
(2005) 12 BOM CK 0124
In the Bombay High Court
Case No : Writ Petition No. 1825 of 1994

Kamal

APPELLANT

Vs

Sawate Education Society and Others

RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9, 9(1), 9(2)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 2, 3, 3(3), 8(1)

Citation : (2006) 2 ALLMR 64 : (2006) 2 MhLj 675

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.A. Gordey, for the Appellant; M.G. Bhangde and T.R. Kankale, AGP for respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Challenge in this writ petition, filed by employee of a Private School, is to the judgment dated 30-4-1994 delivered by respondent No. 5 School Tribunal in an appeal u/s 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, dismissing said appeal. It is not in dispute that the service conditions of employees of Private Schools are regulated by said Act (hereinafter referred to as MEPS Act for short) and rules as (MEPS Rules) framed thereunder.

2. As is apparent from Judgment of School Tribunal, the present petitioner approached it with grievance that her claim for promotion as Headmistress has been superseded by appointing present respondent No. 3 on that post. The basic facts are not in dispute and even the contention of present petitioner that she is senior than respondent No. 3 as Assistant Teacher is also not in dispute. The petitioner joined the services of present respondents No. 1 and 2 as Assistant Teacher on 24-6-1986 and in fact she officiated as Headmistress during 1986-1987. She was already holding qualification of B.A., B. Ed. while joining.

Present respondent No. 3 was also holding qualifications of B.SC., B.Ed, when she joined the services on 29-6-1987. It appears that as petitioner declined to work as Incharge Headmistress, respondent No. 3 became Incharge Headmistress in 1987-88. As respondent No. 3 was not seniormost, petitioner gave her undertaking before respondent No. 4 - Education Officer and relinquished her claim for said appointment. Neither present petitioner nor respondent No. 3 were holding requisite experience at that time to enable management to substantively fill in the post of Headmistress and hence, seniormost and willing Assistant Teacher was given said responsibility as In charge Headmistress. The petitioner secured necessary experience and could have been promoted in substantive capacity from 1-7-1991 but the management continued respondent No. 3 as Incharge Headmistress even during 1991-92 and on 1-7-1992 respondent No. 3 also secured necessary experience. The management thereafter appointed respondent No. 3 as Headmistress in substantive capacity. The petitioner thereafter approached School Tribunal and contended that while filling in post of Headmistress substantively, her claim ought to have been considered in view of Rule 3 (3) of MEPS Rules, 1981, and relinquishment of her claim for Incharge Headmistress could not mean that she relinquished her claim even for the post of substantive Headmistress. She contended that the order issued in favour of respondent No. 3 was not circulated and Education Officer had not by that time granted approval in favour of respondent No. 3. She therefore stated that appeal filed by her on 15-9-1992 was within limitation but by way of abundant precaution, also filed application for condonation of delay. The appeal was opposed by present respondent No. 3 as also management on various grounds including non-joinder of management as necessary party in appeal and bar of limitation. The defence was that present petitioner waived her right for said post in accordance with provisions of Rule 3 (3) of MEPS Rules, 1981.

3. School Tribunal found that though petitioner was given charge of the post of Headmistress, after one session she voluntarily relinquished it and present respondent No. 3 was given that charge. It found that the management made sincere efforts to fill up said vacancy by promoting seniormost teacher and because petitioner and respondent No. 3 were not possessing requisite teaching experience that could not be done and management therefore made ad hoc arrangement. It found that petitioner waived her right before Education Officer on 9-2-1988 as contemplated by Rule 3 (3) of MEPS Rules 1981. It found that said document was for relinquishment in relation to substantive posting as Incharge Headmistress was not a promotional post but only a stop-gap arrangement. It found that petitioner slept over her rights for about one year and management was not joined as party. In view of these findings, it held that respondent No. 3 was already Incharge Headmistress for 4 years and regular Headmistress since one year and therefore had vested right in said post. It also held that respondent No. 3 has been rightly regularised as Headmistress. It therefore dismissed the appeal,

4. I have heard Advocate S.A. Gordey for the petitioner and Shri Bhangde, Advocate for respondent No. 3. The learned AGP Kankale represented respondents No. 4 and 5. Nobody has appeared for respondents No. 1 and 2 though served. Respondent No. 3 herself is Headmistress and therefore also respondent No. 2.

Advocate S.A. Gordey for petitioner has contended that the School Tribunal acted erroneously in relating the declaration given by present petitioner to the substantive post because at that time petitioner was not in the zone of consideration. He states that because respondent No. 3 was not getting approval from Education Department, said document was procured from petitioner. Question of compliance with explanation of Rule 3 (3) of MEPS Rules will arise only when post of Headmistress is sought to be filled in permanently. He argues that such contingency arose for the first time in July 1992 when the management decided to fill in the post of substantive capacity. The claims of present petitioner as also respondent No. 3 fell for consideration at that time and as petitioner is/ was seniormost, her claim ought to have been considered and she ought to have been promoted as she is and was fit for the same. He draws support from findings recorded by School Tribunal to demonstrate that working as Incharge Headmistress is not promotion and also relies upon the judgment of Hon. Apex Court reported at Tarsem Singh and Another Vs. State of Punjab and Others, to demonstrate what constitutes promotion. He states that Incharge Headmistress draws salary as substantive Assistant Teacher only and shoulders more responsibility and hence, it is not promotion. He states that document of relinquishment has not been executed by petitioner after management decided to fill in that vacancy substantively and hence reasoning given by School Tribunal is perverse. He further states that Chief Executive Officer who represents management was party respondent before School Tribunal and as subject-matter of Appeal was supersession, Section 9 MEPS Act does not prescribe any limitation therefor. He therefore states that judgment of School Tribunal needs to be reversed and petitioner deserves to be promoted as Headmistress retrospectively.

Advocate Shri Bhangde for respondent No. 3 supports the impugned judgment. He: contends that reasoning given by School Tribunal is without any perversity or jurisdictional errors. He points out that petitioner became qualified in 1991 and therefore could have lodged the claim immediately but she permitted present respondent No. 3 to continue as Incharge Headmistress. He further states that petitioner had occasion to protest again when Education Officer refused approval to respondent No. 3 but said occasion was also not made use of by her. He also points out relinquishment dated 9-2-1988 and states that reasons therein reveal that petitioner had no desire to continue as Headmistress or to work as Headmistress and hence her claim has been rightly not examined by management while promoting respondent No. 3 in substantive capacity. He further states that management of School was not made party and the case of petitioner was suffering from laches and bar of limitation. According to him, therefore, no interference is warranted in exercise of writ jurisdiction. Without

prejudice to all these arguments and by way of abundant precaution he states that prayer for promotion made by petitioner cannot be granted and at the most her claim may be directed to be considered in accordance with law. He prayed for dismissal of writ petition.

5. In this background first issue of promotion will have to be looked into. As already stated above, School Tribunal itself has observed in para 4 of its judgment that it was not necessary to give unwillingness for the post of Incharge Headmistress as it was not a promotional post but only a stopgap arrangement was being done. It is further observed that present petitioner or respondent No. 3 were not possessing requisite experience and hence management was constrained to appoint Incharge Headmistress. It is observed that petitioner was not willing to shoulder responsibility of Headmistress and therefore management appointed respondent No. 3 as Incharge Headmistress and rightly regularised her later on. It is observed that petitioner cannot claim the promotion as respondent No. 3 held that post as Incharge Headmistress and shouldered the responsibility of higher post in lower pay scale. It is thus obvious that School Tribunal also found that management could not and did not fill in post of Headmistress till 1992. The judgment of Hon"ble Apex Court also considers what is import of promotion in service jurisprudence.

In Tarsem Singh and Another Vs. State of Punjab and Others, , the question for consideration was whether the Superintendents in the pay-scale of Rs. 350-450/- (revised Rs. 2000-3500/-) can seek "promotion" to the post of Labour Inspector having the pay-scale of Rs. 200-450/- (revised Rs. 1500-2640/-) A learned single Judge of the Punjab and Haryana High Court and answered the question in the affirmative. The Letters Patent Bench has upheld the judgment of the learned Single Judge. This appeal by way of special leave was against the judgments of the High Court. Said question is answered in paragraph 9 as under :-

9. A person holding the post of Superintendent may be a "ministerial employee" but unless his appointment to the post of Labour Inspector can be made by way of promotion, he is not eligible under Rule 8 (1) (a) (i) of the Rules. Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position grade or honour. Opting to come to a lower pay-scale or to a lower post cannot be considered a promotion, it is rather a demotion. A superintendent in the Labour Department who is holding a higher pay-scale and higher status cannot seek promotion to the post of Labour Inspector which post is lower in grade and status.--

Here, School Tribunal itself has held that it is not promotion, it is not necessary for this Court to deal with this aspect in more detail as it is also not challenged by present respondent No, 3.

6. Hence, provisions of Rule 3(3) of MEPS Rules assume importance. It would be convenient to reproduce the entire Rule 3, explanation and the proviso as

follows :

Qualifications and appointment of Head :

(1) A person to be appointed as the Head

(a) (i) of a primary school having an enrolment of students above 200 or having Standards I to VII shall be the senior-most trained teacher who has put in not less than five years service; and

(ii) of any other primary school shall be the senior-most teacher in the 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 recognized 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.

(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in Clause (b) of Sub-rule (1) available on the staff of the school or if the qualified persons though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in Clause (b) of Sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approves of the Deputy Director.

Note - In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualification for appointment of such teacher as a Head.

(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 the 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 indorse 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.

In *Mohanlal Bhansali Vs. State of Maharashtra and Others*, the Division Bench of this High Court considered the issue of officiating promotion as Head Master and inter se seniority under the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 & held: a) that in case a teacher improves his qualifications and goes to the higher category wherein the teacher would enter by improving his qualification, b) since Government

Resolution of 1979, dated 28-5-1979, dated 28-5-1979 has already been done away with in view of the subsequent Government Resolution of 1981, it would not be appropriate for the petitioner Mohanlal to rest his claim again on the same Circular, c) that the Management by its Resolution dated December 17, 1978 promoted the petitioner to the post of Head Master though prior to that from 2-6- 1978 he was officiating as Head Master. The facts disclosed that till 1982 the Petitioner was working as officiating Head Master whereafter he was served with the promotion order whereas, in fact it was the claim of respondent No. 5 who could not be treated to be junior to the petitioner Mohanlal and respondent No. 5 was definitely deprived of his right and claim of his promotion. Observations in paragraph 19 of the Judgment are important for present purposes and the same read: -

19. Feeble attempts are made by Shri Agnihotri to prove his case by resting his arguments on the Judgment of this Court in Writ Petition No. 123/88 decided by this Court on July 11, 1988 (Manohar Ramchandra Zamre and Ors v. State of Maharashtra and Ors.). Relying on this judgment Shri Agnihotri tried to contend that since the petitioner was officiating in the post of Head Master for approximately 4 years Shri Agnihotri wanted to contend that he should have been deemed to have been confirmed on the post of Head Master under the provisions of the School Code and he, therefore, contended that it was not possible for the respondents to have removed the petitioner from the post of Head Master. Hollowness of his arguments is, it is an admitted fact that the petitioner was simply officiating and he was never promoted in the said post either on regular basis or by issuing a specific order of his regulation in the said post. In our opinion, this type of arrangement is nothing but an attempt to reach the summit with the help of spiders web. We are not in a position to accept this argument of Shri Agnihotri.

Thus, it is more than apparent that when vacancy of Headmaster/Headmistress becomes available, management has to fill in the same through only seniormost qualified and eligible Assistant Teacher. If it wants to fill in said vacancy through Assistant Teacher not holding necessary experience, it has to seek previous approval therefore and also relaxation from Deputy Director. The facts of present case demonstrate that no such relaxation and previous approval from Deputy Director has been obtained by the management. Therefore only Education Officer might not have granted approval to respondent No. 3 and the declaration of relinquishment was sought for from petitioner. The stopgap arrangement in which present respondent No. 3 continued to function as Incharge Headmistress lasted till July 1992 when respondent No. 3 completed five years teaching experience and became eligible for substantive appointment/promotion as Headmistress. The management thus filled in the post of Headmistress substantively for the first time in August, 1992. As per requirement of Rule 3 management therefore ought to have communicated the said decision to fill in vacancy substantively to present petitioner who admittedly is senior to present respondent No. 3 and was also eligible since 1991. It is not the case of

respondent No. 1 that service record of present petitioner is in any way not satisfactory. There was no such plea even before School Tribunal. Provisions of said Rule 3 of MEPS Rules 1981 for the first time became operative after management decided to fill in a vacancy substantively. Till then, there was no occasion of calling for willingness from present petitioner and of asking her to give the declaration of relinquishment in presence of respondent No. 4 Education Officer. Argument of Advocate Bhangde that Rule 3 (3) does not make any distinction between stop gap arrangement and permanent arrangement is misconceived. It is apparent that as respondent No. 3 was made Incharge Headmistress when senior employee like present petitioner was available, Education Officer has only recorded no objection of petitioner on 9-2-1988 and it is not a declaration of relinquishment by her as contemplated by explanation to Rule 3 (3) above. Even otherwise, while filling in said post in substantive capacity, a fresh declaration of relinquishment ought to have been recorded in presence of Education Officer in 1992. The declaration given by petitioner in 1988 could not have been used against her in 1992 in any case. Reasons assigned by her in 1988 for waving the right are also irrelevant. The action of management in appointing/promoting Junior Assistant Teacher like respondent No. 3 as Headmistress constitutes supersession of right of present petitioner. Said provision contemplates relinquishment of a right by eligible seniormost Assistant Teacher and not by anybody else. Certainly it does not contemplate such relinquishment from a person who is not in zone of consideration at all. The logic and application of mind by School Tribunal in this respect is contrary to provisions of said rule. There is no question of any vested right in respondent No. 3 or any question of regularisation of her service in the matter. The provisions of Rule 3 are very clear and the same cannot be allowed to be defeated in this mode and manner.

7. The next question is about limitation and non-joinder of management as party respondent before School Tribunal. So far as issue of limitation is concerned, in view of Judgment of Hon. Single Judge and Hon. Division Bench of this Court it is settled that in the matter of supersession Section 9 of MEPS Act does not prescribe any limitation. The petitioner has in her appeal memo stated that Impugned order dated 1-8-1992 was never circulated and she has filed the appeal on 15--9-1992 mentioning that by way of abundant precaution she has filed application for condonation of delay also. Perusal of her appeal memo demonstrates that according to her on 29-7-1992 respondent No. 1 resolved to appoint present respondent No. 3 as regular Headmistress with effect from 29-7-1992 vide order dated 1-8-1992. She has also stated that Education Officer has not granted approval to said appointment. As there was no declaration from petitioner as contemplated by Rule 3 (3), Education Officer would not have been in position to grant approval to respondent No. 3 as Headmistress. The impugned Judgment of School Tribunal does not disclose any consideration of said application for a condonation of delay. It cannot be forgotten that respondent No. 3 was already an Incharge Headmistress and as such, if order promoting her in

substantive capacity is not made known on circulated, there might not be any apparent change. The question of supersession of right of petitioner arose when management decided to fill in the vacancy permanently in substantive capacity. In such circumstances, it is apparent that there was no delay and also there was no question of petitioner being negligent. In this respect reliance can be placed upon 2002 (11) LJSOFT 116 : 2002 (4) All MR 512 between Mohammad Hasan Khan v. Mohammad Majidulla and Ors. Observations in paragraph 9 to 12 are important and the Judgment of Hon Single Judge are also considered therein. Said observations are:

9. On the first point regarding delay in filing Appeal No. 174/1994, Shri Dhage, the learned Counsel for the appellant invited our attention to the decision dated 30-11-1999 of this Court (Single Bench) in the case of Secretary, Shiorai Education Society, Wani v. Presiding Officer, School Tribunal, Aurangabad and Ors. 2000(2) Mh. LJ. 752 wherein, the learned Single Judge (Sinha, J) considered the amended provisions of Section 9 as compared to the unamended provisions and recorded an opinion that the limitation clause as set out in Sub-section (2) therein did not apply to an appeal, which came to be filed u/s 9 (1) (b) of the MEPS Act. The learned Counsel, therefore, submitted that when this was the view taken by a co-ordinate Bench, it was not in keeping with the judicial discipline to take a view contra while deciding the writ petition No. 5802/95 and it could have been more appropriate to refer the issue of limitation, in case, a different view was to be taken that the view taken in the case of Shiorai Education Society's case. In this regard reliance has been placed on the judgment of the Supreme Court in the case of Dr. Vijay Laxmi Sadho v. Jagdish AIR 2001 SCW 223. Referring to the issue of precedents, the Apex Court in paragraph 29 noted thus:

As the learned Single Judge was not in agreement with the view expressed in Devilal's case, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a Bench of co-ordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

10. On the other hand, the learned Counsel for the respondents have referred to a decisions of this Court (Single Bench) in the case of The Secretary and another Vs. Shri Chintamani Birjaprasad Dubey and others, and Executive President, Pune Vidyarthi Griha, Pune and Ors. v. Bhaskar Bhagwant Yadav and Ors. 2001 (2) Mh. LJ 226 : 2000 (4) ALL MR 798, and urged before us that the limitation clause under Sub-section (2) of Section 9 of the MEPS Act is also applicable to an appeal filed under Sub-section (1) (b) of the said Section. We are not persuaded

by these arguments. In the case of Jamnadas Adukia Charity Trust (supra), while filing an appeal u/s 9(1)(b), there was delay of about five years and an application for condonation of delay was submitted and the same was allowed and in the final judgment, the appeal was also allowed. The learned Single Judge held that the Tribunal had committed an illegality in entertaining the appeal and more so, when there were no sufficient reasons made but to condone the delay. In the case of Pune Vidyarthi Griha (supra) an appeal was filed u/s 9 (1) (b) of the MEPS Act and there was delay of three years and hence, an application for condonation of delay was also filed. This was allowed by an interlocutory order which was carried in a writ petition which was allowed on 23-6-2000. It was held by relying upon the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , that the appellant had failed to make out good and sufficient reasons to condone the delay and appeal suffered from inordinate delay. The Tribunal, therefore, committed serious error in condoning the delay by its order dated 17-12-1997 and thus, the petition was allowed. In both these cases, a specific issue which fell for consideration in the case of Shiorai Education Society was not raised and the decision in the said case rendered by Sinha, J. was not brought to the attention of the respective Benches at Mumbai. The decisions in both these cases decided at Mumbai do not have any bearing on the view taken by Sinha, J. in the case of Shiorai Education Society (supra).

11. The original scheme of Section 9, if considered, would show that the limitation clause was incorporated in Sub-section (2) when there was no provision for an appeal on account of supersession or denial to appoint to a particular post by promotion, by the management under the scheme of Sub-section (1) and, therefore, the language of Sub-section (2) was confined to the orders to be appealed against under Sub-section (1) alone. However, when Sub-clause (b) to Sub-section (1) was incorporated by the amendment brought into force w.e.f. 7th August, 1987, the provisions of Sub-section (2) regarding limitation were not amended and they remained as they were originally. This act of the Legislature must be deemed to be deliberate and, therefore, the provisions of Section 9 of the MEPS Act, in totality; are required to be read as they appear after the amendment of 1987. The language of Sub-section (1) and Sub-section (2) is clear and " unambiguous and if the Legislature, at any time, had intended to provide limitation period for an appeal against the order of supersession within the meaning of Sub-clause (b) of Sub-section (1), it was not prevented from providing for such a contingency by amending the language of Sub-section (2). The legislature, in its wisdom, did not do so and, therefore, the view taken by Sinha, J must be upheld. The reasoning given in the said case does not in our considered view permit any other interpretation than the interpretation adopted. We must also keep in mind the doctrine of Causes Omissus while interpreting the statutory provisions.

12. The substantial question that we are required to consider in the case at hand is whether the appellant could approach the School Tribunal at any time even

though his appeal did not attract the limitation clause in Sub-section (2) of Section 9. The learned Counsel for the appellant fairly conceded before us that even if there was no specific limitation provided for filing an appeal, such an appeal must be filed within a reasonable period and the appeal cannot be moved before the School Tribunal at any time at the choice and convenience of the appellant. He has invited our attention to a decision of the Division Bench of this Court in the case of Sulabha Govind Vidwans Vs. Shravan M. Shevale and Others, wherein, the writ petition against a grievance of denial of promotion by a private school was moved before this Court after two years with reference to the grievance of promotion to the post of Head Mistress and within a period of eight years, with reference to the grievance for promotion to the post of Assistant Head Mistress. This Court (D.R. Dhanuka and Vishnu Sahai, JJ), on the point of delay and laches, held that the petitioner was the senior most teacher and otherwise, the only claimant for the respective promotions if the said posts were not reserved and the petitioner had registered her protest in respect of denial of promotion to her, the management also had agreed about her claim and even the Education Officer stated on affidavit that the petitioner could have been promoted to the respective posts if they were not reserved. Both the posts were wrongly marked as reserved when they were isolated posts and in total disregard to the law laid down by the Apex Court in the case of Chakradhar Paswan Vs. State of Bihar and Ors, . This Court opined that it was a fit case to condone the delay and decided the petition on merits. Relying upon this decision, the learned Counsel for the appellant submitted that when he was superseded in disregard to the provisions of the MEPS Rules and he had submitted representation, which was acknowledged on 7-1-1992, and was not decided by the management, he had approached the tribunal within a reasonable period and more so, when his second representation dated 1-8-1994 came to be decided for the first time on 26-8-1994. We are willing to accept this proposition only with reference to the promotion order granted in favour of the respondent No. 4 w.e.f. 2-1-1992 and not in respect of the promotion orders granted in favour of the respondent No. 1 w.e.f. 2-1-1992 and respondent No. 3 w.e.f. 1st August, 1988. We hold that there was no reason to entertain the petitioner's grievance against the appointment of respondent No. 1 to the post of Senior Clerk w.e.f. 8-1-1981 and the appointment/promotion of respondent No. 3 w.e.f. 1-8-1988. The view taken by the Tribunal on condoning the delay with respect to the promotion order dated 2-1-1992, therefore, does not call for any interference, as the said view does not suffer from any error in law.

Here it is also apparent that present petitioner approached School Tribunal making grievance of supersession within reasonable time. Even if it is presumed that cause of action still accrued in her favour on 1-8-1992, period of 30 days expired therefrom only on 31-8-1992 and petitioner was before School Tribunal on 15-9-1992. From the original record of School Tribunal it is seen that on 17-8-1992 and 28-8-1992 she has made representation to Education Officer and requested for her promotion as Head Mistress in substantive capacity mentioning

that her earlier relinquishment could not be used to deny her said promotion. She requested that nobody else therefore should be promoted on that post. Copies of these representations are given to Deputy Director of Education to President of institution and various other dignitaries. On 28-8-1992 she has informed President of institution that she gathered that respondent No. 3 has been made regular Headmistress and requested for confirmation thereof. By third letter of same date and on 7-9-1992 she requested management to provide to her copy of seniority list. All these facts are not considered in impugned judgment by School Tribunal. Perusal of order sheet dated 23-10-1992 maintained by School Tribunal and also appeal memo at its first page reveal that in fact on that day school Tribunal allowed her application for condonation of delay and fixed the appeal on 19-12-1992 for filing of written statement by respondents before it. In the circumstances mentioned above, it cannot be said that there is any unreasonable delay or laches on her part in the matter. All observations of School Tribunal in respect of delay and laches therefore are unwarranted and deserve to be set aside. It is obvious that the respondent No. 5 Presiding Officer did not even look into the records or the appeal memo before making any observations in this respect.

8. In appeal to the before School Tribunal. The Education Officer (Secondary) Z.P. Akola i.e. present respondent No. 4 was respondent No. 3 Respondent No. 2 in said appeal is found to be mentioned as "The Head Mistress (Under Dispute) Savitribai Fule Kanya Vidyalaya, Belkhed, Tq. Telhara, District. Akola". It is not in dispute that present respondent No. 3 Ku. Padmavati Tikar has been said Head Mistress. Further, respondent No. 1 in appeal is described as "The Chief Executive Officer, Sawata Education Society, C/o Savitribai Fule Kanya Vidyalaya, Belkhed, Tq. Telhara, District. Akola". Thus present respondent No. 3 (in person) being also In Charge Headmistress was party before School Tribunal. The provisions of MEPS Rules, 1981, particularly Rule 2 (c) define "Chief Executive Officer" to mean the Secretary, Trustee Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the Management. In view of description of respondent No. 1 above, it cannot be said that management was not party before School Tribunal. The responsibility to execute decision of management dated 29-7-1992 was that of Chief Executive Officer. In present writ petition, Sawata Education Society, Belkhed, Tq. Telhara, District Akola has been joined as respondent No. 1 through its President. However, in the welfare jurisdiction exercised by School Tribunal that does not make any difference inasmuch as management through its Chief Executive Officer was very much party before School Tribunal. This reason assigned by School Tribunal therefore is unsustainable.

9. Hence, writ petition is allowed. The impugned judgment of respondent No. 5 School Tribunal dated 30-4-1994 is hereby quashed and set aside. The order of promotion given to present respondent No. 3 as regular Headmistress is also set aside. The respondent Nos. 1 and 2 are directed to consider the case of present petitioner for promotion as Headmistress as on 29-7-1992 within period of two

months from today and, if her service record is satisfactory, to promote her as regular Headmistress from the date on which respondent No. 3 came to be promoted with deemed date and all consequential benefits including seniority, arrears of salary etc. Rule made absolute in above terms. There shall be no order as to costs.

Shri Bhangde, learned Counsel for respondent No. 3 seeks stay for six weeks as Respondent No. 3 is continuing as Headmistress. The request is opposed by Shri Gordey, learned Counsel for the petitioner.

However, in the interest of justice, time of four weeks is given to Respondent No. 3 to take further appropriate steps in the matter. The judgment delivered today is stayed for a period of four weeks.