
(2010) 07 BOM CK 0046
In the Bombay High Court
Case No : Petition No. 4172 of 2009

Mohan Bapurao Shinde

APPELLANT

Vs

Terana Charitable Trust and Others

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9(1)(b)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
3(3)

Citation : (2010) 6 BomCR 203

Hon'ble Judges : Mhatre Nishita, J

Bench : Single Bench

Advocate : S.J. Ghogare, for the Appellant; N.V. Bandiwadkar, for the
Respondent

Final Decision : Allowed

Judgement

Mhatre Nishita, J.—Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The present petition has been filed against the order of the School Tribunal dismissing the appeal filed by the Petitioner.

3. The facts in the present case are not in dispute. Respondent No. 1 is a charitable trust which is running various schools. It established its first school in Nerul in June, 1990. The Petitioner was appointed as an Assistant Teacher on 30.6.1990 in the school. Respondent No. 1 then established new schools in Osmanabad, Ter and Aurangabad in 2002, 2003. Thereafter, another school was Writ Petition No. 4172 of 2009 established in Koparkhairane in 2003-2004. Headmasters were appointed in the various schools after advertising for the posts. In 2003-04, the Petitioner contends he orally represented to Respondent Nos. 1 and 3 that he should be appointed as the headmaster in the school at

Koparkhairane which had just been established. Respondent No. 4 was initially appointed as the Incharge Headmistress in 2003-2004. On 8.12.2006, the Petitioner raised an objection to her appointment before the Education Officer, Zilla Parishad, Thane. He thereafter raised an objection to her appointment before the Administrative Officer and later sent a reminder to the Officer of the Deputy Director of Education on 2.7.2007. It appears there was some correspondence exchanged between Respondent No. 3 and the Petitioner in July 2007. The Petitioner again requested Respondent No. 5 in July 2007 that he be promoted as Headmaster in Koparkhairane school. On 5.12.2007, Respondent No. 5 i.e. the Education Officer informed him that the post was filled after selecting a suitable candidate who applied in response to the advertisement published for the post. Respondent No. 5 also informed the Petitioner that the appointment had been approved by an order dated 10.2.2006 w.e.f. 1.8.2003. Not being satisfied with this letter, the Petitioner submitted a representation to Respondent No. 5 on 24.12.2007 which went unheeded. The Petitioner therefore preferred an appeal before the School Tribunal challenging the appointment of Respondent No. 4 by claiming that he was superseded by her.

4. The School Tribunal after considering the material placed on record as well as the submissions of the parties held that there was an inordinate delay on the part of the Petitioner before approaching the School Tribunal due to which the Petitioner was Writ Petition No. 4172 of 2009 not entitled to any relief. The Tribunal further held that the appointment of Respondent No. 4 as Headmistress in the school at Koparkhairane did not amount to supersession of the Petitioner as she was a direct recruit. The appeal was therefore dismissed. Aggrieved by that order, the Petitioner has filed the present petition under Article 227 of the Constitution of India.

5. Mr. Ghogare, appearing for the Petitioner, submits that the Rules framed under the MEPS Act require the management to prepare a common seniority list in the manner prescribed. He submits that the management must exhaust the option which is contemplated under Rule 3(3) of the MEPS Rules while filling up the post of the Head of the school. According to him, it is only if no eligible candidate from amongst the teaching staff is available that the management can issue an advertisement for recruiting the Head of the school, after obtaining prior permission from the Education Officer. Mr. Ghogare submits that none of these requirements were fulfilled before Respondent No. 4 was appointed. He submits that the Petitioner being the seniormost teacher in all the schools together, he should have been appointed as the Headmaster as he was suitably qualified. He further submits that the Tribunal has erred in concluding that the Petitioner was not entitled to any relief as he had approached the Court belatedly. According to him, when a person is superseded, he cannot be non-suited on the ground of delay because it is a continuing cause of action. The learned Advocate then submits that the Tribunal has erroneously held that merely because Respondent No. 4 was directly recruited in response to an advertisement issued by the management, the appeal filed by the Petitioner challenging her appointment was

not maintainable. He submits that the very fact that Writ Petition No. 4172 of 2009 the Petitioner was continued as a seniormost assistant teacher without considering him for the post of headmaster would indicate that he was superseded by a person who had been illegally appointed.

6. Respondent Nos. 1, 2 and 3 though served have not bothered to put in an appearance. Mr. Bandiwadekar, who appears for Respondent No. 4, submits that the Tribunal has committed no error in dismissing the appeal. He points out that Section 9(1)(b) of the MEPS Act specifically provides that an appeal can be filed by a person who has been superseded by the management while appointing another person by promotion. He submits that the appointment of Respondent No. 4 was not by way of promotion but by direct recruitment and, therefore, the appeal has rightly been dismissed. The learned Advocate then submits that the issue raised in this petition is no longer *res integra* as there are several judgments of this Court which lay down the law regarding an appeal by a person who claims who have been superseded by one who is directly recruited. He therefore submits that the order of the Tribunal should be confirmed.

7. In the present case, the Tribunal had condoned the delay caused in filing the appeal by its order dated 29.8.2008. Aggrieved by that order, Respondent No. 4 had preferred Writ Petition No. 7201 of 2008 before this Court. By an order dated 21.11.2008, the order was set aside by this Court. It was observed that there is no specified period of limitation insofar as an appeal against supersession while making an appointment to a post by promotion is concerned. The general doctrine of delay and laches would then have to be considered by the Tribunal while deciding such an appeal. The matter was then remanded to the Tribunal.

8. It has been reiterated time and again by this Court in several judgments that an appeal with respect to supersession of a person by promotion of another cannot be barred by limitation. However, while deciding whether relief should be granted to a person who approaches the Tribunal belatedly, the Tribunal is expected to consider whether the delay would disentitle the Appellant to any relief. In the present case, Respondent No. 5 was appointed In-charge Headmistress in 2003-2004. Although the Petitioner objected to her appointment and submitted several representations to various authorities, he took no steps to challenge that order. Assuming such a challenge would not be maintainable because Respondent No. 4 was only appointed as an In-Charge Headmistress, in any event, the Petitioner was aware of the fact that an advertisement had been issued for filling the post of Headmistress in the Koparkhairane school. It is now well settled that merely submitting representations or engaging authorities in interminable correspondence to redress one's grievance would not absolve the Petitioner from approaching the Tribunal within a reasonable time from when he became aware that Respondent No. 4 was to be appointed. An advertisement was published on 18.6.2003 in the Marathi daily newspaper. Respondent No. 4 was appointed on 22.7.2003. When the seniority list was prepared by Respondent No. 1 trust, the name of Respondent No. 4 was shown at serial No. 1

as the headmistress of the school. Approval was granted to her appointment in 2004. Again, in 2006-2007, when the seniority list was published by the management of the school, Respondent No. 4 was shown as headmistress of the Koparkhairane school. However, the Petitioner did nothing to redress his grievance by approaching the proper forum. Therefore, the finding of the Tribunal that there has been delay on the part of the Petitioner in approaching the Court which disentitles him to relief cannot be said to be perverse.

9. As regards the issue of maintainability of the appeal, in my opinion, the Tribunal has rightly held that the present appeal was not maintainable. I had occasion to deal with a similar situation in the case of (Shri Sampat Dattu Bhosale v. Archana Chandrakant Shinde and Ors.), Writ Petition No. 2092 of 1998. This petition was decided on 5.9.2008 wherein I have considered the dictionary meaning of the word "supersede" and held that supersession would obviously mean that a person who is junior in rank overrides the claim of a person who is senior to him and is appointed in a post instead of the senior. u/s 9, the supersession has to be by promotion for an appeal to be maintainable. There can be no supersession unless there is replacement of one person by another by promotion.

10. The Petitioner may have a valid grievance that he was not considered for promotion, contrary to the provisions of the MEPS Rules, 1989. However, that grievance cannot be redressed before the School Tribunal. He would have to approach the proper forum for redressal of his grievance. As held in (Tara w/o. Ramesh Tupkar v. Pramod Shikshan Sanstha and Ors.) 1999 Bom.C.R. 119 : 2000(2) Mh.L.J. 798, the management is liable to appoint the seniormost member of the teaching staff employed in the school if that member fulfils the other conditions stipulated in Sub-rule (3) of Rule 3 of the MEPS Rules. It is only when such an eligible qualified candidate from amongst the members of the teaching staff is not available that the Writ Petition No. 4172 OF 2009 management can resort to Sub-rule 5(a) of Rule 3 i.e. issuing an advertisement for filling up the post of the head of the school after obtaining prior permission from the Education officer. If this process has not been carried out it would be open for the Petitioner to agitate his grievance before another forum but not by filing an appeal before the School Tribunal.

11. Rule discharged accordingly.