

**(2009) 11 BOM CK 0149**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 364 of 2009**

In charge President, Shri Gurudeshmukh Ashram Trust and  
Another

APPELLANT

Vs

Jaywant Tukaram Pandagale and Another

RESPONDENT

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**Date of Decision :** 04-11-2009

**Acts Referred:**

Constitution of India, 1950 — Article 227

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 10, 2, 2(K), 68.1

**Citation :** (2010) 3 BomCR 694

**Hon'ble Judges :** Borde R.M., J

**Bench :** Single Bench

**Advocate :** V.D. Gunale, for the Appellant; B.L. Sagar-Kaillarikar and T.S. Londhe, A.G.P., for the Respondent

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## Judgement

Borde R.M., J.—The petitioner in this petition raises an exception to the order passed by the Presiding Officer School Tribunal, Latur on 25.11.2008 whereby the Tribunal while allowing the appeal has directed the quashment of the order dated 1.6.2001 granting promotion to the petitioner No. 2 herein as head mistress of the school and has further directed to promote respondent No. 1 herein to the post of head master w.e.f. 1.6.2001 and to pay a difference of salary from that date till he is reinstated. A grievance was made before School Tribunal by respondent No. 1 herein by presenting an appeal in respect of promotion of petitioner No. 2 herein to the post of Head Mistress of the School run by petitioner No. 1. The petitioner No. 2 as well as respondent No. 1 herein are appointed as assistant teacher in the school on the same date i.e. on 12.6.1989. The respondent No. 1 holds educational qualification as B.A. B.Ed, whereas the petitioner No. 2 herein holds educational qualification as M.A. B.Ed. Both are trained teachers within meaning of Rule 2(K) of Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977. The date of birth of respondent No. 1 is 25.1.1960 where as the date of birth of petitioner No. 2

herein is 10.8.1963. The respondent No. 1 is senior to the petitioner No. 2. Accordingly it is further contended that placement is also made in the seniority list showing him as senior to petitioner No. 2. It is contended that respondent No. 1 herein who was teaching 5th to 10th standard and was also appointed as examiner by SSC Board and in the salary register his name was shown at serial No. 9 where as the name of petitioner No. 2 is shown at serial No. 10. Thus according to him he being senior to that of petitioner No. 2 herein is entitled to be promoted. It is further disclosed by the respondent No. 1 in the appeal that petitioner No. 2 was granted pay scale of Rs. 1400 to Rs. 2600 whereas he was received pay scale of Rs. 1200 to Rs. 2040/-. He had earlier raised challenge to the order of promotion by presenting RCS No. 656/2001 before the Civil Judge Senior Division, Nanded however, later on same came to be withdrawn being not maintainable. The respondent No. 1 thus after withdrawal of the suit has approached Tribunal by presenting appeal.

2. The contention raised by the respondent No. 1 were controverted by the petitioner herein by filing written statement. According to petitioners herein the petitioner No. 2 is promoted to the post of head master since 1.6.2001. The respondent No. 1 herein was teaching classes 5th to 7th standard as trained graduate teacher whereas the petitioner No. 2 was teaching the students studying in higher secondary school. There is disparity in the pay scale between the respondent No. 1 and petitioner No. 2. According to the petitioners herein the petitioner No. 2 is senior to that of respondent No. 1 and in the seniority list also she is shown as senior. It is contended that, the institution had committed mistake in recommending the name of respondent No. 1 to S.S.C. Board as examiner however, he cannot claim benefit on account of bona fide mistake committed by the institution. According to petitioners herein the respondent No. 1 and petitioner No. 2 fall within category "C" It is contended that the petitioner No. 2 is granted promotion considering all these relevant aspects and the order awarding promotion to petitioner No. 2 is proper and as such, there is no legal ground for assailing the order in respect of award of promotion to petitioner No. 2.

3. Considering the rival contentions raised by the parties, the Tribunal found that the petitioner No. 2 and respondent No. 1 fell within same category i.e. category "C" and in view of Note 3 to Rule 2 Schedule "F" of Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977, the respondent No. 1 shall have to be treated as senior to that of petitioner No. 2. Thus, the Tribunal while allowing the appeal directed quashment of the order issued by the institution directing the promotion of petitioner No. 2.

4. I have heard the argument of the respective Counsel appearing for the parties.

5. Shri Gunale, the learned Counsel appearing for the petitioner has submitted that considering the qualification held by the respective teachers i.e. petitioner No. 2 and respondent No. 1 and on consideration of the pay scale drawn by them, it cannot be construed that they come within same category i.e. Category

"C". According to the Counsel, the petitioner No. 2 holds qualification M.A. B.Ed and as such she can be categorized in entry at Serial No. 1 in category "C" whereas the respondent No. 1 sits in Category "C" Entry No. 2 and both cannot be considered to be equivalent for the purpose of their placement in seniority list. It is also contended by petitioner No. 2 that she was receiving pay scale of Rs. 1400 to Rs. 2600/- on the date of appointment whereas the respondent No. 1 was receiving pay scale of Rs. 1200 to Rs. 2040/ -. Considering the disparity in the scale according to him, it has to be construed that they fall within different category and as such Note 3 of Rule 2 of Schedule F is not attracted to the facts of this case and in any case respondent No. 2 cannot be considered as senior to that off petitioner No. 2. It is also further urged that the appeal is presented by the appellant belatedly, there was no application seeking condonation of delay and as such the Tribunal has erred in entertaining the appeal and allowing the same.

6. It cannot be controverted that both the petitioner No. 2 and the respondent No. 1 fall within Category "C" Rule 2 Schedule F of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977. Merely because the petitioner No. 2 holds higher educational qualification, she cannot be treated differently than the respondent No. 2 in respect of categorization within Schedule "F". Based as qualification mentioned at Entry No. 2 in Category "C" of Rule 2 Schedule "F" of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977, no distinction can be made. Thus in these premises Note 3 of Rule 2 of Schedule "F" is attracted. Admittedly, respondent No. 1 is senior in age to that of the petitioner No. 2 and as such he shall have to be treated as senior. So far as contention raised by the petitioner No. 2 based on disparity in pay scale, objection stands answered in view of pronouncement of this Court in the matter of Saramma Varghese v. Secretary/President S.I. C.E.S. Society and Ors. reported in 1990 (1) Bom.C.R. 185. Paragraph Nos. 23 and 24 are relevant for consideration. Those are quoted as below:

23. The provisions of the Act, Rules and the Code when analyzed reduce themselves to the following principles:

Firstly, the Act and the Rules clearly stipulate that all teachers having B.A., B.Ed., or B.Sc., B.Ed, rank together for the purposes of fixation of seniority. (Note 1 paragraph 2, Schedule F to the Rules).

Secondly, the Act, Rules or the Code make no distinction based on the Division of the School in which a teacher teaches. The only distinction made is between permanent and temporary teachers (Rule 10, Categories of Employees, Rule 68.1, Chapter III, Section II of the Code).

Thirdly, the Rules and the Code reject the relevance of pay scale for the purpose of Seniority. That is why Note 8 quoted at Foot note 26, enjoins the School to prepare a combined seniority list of teachers, notwithstanding the fact that trained graduate teachers in Junior Colleges draw higher scale of pay.

Fourthly, for the purpose of appointment of Headmasters and Supervisors in the S.S.C. level Schools, the trained teachers with M.A./M.Sc./M.Com are considered equal to trained teachers with B.A./B.Sc./B.Com./Degree. Therefore, a higher academic qualification too is not relevant for fixation of seniority of trained teachers (Note 3, Annexure 45 of the Code).

Fifthly, the only criteria for fixation of seniority of trained graduate teachers is the continuous officiation in such post of teacher (Notes 1, 2 and 3 below paragraph 2 of Schedule F to the Rules), depending upon their position on the ladder.

24. The Act, the Rules and the Code have made the petitioner and the respondent No. 5 equal in all respects for the purpose of fixation of seniority for the simple reason that they fall in the same category-graduate teachers with B.Ed. There is a clear statutory rejection of the respondents' contention that the respondent No. 5 is senior to the petitioner because she draws a higher pay. Similarly, the Act, Rules and the Code do not admit of any distinction based on the division in which the petitioner or the respondent No. 5 teaches. This immediately negatives the claim of the respondents that the respondent No. 5 is senior to the petitioner because the former teaches in what the respondents call the Higher Division. Such distinction is alien to the Rules and the Act. Once a person is a graduate teacher with B.Ed, degree, she ranks in seniority according to the date of continuous officiation. The Legislature and the authors of the Code have so strongly asserted the equality of the petitioner and the respondent No. 5 that they thought it necessary to declare that the appointment in a higher scale of pay or possession of post-graduate degree is not relevant. We have no doubt that the petitioner is senior to the respondent No. 5.

7. Thus in view of the pronouncement of the Division Bench no distinction can be made on the basis of award of different pay scale. It cannot be overlooked that both respondent No. 1 and petitioner No. 2 are trained graduate teachers. The Tribunal was therefore justified in allowing the appeal and directing the quashment of the order issued by the institution. The Counsel for the petitioner seeks leave to place reliance on the reported judgment in the matter of Chinchni Tarapur Education Society's English Medium School Vs. Mrs. Surekha Shirish Dogmane, Mrs. Vibhuti Muzumdar and Education Officer (Secondary), Zilla Parishad, . Paragraph No. 12 is relevant for consideration which is quoted as below. :

12. In the case of State of Maharashtra and Others Vs. Tukaram Tryambak Chaudhari and Others, , the Supreme Court has held thus:

Thus, Classes 5 to 7 may be attached either to the primary school or to the secondary school run by any institution. In the present case, admittedly, when the respondent No. 2 was appointed, she was asked to teach in Classes 5 to 7. The learned Advocate for the petitioners has conceded that Classes 5 to 7 were attached to the primary school of the petitioners. Therefore, respondent No. 2

was a teacher in the primary section of the school and not in the secondary school, when she was appointed on 30.6.2002. There is a controversy as to whether respondent No. 2 was appointed to the secondary section on 30.7.2002 or on 10.8.2004. If she was appointed to the secondary school on 30.7.2002, then she would be senior to respondent No. 1 who acquired the B.Ed, degree from the recognized university on 4.6.2003. However, when the learned Advocate for the petitioners has conceded that the secondary section of the school consisted of Classes 8 to 10, it is obvious that the primary section includes Classes 1 to 7. The petitioners, therefore, have illegally and incorrectly fixed the seniority of respondent Nos. 1 and 2, inter se. The respondent No. 1 had acquired the requisite qualification on 4.6.2003 and, therefore, was senior to respondent No. 2. She was entitled to be appointed as the headmistress instead of respondent No. 2 who entered the secondary section only on 10.8.2004 as found by the Education Officer.

8. The analogy adopted by the learned Single Judge while dealing with the matter also supports the contention raised by the respondent No. 1.

9. It is contended that School Tribunal ought not to have entertained the appeal which is presented belatedly. The Tribunal has taken into account the fact that after issuance of the order impugned in the appeal, the respondent No. 1 presented a suit raising challenge to the order. The suit came to be withdrawn at subsequent stage and after withdrawal of the suit, the appeal is presented. Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 does not lay down a period of limitation in respect of raising challenge to the order in matter of supersession whereas distinction is made in Section 9 in respect of challenge to the orders of dismissal or removal or otherwise termination. It is contended that although no period of limitation is prescribed u/s 9 appeal has to be presented within reasonable period and delay if any is required to be explained. Considering the factum of presentation of suit raising challenge to the impugned order and its withdrawal at subsequent stage, the delay occurred in approaching the Tribunal stands explained. Tribunal was therefore justified in entertaining the appeal and passing the impugned order. In my view, in exercise of power under Article 227 of Constitution of India, no interference is called for. Petition therefore stands rejected summarily. In view of disposal of this petition, pending civil application, if any, does not survive and stands disposed off.