courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2017) 04 BOM CK 0165

In the Bombay High Court

Case No : 2019 of 2009

Milind s/o. Namdevrao Kamble — APPELLANT

Vs

The State of Maharashtra, through its Principal Secretary, Education Department, & Ors. — RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, Section 9 - Right of appeal to Tribunal to employees of private schools.

Citation : (2017) 04 BOM CK 0165

Hon'ble Judges : R. K. Deshpande

Bench : SINGLE BENCH

Advocate : D.Duvvuri, K.L.Dharmadhikari, A.D.Mohgaonkar

Judgement

1. The petitioner working as Assistant Teacher and belonging to Scheduled Caste category was promoted by an order dated 29.04.2002 to the post of Assistant Head Master with effect from 01.05.2002. This was the subject matter of challenge in Appeal No. STN/36/2007 before the School Tribunal at Nagpur under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service Regulations) Act, 1977. The School Tribunal holds that the petitioner was junior to respondent Nos. 5 to 7, who were the appellants before it, but the reservation of the isolated post of Assistant Head Master for Scheduled Caste category was illegal and consequently, the promotion of the petitioner in deviation of the principle of senior was illegal. The School Tribunal relied upon the decision of the Full Bench of this Court in the case of New English High School Association, Nagpur and another vrs. Baldev Fakira Ade and another, reported in 2006 (6) Mh.L.J. 882.

2. Shri Duvvuri, the learned counsel appearing for the petitioner urged that the approval to the appointment of the petitioner was given by the Education Officer on 09.07.2002 and after making representation on 12.10.2007, the appeal in question was preferred before the School Tribunal after an inordinate delay. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/milind-so-namdevrao-kamble-...

same was, therefore, liable to be dismissed on that short ground.

3. On 01.10.2009, this Court admitted the matter and passed an order as under;

"Heard.

Rule.

On the question of interim relief, counsel for the parties were heard from time to time. Mr. Mohgaonkar, learned counsel for the respondents, opposed the grant of interim relief on the ground that the same would amount to granting final relief in the main writ petition without deciding the writ petition finally. It is seen that the petitioner was promoted to the post of Assistant Head Master on 02.05.2002 and has been working since then. After the Full Bench judgment of this Court, respondent Nos. 5, 6, 7 and 8 preferred appeal before the Tribunal claiming on the basis of the said judgment that petitioner could not have been promoted and they were entitled to the said relief of promotion. Appeal was preferred on 28.12.2007. There is no independent explanation for filing the appeal after the period of about five years. It appears that the only cause of action for filing the appeal was the decision of Full Bench of this Court. In my opinion, change in law by a decision of the Court cannot be a good explanation for such a long delay of five years. It is true, as pointed out by Mr.Mohgankar, that for challenging supersession in the matter of promotion, there is no limitation provided under Section 9 of the M.E.P.S. Act. In the case of The State of Gujrat v. Patil Raghav Natha - 1969 (2) SCC 187, in para 11, Supreme Court has had to say

" The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised".

In the instant case, there is no reason why the appeal should have been entertained after so many years, since I have already held that the decision of Full Bench cannot be a cause of action to approach the Court. Since the petitioner has been working for about five years on promotional post, it would be wholly improper to displace him from that post. In view of the strong prima facie case made out by the petitioner, I grant interim relief in terms of prayer clause (iii) of the petition with further direction to the management to restore the petitioner to his original post of Assistant Head Master.

This order is stayed for 15 days at the request of Mr.Mohgankar".

4. It is reported by the learned counsels appearing for the parties that respondent Nos. 5 to 7 who had filed appeal before the School Tribunal have already retired from service on attaining the age of superannuation. In view of the interim order passed by this Court on 01.10.2009, the petitioner was continued in the post of Assistant Head Master and he is still working on the said post. The respondent Nos. 5 to 7 were subsequently promoted directly to the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/milind-so-namdevrao-kamble-…

post of Head Master and all these promotions were challenged by the petitioner by filing appeals before the School Tribunal and the Writ Petition No. 1277 of 2015 arising out of one of such appeals is pending before this Court for judgment.

5. Both the learned counsels appearing for the parties agree that the challenge which is pending in Writ Petition No. 1277 of 2015 has nothing to do with the controversy involved in the present writ petition. Both the learned counsels agree that the promotion to the post of Head Master is required to be made from the category "C" of the teachers in ScheduleF under the M.E.P.S. Rules. The said petition can be decided on its merits.

6. In view of this undisputed position, no purpose would be served in adjudicating the controversy involved in the present case either one way or the other. Since respondent Nos. 5 to 7 have already retired on attaining the age of superannuation, the petitioner can be continued on the post of Assistant Head Master and he cannot be displaced and shall be entitled to all the benefits of the post.

7. This petition is, therefore, disposed of with these observations by further clarifying that none of the findings recorded in the judgment delivered by the School Tribunal which is impugned in this petition shall come in the way of any of the parties and any controversy in this petition can be adjudicated in other proceedings as an incidental issue. Merely because the petitioner is continued in the post of Assistant Head Master that by itself will not confer upon him any right to get promotion to the further post of Head Master.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/milind-so-namdevrao-kamble-…