(2017) 11 BOM CK 0159

In the Bombay High Court

Case No : 317 of 2010?IN?WRIT PETITION NO 3191 of 2009

Haridas Vikramji Meshram

APPELLANT

Vs

State of Maharashtra & Ors

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Rules, 1981](#), [Rule 9\(7\)](#), [Rule 3\(4\)](#), [Rule 9\(7\)](#), [Rule 3\(4\)](#)

Citation : (2017) 11 BOM CK 0159

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : DIVISON BENCH

Advocate : G.M.Bagde, H.R.Dhumale

Judgement

1. Heard Adv.Bagde for appellant/original petitioner and learned AGP Dhumale for respondents 1,5 and 6. Nobody appears for other respondents.
2. Submission of Adv.Bagde is, learned single Judge has passed the order in a rather pedantic and mechanical manner without looking to the arguments advanced or legal position pointed out. He does not dispute the basic facts. According to him, there are total four Schools run by same Management and, therefore, four posts of Headmasters. Merely because one of these four Schools is an exclusive school for Girls, post of Headmaster therein cannot be excluded for the purposes of computing reservation of 24%. He contends that while applying Full Bench judgment of this Court in the case of New English High School Association vs. Baldev, reported at 2006 (6) Mh.L.J. 882 though requirement of reservation at 24% has been noticed, fact that there were four posts of Headmasters with Management, has been ignored. Treating post of Headmaster in Girls' school as a distinct class, by itself, only three posts have been accepted and this has resulted in failure to apply stipulated reservation at 24%. He contends that the issue though specifically raised, has not been addressed to by learned single Judge.

3. In order to point out the obligations of Court even while writing judgment of concurrence, he has relied upon the judgment of Hon''ble Apex Court, in the case of U.Manjunath Rao vs. U. Chandrashekhara and another, reported in (2017) SCCR 837.

4. Learned AGP, on the other hand, has invited attention to consideration in para 24 of the Full Bench judgment. He submits that there Full Bench has looked into earlier Full Bench judgment in the case of Asha Chakradhar Raut vs. Deputy Director of Education (Sec), Nagpur and others, reported at 2003 (3) Mh.L.J. 1010. He submits that as per said Full Bench judgment of 2003, post of Headmistress in Girls'' School becomes an isolated post and therefore is cut away from the normal school. He, therefore, submits that learned single Judge as also the School Tribunal have rightly applied their mind to the controversy. The provisions of Rule 9(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (henceforth abbreviated to ''Rules of 1981'') then envisaged reservation at 24% and accordingly four posts in a cadre were essential. As management has only three schools, 24% roster has not been applied. He therefore prays for dismissal of LPA.

5. With assistance of learned counsel for respective parties we have perused the records. Facts show that Management, no doubt, runs four schools or then may also have maintained common seniority list and transferred teachers from Girls'' school to mixed school or vice-versa but then mandate of Rule 3 (4) of Rules of 1981 is very clear. Rule 3 deals with qualification and appointment of Head. Sub-rule (4) specifically stipulates that where the School concerned is a girls'' secondary school or Junior College of Education for women, the senior-most lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) of Rule 3 only, shall be appointed as its Head. It also clarifies that it is irrespective of her seniority vis-a-vis male teachers.

6. Sub-rule (4) therefore obliges management to promote senior-most eligible lady teacher as Headmistress in its Girls'' school. The language employed in said sub-rule also demonstrates that presence of a senior male teacher in a Girls'' school is irrelevant for said purpose. Not only this, it also implies that roster itself does not apply to such Girls'' school. Thus, present management having only one girls'' school is obliged to promote senior-most lady teacher fulfilling necessary qualifications on satisfying the conditions for being a Headmistress. The post of Headmistress, therefore, is obviously treated as distinct by scheme of Rules of 1981 and in present facts, it gets segregated from the cadre of Headmaster. Said cadre here has strength of three posts only.

7. According to Adv. Bagde, in present facts, there are four posts in cadre of Headmaster. We are not in position to accept said contention. The provisions of Rule 3 (4) read with Full Bench judgment in the case of Asha Chakradhar Raut vs. Deputy Director of Education (supra), clearly shows that post of Headmistress in a Girls'' School cannot be treated as part of such cadre and it is required to be recognized as an isolated and distinct post. When roster itself is not attracted

while promoting senior-most lady teacher as Headmistress, such post of Headmistress cannot be added to general/mixed cadre of Headmasters in an attempt to reach total strength requisite for applying 24% roster.

8. The School Tribunal as also learned single Judge have arrived at same conclusion and we endorse it.

9. We find that arguments advanced by Adv.Bagde have not been elaborated by learned single Judge while disposing of Writ Petition. However, the same have been duly evaluated and findings upon it, have been recorded. Thus, there is no omission to record proper reasons on part of learned single Judge.

10. In this background, no case is made out warranting intervention in the Appeal. Letters Patent Appeal is accordingly dismissed. No costs.