
(2014) 02 BOM CK 0142

In the Bombay High Court

Case No : Letters Patent Appeal No. 395 of 2011 in Writ Petition No. 8744 of 2010

Rukhminibai Pratisthan

APPELLANT

Vs

Ravindra and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 8 9

Citation : (2014) 3 BomCR 68

Hon'ble Judges : S.C. Dharmadhikari, J; Ravindra V. Ghuge, J

Bench : Division Bench

Advocate : S.R. Barlinge in Letters Patent Appeal No. 395/2011 in Writ Petition No. 8744/2010, Mr. Ajay Deshpande in Letters Patent Appeal St. 25309/2012, for the Appellant; V.D. Sapkal, Advocate for Respondent No. 1 in both Appeals, Shri N.B. Suryawanshi, Advocate for Respondent No. 2 in Letters Patent Appeal No. 395/2011 in Writ Petition No. 8744/2010 and for Respondent No. 3 in Letters Patent Appeal (St.) 25309/2012, Shri Ajay S. Deshpande, Advocate for Respondent Nos. 3 to 6 in Letters Patent Appeal No. 395/2011 in Writ Petition No. 8744/2010, Shri S.G. Karlekar, AGP for State in Letters Patent Appeal No. 395/2011 in Writ Petition No. 8744/2010, Shri S.R. Barlinge, Advocate for Respondent No. 2 in Letters Patent Appeal (St.) 25309/2012, for the Respondent

Judgement

S.C. Dharmadhikari, J.—Heard learned counsel for the parties. Admit.

2. By consent of the learned counsel appearing for all the parties, we have heard these Letter Patent Appeals finally.

3. These appeals under Clause 15 of the Letters Patent are directed against the judgment and order dated 6.9.2011 of the learned Single Judge in the Writ Petition No. 8744/2010. By the impugned judgment and order, the learned Single Judge has dismissed the above writ petition. The original writ petitioner, for short the management, is before us in LPA No. 395/2011 and the original respondent no. 3 in WP 8744/2010 is before us in LPA (St.) No. 25309/2012.

4. The appellant in LPA 395/2011 is an educational institution and is managing and administering four schools, namely:-

1] Saraswati Madhyamik Vidyalaya, Sadawan, Tq. Amalner Dist. Jalgaon.

2] Kirti Vijay Patil Army School, Shirdon, Tq. Panvel Dist. Raigad.

3] Nawal Bhau Madhyamik Vidyalaya, Tade, Tq. Erandol Dist. Jalgaon.

4] V.N. Patil Madhyamik Vidyalaya, Igatpuri, Dist. Nashik.

5. The respondent no. 1, who is the contesting respondent in LPA No. 395/2011, had approached the School Tribunal, Nashik. He filed Appeal No. 36/2009 challenging the action of the management in promoting the respondent nos. 3 to 6 to this appeal as Head Masters and praying that the respondent no. 1-original appellant in the appeal before the Tribunal, may also be posted/promoted as such along with all benefits and with effect from 2006.

6. For appreciation of the rival contentions, it would be necessary to refer to the memo of appeal before the School Tribunal. It was the grievance of the respondent no. 1 in the said appeal that the management administers and manages the above four schools. However, the management has not prepared a combined or common seniority list nor has obtained the signatures of the employees on such a list. Some seniority list was prepared, but that was incomplete. Therefore, none of the employees had any idea about their seniority and placement. It was the grievance that the four educational institutions/schools are functional in three different Districts of the State. Therefore, which Head Master is the head of which school can never be known to the other employees unless and until a proper and complete seniority list is maintained. The management took disadvantage of this situation and promoted employees of their choice. These employees were junior and by this act of the management, the seniors were deprived of their promotions. When seniors came to know this illegal act of the management, they obtained various details and documents. That is how they came to know that they were deprived of promotions. The respondent no. 1 stated that he is one such senior and an aggrieved employee.

7. The respondent no. 1 to the LPA No. 395/2011 then further alleged that he is senior to the respondent nos. 3 to 6 save and except one Shaikh Shabbir Shaikh Ajij. The respondent no. 1 has completed his education and obtained degrees of M.A., B.Ed. He has been serving in the Saraswati Vidyalaya, Sadawan, from June, 2000 as Assistant Teacher. He has also been working as an in-charge head. This school has been established in the year 1988. The respondent no. 1 has been serving in the school since then. Initially, the school had no recognition. Later-on, when it was recognized, the respondent no. 1 alleged that, he has been serving as in-charge head for past 9 years. The appointment as in-charge head has been approved by the Education Officer.

8. Then the grievance is that in October, 2008, the school in question became a 100% aided school. Therefore, a post of permanent head was created and could

have been created. Since the respondent no. 1 is the senior most Assistant Teacher and serving as in-charge head for 9 years, therefore, he deserved to be promoted and should have been thus promoted. However, from 1.6.2009, one Shyamkumar Bhimrao Jadhav, who is the respondent no. 6 to the LPA No. 395/2011, has been promoted as head and the Education Department has approved his appointment. The respondent no. 1, therefore, objected to this course and protested by approaching the management and the Education Officer.

9. Relying upon the information obtained under the Right to Information Act, 2005, the respondent no. 1 alleged that all the heads of the aforesaid schools are junior to him. Mr. Madhukar Krushna Marathe-respondent no. 3 is junior to the respondent no. 1, but he has been promoted as a head of the school in 2006. His appointment has been approved in the year 2007 by the Education Officer. Thereafter, one Sharad Yashwant Ahirrao-respondent no. 4 has been promoted as head of the school in June, 2006 and equally his appointment has been approved by the Education Officer. Mr. Rajendra Vishwanath Patil-respondent no. 5 is also junior to the respondent no. 1 and he has been promoted in 2006 as head of the school. His appointment has also been approved by the Education Officer. All these events came to the notice of the respondent no. 1 recently. It is pertinent to note that the respondent no. 1 alleged that two seniority lists of Grade "A" and Grade "C" employees were maintained and that is how none of the employees came to know of the promotional orders and it is not known as to which employee has been promoted.

10. Therefore, it was his grievance that by denying him promotion, the management has inflicted injustice on him. The respondent no. 1 alleged that he approached the management by making a written complaint on 12.9.2008. Thereafter, he has made two written complaints dated 15.4.2009 and 29.4.2009 to the Education Officer. He has also made written complaints on 1.7.2009, 2.7.2009 and 9.7.2009 about his supersession to the management, but the management refused to give any reply. Prior thereto, the respondent no. 1 alleged that he applied for copies of relevant documents including the seniority list, but the management refused to provide them.

11. Therefore, from the available documents, the appeal was filed and the grievance was that the promotional orders of the respondent nos. 3 to 6 are contrary to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. If employees, save and except the respondent no. 2, are junior to the respondent no. 1, then by overlooking his seniority, the juniors have been promoted. At that time, no objection of the respondent no. 1 was not sought by the management nor has he ever given any no objection (NOC for short) to the same. The respondent no. 1 alleged that he has made several complaints in writing, but he was never called for any redressal. He was also not supplied with any documents. It is alleged that the appointment orders of the respondent nos. 3 to 6 as heads of the school are

contrary to law and the Education Officer could not have approved their appointments. These appointments are also contrary to several Government resolutions. Once the respondent no. 1 has rendered 9 years unblemished selfless service, then, he should not have been superseded. Pertinently, he alleges that the management may have filed some false and fabricated documents in the office of the Education Officer. Those documents be called for and after scrutiny of the same, the respondent no. 1 prayed that he may be permitted to amend his memo of appeal. It is further pertinent to note that the respondent no. 1 did not dispute that the appointments of the other respondents have been duly approved and that is how he claims promotion as a head of the school from prior date namely 2006.

12. It is important to peruse paragraph no. 8 of the memo of appeal in the School Tribunal wherein the respondent no. 1 alleged that the cause of action for approaching the Tribunal accrued in the year 2009. That is because the respondent no. 6 has been illegally promoted in June, 2009 and all prior and equally this promotion came to the knowledge of the respondent no. 1 only in 2009. It is in these circumstances that he alleged that he approached the Tribunal by filing the appeal in the year 2009. It is alleged by him that this appeal is maintainable because Section 9 of the MEPS Regulation Act, 1977 and which has been pressed into service by him, confers a right of appeal not only against the orders of termination, dismissal or removal, but equally against reduction in rank, supersession and while making an appointment to any post by promotion. Therefore, the respondent no. 1 has a right of appeal, which he has invoked in this case.

13. The prayers in the appeal are that the respondent no. 1 be promoted with effect from June, 2006 as Head Master. This relief be granted by declaring that the promotion given to the respondent nos. 3 to 6 is bad in law. The prayers from (A) to (D) of the appeal memo read as under:-

A] By declaring the promotion and recognition given to the respondent no. 6 as Head Master from June, 2009, by the respondent no. 1-institution, as illegal, the same may be quashed.

B] By declaring the promotion and recognition given to the respondent nos. 3 to 5 as Head Masters by the respondent no. 1-institution, from 2006, as illegal, the same may be quashed.

C] It may be directed in favour of the appellant that the respondent no. 1 should immediately promote the appellant as Head Master and give all the benefits of the post of Head Master to him from 2006.

D] It may be directed in favour of the appellant that the concerned Education Officer should recognize the promotion of the appellant as Head Master and give all the benefits to him from 2006.

14. The respondent no. 1-management filed a written statement in the appeal

before the School Tribunal, in which it was alleged that the appeal is false, frivolous and vexatious. The same deserves to be dismissed. Each of the allegations in the memo of appeal are denied by the management and it was urged that it is true that the respondent no. 2 is senior to the appellant, save and except that what has been alleged is completely false and misleading. While it is true that the respondent nos. 3 to 6 are working as heads of different schools, but it is false that the said respondents are junior in service to the appellant before the Tribunal. The management in paragraph no. 9 of the written statement justified each and every appointment and then relied on the approval orders. They also relied on the fact that as far as Saraswati Madhyamik Vidyalaya, Sadawan Tq. Amalner Dist. Jalgaon is concerned, the post of head was created in the year 2009. As per the Roster Point, the scheduled caste candidate could only be appointed as head of the school. Therefore, relying upon the Roster Point, Mr. Shyamkumar Bhimrao Jadhav was appointed as head of the school with effect from 1.6.2009 by promotion. Thus, none of the appointments have been made contrary to law nor can be termed as illegal. On the other hand, while working as an in-charge head at Saraswati Madhyamik Vidyalaya, Sadawan Tq. Amalner Dist. Jalgaon, the appellant before the Tribunal (the respondent no. 1 herein) committed several acts of omission and commission. He was negligent in the work. On account of his lack of interest, negligence and avoiding his duties, the result of the school was adversely affected. The Education Department had initiated steps to de-recognize the school. There are allegations made in paragraph no. 15 of the written statement of serious mis-conduct, but for the purposes of present LPAs, one need not refer to the same.

15. The management had pointed out qua each appointment and as far as Madhukar Krushna Marathe is concerned, there was a post created of head of the school (Kirti Vijay Patil Army School) in the year 2005. For filling the said post, the management issued an advertisement in accordance with law. After all the applications were received, the committee presided over by the Education Officer, Zilla Parishad, Raigad, selected Madhukar Krushna Marathe on merit and in view of his educational qualifications to be the head of the school. Accordingly, he was appointed and he has taken charge. The appointment has been approved also.

16. Mr. Sharad Yashwant Ahirrao and Mr. Rajendra Vishwanath Patil, both have been appointed on promotion as head of the schools in the year 2006. In relation thereto, what has been alleged by the management in the written statement is that a post of head of the school at V.N. Patil Secondary School, Igatpuri, became vacant. At that time, the management enquired from the respondent no. 1 herein as to whether he would be interested in appointment as head of the school. The respondent no. 1 herein flatly refused and informed the Education Officer in writing that he is not interested in being appointed as head of this school and would have no objection if anybody else is appointed in his place. It is in these circumstances, the management appointed Mr. Rajendra Vishwanath Patil.

17. As far as Nawal Bhau Madhyamik Vidyalaya, Tade, is concerned, a post of head of the school was created therein in the year 2006. Even for that promotion, the willingness of the respondent no. 1 was sought, but he refused and by assigning reason that he is interested in working as head of a school in his village, Mr. Sharad Yashwant Ahirrao was appointed and to which, no objection was raised by the respondent no. 1 herein. The position of Saraswati Madhyamik Vidyalaya, Sadawan, has already been set out and the respondent no. 6 was appointed as head of the school therein on account of the post being reserved for scheduled caste by Roster Point. With this specific case, the management prayed that the appeal be dismissed.

18. The Presiding Officer of the School Tribunal heard both the sides and in the light of the pleadings and particularly of the respondent no. 1 herein and the management, framed several points for determination. However, in the final judgment of the School Tribunal, only one point has been framed for consideration and it has been answered in the affirmative and in favour of the respondent no. 1 herein.

19. The reasoning of the Tribunal is that the management has filled in the post of the school in Panvel Taluka by direct recruitment. The management can fill in the post of head of school by direct recruitment if a suitable teacher possessing qualifications laid down in Rule 3 is not available. The Sub-rule (5) of Rule 3 and particularly Clause (a) enables the management to then fill in the post by direct recruitment. It is observed by the Presiding Officer that there is nothing on record to show that the school management had sought permission from the Education Officer to fill in the post of Head Master of Kirti Vijay Patil Army School at Shirton Tq. Panvel Dist. Raigad. The Presiding Officer made this observation despite the management producing before him a xerox copy of the paper cutting, which shows that the post of Head Master was advertised by the school management. However, the Presiding Officer faults the management for not obtaining prior approval of the Education Officer or of the Deputy Director of Education for advertising the post of Head Master. It means the school has not followed the procedure laid down in Rule 3(5)(a) of the MEPS Rules, 1981. Therefore, the school management has illegally filled in the post by appointing the respondent no. 3. Then, the learned Presiding Officer referred to the fact that the respondent no. 1 is senior to the respondent nos. 4 to 6. If he has rendered satisfactory service and without any complaint and blemish, then he should have been promoted. The argument was that the management had asked his willingness for the post of Head Master, but he expressed his unwillingness to take up the post and in that regard the management had produced a letter dated 17.10.2006. The respondent no. 1 denied having addressed any such letter and filed his affidavit and that the alleged letter has not been signed by him. The Presiding Officer, therefore, holds that a perusal of the documents produced on record by the respondent no. 1 herein shows that he was serving in the school and was on duty in the month of October, 2006. It is difficult to digest that he would give something in writing and before the Education Officer, Zilla Parishad,

Nashik, voluntarily relinquishing his claim to the post of Head Master. The conclusion in paragraph no. 15 of the Tribunal's order at page no. 103 of the paper book reads as under:-

15. The next contention of the respondent management is that when the management had communicated occurrence of vacancy of the head to the appellant at that time the appellant had refused for appointment to the post of head master and that too in presence of Education Officer, Zilla Parishad, Nashik. The management of respondent institute has produced on record the copy of said letter dt. 17.10.2006. It is worthy to note that the appellant has denied the execution of said letter as well as the appellant has also denied by filing his affidavit that he has also signed letter. It is pertinent to note that a perusal of documents produced on record by the appellant, below list of documents dt. 09.07.2010, more particularly, Xerox copies of muster roll of the month October, 2006, it transpires that the appellant was no duty in the school, which is admittedly situated in Jalgaon, then it is difficult to digest the fact that the appellant has given in writing before the Education Officer, Zilla Parishad, Nashik on 17.10.2010 that he has voluntarily relinquished his claim to the post of head master. Therefore, I do not find substance in the defence of respondent management that the appellant has voluntarily relinquished his claim to the post of head master.

Then, the Presiding Officer discusses the delay in filing of the appeal and finally holds that the respondent no. 1 has proved that he has been superseded by the school management while promoting or appointing the respondent nos. 3 to 6 on the post of Head Master and, therefore, point no. 1 needs to be answered in the affirmative.

20. The Presiding Officer passed following operative order and direction on 17.7.2010:-

Appeal is allowed.

Orders of management of respondent institute, promoting or appointing the respondent Nos. 3 to 6 on the post of head master, are hereby set aside.

The management of respondent institute is hereby directed to promote the appellant on the post of head master along with benefits attached to the said post w.e.f. June, 2009.

The management of respondent No. 1 shall comply the order within 40 days from the date of order.

Parties shall bear their own costs.

21. Being aggrieved and dissatisfied with this judgment and order, the management preferred Writ Petition No. 8744/2010 before the learned Single Judge and which came to be admitted and heard forthwith. However, prior thereto, this Court had issued notices on all the respondents. Pertinently, two of

the contesting respondents before this Court filed a reply affidavit. The reply of the contesting respondent nos. 3 to 6 was filed by Shyamkumar Bhimrao Jadhav. It is a common affidavit in reply and in the said affidavit, it was specifically urged by the respondent no. 6 that the respondent no. 1 of his own volition gave up his claim to the post of Head Master by promotion. That, the post was offered to him and after his refusal, the junior employees were promoted. That, promotion was effected in the year 2006. The respondent-teachers, who are junior to the respondent no. 1 herein, relied upon the writing executed by the respondent no. 1 herein on 17.10.2006 and specifically urged that this was a writing given to the Education Officer. They confirmed the handwriting of the respondent no. 1 and equally his signature. As far as the appointment in the subject school is concerned, said Jadhav pointed out that he is the senior-most scheduled caste teacher working in all the four schools and, therefore, in order of his placement and by the Roster, he came to be appointed by way of promotion as head of Saraswati Madhyamik Vidyalaya, Sadawan, on 1.6.2009. Thus, all the appointments and promotions were known to the respondent no. 1 herein and he made no grievance. Once he makes no such grievance after the approval to the appointments as well, then, the appeal could not have been entertained and should not be allowed, was the specific stand taken by these respondents.

22. We have before us on record at page no. 178 of the paper book a reply affidavit of Shaikh Shabbir Shaikh Ajij, Assistant Teacher in V.N. Patil Madhyamik Vidyalaya, Igatpuri Dist. Nashik. Pertinently, against this teacher, the respondent no. 1 herein had no grievance. He stated that this respondent-Shaikh Shabbir Shaikh Ajij is senior to him. Even this respondent in paragraph nos. 2 and 3 of his reply urged and stated that both-he and the respondent no. 1-Ravindra Deoram Patil, appeared before the Education Officer (Secondary), Zilla Parishad, Nashik-respondent no. 9 and gave in writing that they were unwilling to accept the promotion as Head Master. Shaikh Shabbir confirmed his writing as also that of said Ravindra Deoram Patil-the respondent no. 1 to the LPA 395/2011. In paragraph no. 3 of his affidavit in reply, Shaikh Shabbir Shaikh Ajij stated that the respondent no. 1-Ravindra has not put his usual signature on his letter forgoing his claim to the post of Head Master, however, the handwriting is that of said Ravindra. Since he and Ravindra happened to be colleagues, said Shaikh Shabbir Shaikh Ajij identified his handwriting and confirmed his presence before the Education Officer, Nashik on 17.10.2006. Shaikh Shabbir accused said Ravindra by alleging that once both have willingly forgone and given up their claims after considerable discussion, then, how the said respondent no. 1-Ravindra changed his mind, has not been clarified at all. Said Shaikh Shabbir submitted that the management would have considered the claim of said Ravindra had he not given up the same willingly and in the circumstances narrated by him.

A copy of this writing has been annexed to this affidavit in reply.

Both these affidavits were served upon the respondent no. 1-Ravindra and during

the pendency of the writ petition, however, he chose not to deal with them, leave alone deny any of the contentions in these affidavits. He did not file any rejoinder affidavit.

23. The learned Single Judge, however, after rejecting the contention that the appeal of the respondent no. 1 was barred by time, held that there is no substance in both the contentions, namely, maintainability of the appeal or that it was barred by limitation. The learned Single Judge also held that there is no substance in the claim of the management that the respondent no. 1-Ravindra relinquished his claim voluntarily. The learned Single Judge in paragraph no. 19 of the impugned order upheld the finding of the School Tribunal. According to him, it is impossible that the respondent no. 1 would give up his claim to a post, which was already filled in the month of June, 2006, by his letter dated 17.10.2006. The respondent no. 1 was not at Nashik on the relevant date and, therefore, he could not have given up his claim in writing and in the presence of the Education Officer. Such a finding of fact cannot be disturbed. Then in paragraph nos. 20 & 21, the learned Single Judge referred to the vacancies, which have been filled in by the appointments of Madhukar Krushna Marathe and others and eventually in paragraph no. 20 held that the occurrence of these vacancies was not communicated to the respondent no. 1 by the management and hence these findings of fact recorded by the School Tribunal require no interference.

24. It is this judgment and order of the learned Single Judge dismissing the Writ Petition No. 8744/2010, which is challenged before us. Shri S.R. Barlinge, appearing on behalf of the appellant herein, submitted that firstly the appeal filed by the respondent no. 1 before the School Tribunal was not maintainable. That was not an appeal covered by Section 9 of the MEPS Regulation Act, 1977. A direct recruitment was made and of one of the heads. In such circumstances, no claim of supersession arises. That was not a post filled in by any junior employee being promoted and by superseding the respondent no. 1 herein. In such circumstances, the appeal filed by the respondent no. 1 before the Tribunal was totally incompetent and not maintainable. Our attention was invited to the written statement of the management filed before the School Tribunal in that behalf. Further, our attention was also invited to the points for determination framed by the Tribunal. It is submitted that initially the Presiding Officer thought of framing more than one point, but later on he restricted the same to only one point. Even if the Tribunal's findings on delay and limitation are accepted, alternatively and assuming that the appeal of the respondent no. 1 was maintainable, the Presiding Officer could not have passed an order disturbing and/or interfering with the appointments of the respondent nos. 3 to 6 in the year 2010. Some of these appointments were made in the year 2005-06. As far as the respondent no. 6 is concerned, he is a scheduled caste teacher and was appointed as head of the school in Saraswati Madhyamik Vidyalaya, Sadawan, by adhering to the Roster Point. Once that post was reserved by Roster Point and which reservation was never put in issue or challenged, leave alone questioned

by the respondent no. 1 herein, then the Presiding Officer could not have passed an order disturbing the appointment of the respondent no. 6. This is clearly contrary to law. If the contention was that there is no common seniority list, then there was no occasion for the original appellant-the respondent no. 1 herein to aver in the memo of appeal itself that there are two separate seniority lists for Group "A" and Group "C" employees. The allegations are contradictory and self-defeating. No reliance could be placed on such vague and contradictory allegations by the Presiding Officer.

25. Then Shri Barlinge submitted that it is not as if the management invited any letter of the respondent no. 1 giving up his claim voluntarily. It is the respondent no. 1, who had in paragraph no. 7 of his memo of appeal, referred to the fact that he had never executed any writing nor has he given any no objection certificate. In that regard, Shri Barlinge relied upon paragraph No. 7(B) of the memo of appeal (running page no. 111 of the paper book). Shri Barlinge submits that in dealing with that contention, the management relied upon his letter dated 17.10.2006. That was in relation to filling up the post of V.N. Patil Secondary School at Igatpuri. Though the respondent no. 1 was senior-most and the appointment was to be made by seniority, yet he stated that he is unwilling to accept the post for personal reasons. The management had pointed out in its written statement as to how the other teachers have been appointed. It has been pointed out that each of the appointments have been approved by the Education Officer. It is the case of the respondent no. 1, according to Shri Barlinge and in his memo of appeal itself, that Saraswati Vidyalaya, Sadawan, has become an aided school in October, 2008 and, therefore, a post of permanent head was created therein. He relied upon the papers and documents and urged that Madhukar Krushna Marathe was appointed in the year 2006 and his appointment was approved in the year 2007. Mr. Sharad Yashwant Ahirrao was also appointed in 2006 and his appointment was approved in 2007. Mr. Rajendra Vishwanath Patil was appointed in 2006 and appointment was approved in the year 2007. Therefore, there is nothing surprising about the no objection, which was given and the willingness to appoint some other teacher. Shri Barlinge relied upon the written statement of the management and urged that all this would show that the respondent no. 1 raised his claim belatedly and there was no substance therein. He was fully aware of his no objection given to the appointment. Shri Barlinge submits that Madhukar Krushna Marathe was appointed on 1.7.2006 and his appointment was approved by the Education Officer. Mr. Sharad Yashwant Ahirrao was appointed on 12.6.2006 and Mr. Rajendra Vishwanath Patil was appointed in the year 2006. None of these appointments have been objected. Further, the management pointed out that though a post of head was created in Nawal Bhau Madhyamik Vidyalaya, Tade Tq. Erandol Dist. Jalgaon, but the respondent no. 1, on inquiry, stated that he is not willing to take up the post and would like to serve a school in his village. In all such circumstances, it is not as if the No Objection Certificate was a got-up or a fabricated document. Its existence has been confirmed by other respondents as well. In such circumstances, Shri

Barlinge urged that the writ petition should have been allowed and the judgment and order of the Presiding Officer deserved to be quashed and set aside.

26. Shri Barlinge has relied upon the judgment of this Court in the case of The Secretary and another Vs. Shri Chintamani Birjaprasad Dubey and others, .

27. Shri Barlinge also relied upon the decision of the learned Single Judge of this Court in the case of Mohan Bapurao Shinde Vs. Terana Charitable Trust and Others, .

28. On the other hand, Shri V.D. Sapkal, learned counsel appearing for the respondent no. 1 herein, submitted that the present Letters Patent Appeals deserve to be dismissed. He submitted that the whole attempt is to have a re-appreciation and re-appraisal of a finding of fact and that is impermissible in law. Now it is concurrently held that the respondent no. 1 was wrongfully and illegally superseded. He had no idea of the promotion orders of other teachers, who were junior to him. He was always kept in dark. On the point of maintainability, delay and limitation as also on merits, the learned Single Judge in his detailed judgment, has rejected the arguments of the management and upheld the order of the School Tribunal. The learned Single Judge has assigned cogent and satisfactory reasons for upholding that conclusion. In these circumstances, in a Letters Patent Appeal, a different view is not possible. Shri Sapkal submits that the appeal filed by the respondent no. 1 before the School Tribunal was clearly maintainable. There was no question of the respondent no. 1 questioning any direct recruitment as he had no idea nor was it ever known to anybody that one of the appointments was made by direct recruitment. The Presiding Officer has clearly held that before publishing any advertisement, the management had not taken prior permission of the Education Officer/Department. Therefore, the direct recruitment is contrary to law. Shri Sapkal asserted that all appointments to the post of head of the school have to be made in terms of Rule 3. As far as head is concerned, the criteria is seniority. The senior-most teacher has to be appointed as head. It is only in the circumstances covered by Sub-rule (5) of Rule 3 that it can be justified that the senior-most teacher need not be appointed as head of the school. Those circumstances have not been proved. Secondly, as far as other schools are concerned, at no stage any common seniority list of teachers was produced. There was no record of the placement of the respondent no. 1 and, therefore, he presumed that having worked in a school from 1998 and being the senior-most teacher so also ahead of the other teachers in the seniority, he alone should have been considered for promotion as head of the school. That he was not considered while appointing or promoting other teachers as head of four schools, resulted in the School Tribunal passing an order and direction of appointing the respondent no. 1 on the post of Head Master along with benefits attached with effect from June, 2009. This direction can be validly issued by the Tribunal and after it has been proved that the appointment of the respondent nos. 3 to 6 to the post of Head Master was illegal. They could not have superseded a senior teacher like the respondent no. 1. For all these reasons, Shri

Sapkal submits that there is no merit in the Letters Patent Appeals and the same deserve to be dismissed.

29. With the assistance of Shri Barlinge and Shri Sapkal, we have perused the memo of appeal and all annexures thereto including the judgment of the School Tribunal and that of the learned Single Judge. We have also perused the annexures to the writ petition as also the affidavits filed by the respondent nos. 2 and 3 to 6.

30. While concluding the hearing of these appeals, we requested Shri S.G. Karlekar, the learned AGP, to produce the record from the office of the Education Officer (Secondary), Nashik-respondent no. 9. We specifically called for the Roster Point register and the documents in the office of the respondent no. 9. The learned AGP has produced the same.

31. We are of the opinion that after Shri Barlinge has given up his challenge to the impugned order of the School Tribunal and that of the learned Single Judge partially on the point of delay and limitation, then, as far as those points are concerned, we need not consider the rival contentions or the findings and conclusions on this point in the impugned orders.

32. Equally, Shri Barlinge has fairly conceded that before the learned Single Judge, no attempt was made to prove the allegations of mis-conduct on the part of the respondent no. 1. Hence, we would proceed on the footing that the respondent no. 1 has rendered satisfactory service and was otherwise eligible for being promoted or appointed as head of the school.

33. Now let us turn to the crucial points and firstly on the maintainability of the appeal. In that regard, a careful perusal of Section 9 would show that notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school, who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management or who is superseded by the Management while making an appointment to any post by promotion and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted u/s 8.

34. Reliance was also placed upon Rule 3 of the MEPS Rules, 1981, and which sets out the qualifications and appointment of head. A person to be appointed as the Head 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. Sub-rules (2) and (3) indicate that the management shall fill up the post by appointing the senior-most member of the teaching staff in accordance with the guidelines 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 schools conducted by it, who fulfills the conditions laid down in Sub-rule (1) and who has satisfactory record of service.

35. In the backdrop of above Rules, if the allegations in the memo of appeal are perused, the respondent no. 1 had in the memo of appeal specifically urged and we have referred to his allegations in details as to how there are four schools of the management, how a common seniority list ought to be prepared and of all the teachers in these four schools. He alleged that save and except the respondent no. 2, all other respondents, namely the respondent nos. 3 to 6 are junior to him. Now, such an assertion could not have been made unless the respondent no. 1 was aware of his placement or seniority. That means, there is a record based on which this allegation and averment is incorporated in the appeal memo before the Tribunal. He alleged that he is educationally qualified and also has the experience. He is working as in-charge head. In such circumstances and when a junior teacher namely the respondent no. 6 was promoted as head of the school-Saraswati Madhyamik Vidyalaya, Sadawan Tq. Amalner Dist. Jalgaon, that he came to know of his supersession. A reading of the paras of the memo of appeal not in parts or in isolation, but together, leaves us in no manner of doubt that the respondent no. 1 appealed to the Tribunal against his supersession. He appealed against denial of promotion although being senior teacher and duly qualified. In the given facts and circumstances and assuming the allegations made in the memo of appeal to be true and correct, the appeal was maintainable. This was not an attempt as Shri Barlinge would urge, of questioning a direct appointment. True it is that the respondent no. 1 had, during the course of proceedings, been made aware of the fact that one of the teachers namely Madhukar Krushna Marathe was appointed as head of the school by the management. In making that appointment, the management urged that it was made directly and, therefore, there is no question of supersession. However, the respondent no. 1 relied upon the fact that there were four schools and he has been superseded in the appointment to the post of head of all four schools. Hence, the judgment of the learned Single Judge in the case of Secretary, Jamnadas Adukia Charity Trust (supra) does not assist Shri Barlinge.

36. Equally, the judgment in the case of Mohan Bapurao Shinde (supra) rendered by another learned Single Judge will not assist Shri Barlinge. There, it was held that the appointment of respondent no. 4 was made directly. In that regard and in the backdrop of such facts, the learned Single Judge held that when the appointment has been made not by supersession but directly, then, the appeal u/s. 9 would not be competent and maintainable.

37. However, the facts before the learned Single Judge and the Presiding Officer in this case were not identical to the above judgments, but distinct. In view thereof, we are not with Shri Barlinge insofar as his first contention is concerned.

38. However, we find considerable merit in the contention of Shri Barlinge insofar

as the second point is concerned. In that regard, we find that the respondent no. 1 was making very guarded statements and allegations in his memo of appeal. From his memo of appeal, it is apparent that he was aware of existence of a seniority list. There could not have been any allegation that the management does not maintain any seniority list much less common seniority list and that there is a seniority list separately maintained for Group "A" and Group "C" class of employees. This itself shows that the respondent no. 1 was aware of the seniority lists and their existence. We are not referring to the management's case or relying upon any other version. This is the version of the respondent no. 1 in his memo of appeal itself. If this was his version in the memo of appeal and he was aware of the fact that there are qualified teachers, who are serving in the other schools, then, we are of the opinion that the Presiding Officer should not have relied upon the above noted conflicting and contradictory version of the respondent no. 1. It was very unsafe to have relied upon such a version, which was one sided. Both the Presiding Officer and the learned Single Judge thus fell in error in holding that the management has not prepared or maintained any proper and complete seniority list. That there was a seniority list and that there were related documents before the Presiding Officer and equally before the learned Single Judge is apparent from the record. The management has, after its written statement, taken care to produce before the learned Single Judge as also the Presiding Officer the Roster Point. It has also produced the related record. In such circumstances, the learned Presiding Officer has, without advertting to the fact as to whether the respondent no. 1 was indeed senior, upset the promotion orders. From a reading of paragraph no. 12 of the order of the learned Presiding Officer, it is apparent that the learned Presiding Officer was dealing with the contention of the management that it has filled in the post of head of one of the schools by direct recruitment. A xerox copy of the paper cutting, which would show that the post of Head Master was advertised by the school management was indeed produced. However, the learned Presiding Officer faults the management for not obtaining prior permission of the Education Officer. In paragraph no. 13 of the order of the Presiding Officer, the School Tribunal accepts the case of the respondent no. 1 that the respondent nos. 4 to 6 are juniors to him. That itself proves that the teacher-respondent no. 2-Shaikh Shabbir Shaikh Ajij was senior to the respondent no. 1-Ravindra Deoram Patil. That also further proves that the respondent no. 3-Marathe was appointed as head of the Panvel school directly. These conclusions can be safely recorded and by relying on the case set up by the respondent no. 1. The Tribunal and the learned Single Judge, with respect, failed to do so though duty bound in law. The case of supersession as pleaded by the respondent no. 1 fails substantially. If this is the version based on the seniority list and that of the respondent no. 1 himself and which is accepted by the Presiding Officer, then we fail to see how the Presiding Officer could have disbelieved the management's stand.

The management had specifically urged that the respondent no. 1 had willingly and voluntarily given up his claim. In that regard, the Presiding Officer and

equally the learned Single Judge ought to have taken care to peruse the memo of appeal. The memo of appeal before the School Tribunal itself refers to the version of the respondent no. 1 that he has not given up his claim nor has he given any no objection to the appointments of junior teachers as heads of the schools. There was no reason for the respondent no. 1 to aver in such a way had it not been for the existence of a letter dated 17.10.2006. The Presiding Officer refers to this letter and writing in paragraph no. 15 of his order. He does not hold that the writing is forged or fabricated. He does not render a finding that this letter was not executed at all. He refers to an affidavit filed by the respondent no. 1 that such a letter was never executed nor signed. However, if the management has produced a copy of this letter for perusal of the Presiding Officer, then, the contents of this letter could not have been disbelieved by relying on the Muster Roll of October, 2006. If the teacher was on duty in the school in October, 2006 and the school is in Jalgaon, then according to the Presiding Officer, it is difficult to digest that he would give anything in writing before the Education Officer, Zilla Parishad, Nashik, on 17.10.2006 and voluntarily relinquishing his claim to the post of Head Master.

39. In that regard, we called for the record of the Education Officer and we find that the letter dated 17.10.2006 was addressed to the Education Officer, Zilla Parishad, Nashik. The original letter has been produced before us. That bears the stamp of the Education Officer (Secondary), Zilla Parishad, Nashik.

40. The assertion of the management in its written statement was that Sharad Yashwant Ahirrao was appointed as head of the school with effect from 12.6.2006 and with effect from 2006 itself, Rajendra Vishwanath Patil also was appointed as head of one of the schools. The management asserted that when the post of head of the school namely V.N. Patil Madhyamik Vidyalaya, Igatpuri, became vacant, the management enquired of the respondent no. 1 whether he is willing to accept that post and he refused. He has written a letter to that effect in his own handwriting and in the presence of the Education Officer (Secondary), Zilla Parishad, Nashik. Thus, Rajendra Vishwanath Patil was appointed as head of the school in the year 2006.

41. The Presiding Officer of the School Tribunal lost sight of the fact that there were four schools of the management. The first school was V.N. Patil Madhyamik Vidyalaya, Igatpuri Dist. Nashik. The second was Kirti Vijay Patil Army School, Shirdon Tq. Panvel Dist. Raigad. The third was Nawal Bhau Madhyamik Vidyalaya, Tade Tq. Erandol Dist. Jalgaon and fourth was Saraswati Madhyamik Vidyalaya, Sadawan Tq. Amalner Dist. Jalgaon. The respondent no. 1 was appointed as an Assistant Teacher in this school. He claimed that he was serving as in-charge Head Master for 9 years in that school. The management asked his willingness while making an appointment of head of another school, namely V.N. Patil Madhyamik Vidyalaya, Igatpuri Dist. Nashik. Therefore, not much can be made of the respondent no. 1 being in Jalgaon District on duty in the school, in October, 2006. It is not the respondent no. 1's case that the appointment of

Rajendra Vishwanath Patil was made in October, 2006. The appointment of Sharad Yashwant Ahirrao has been made by the management, and as claimed by it in the written statement, on 12.6.2006. Mr. Rajendra Vishwanath Patil was appointed in a distinct school at Igatpuri in the year 2006. However, neither the learned Presiding Officer nor the learned Single Judge have in their judgment observed that this appointment was made in October, 2006. In these circumstances and when the version of the management was not just this but also that the respondent no. 1 was never interested in serving at any other school as head, save and except Saraswati Madhyamik Vidyalaya, then the learned Presiding Officer and the learned Single Judge ought to have rendered a specific finding of fact that not only the respondent no. 1 gave up his claim to be appointed as head of the school at Igatpuri, but equally at Saraswati Madhyamik Vidyalaya. It is apparent that there was another teacher and senior to the respondent no. 1 namely Shaikh Shabbir Shaikh Ajij and serving at Igatpuri school. It is he who had emphatically stated that he gave up the claim for being appointed as head at school at Igatpuri. He has stated that the respondent no. 1- Ravindra Deoram Patil and Shaikh Shabbir Shaikh Ajij jointly gave up their claims for being appointed as head of the school. In these circumstances, the observation and conclusion of the Presiding Officer and that of the learned Single Judge that the letter dated 17.10.2006 appears to be bogus, is completely incorrect. In that regard, the learned Presiding Officer does not render a specific finding that the letter was got up or fabricated. In his opinion, such a letter could not have been executed when the respondent no. 1 was on duty in the month of October, 2006 in a school at Jalgaon. It is not proper to render a finding like suspicious nature of a document or that it being not genuine or that it not inspiring confidence in such a casual manner. The Presiding Officer and equally the learned Single Judge should have been careful enough to peruse the pleadings, claims and assertions of the parties. The management never said that it made the appointment of Rajendra Vishwanath Patil in June, 2006. It only made a claim and of having appointed Rajendra Vishwnath Patil in 2006. In such circumstances, it was open for the respondent no. 1 to have given up his claim or convey his no objection in the month of October, 2006. There is no finding that this letter is back-dated or that this letter has been obtained by coercion or force. Therefore, when the appointment of Mr. Rajendra Patil was made in the year 2006 and approved in the year 2007, then, such a letter could have been very well addressed. Pertinently, such a letter is addressed not to the management, but to the Education Officer (Secondary), Zilla Parishad, Nashik. The original bears his signature and stamp. If the letter was forged, fabricated or got up, then it would not have borne the signature and stamp of the Education Officer (Secondary), Zilla Parishad, Nashik and it is nobody's case that this signature and stamp was not that of the officer. In such circumstances, we are of the opinion that the respondent no. 1 did execute this letter. He never disputed the execution, but made a vague statement in that regard in his memo of appeal. On being confronted with this letter repeatedly, his stand is inconsistent and shifting. In these circumstances, it was very unsafe to have relied upon his version.

42. The learned Single Judge fell in clear error in upholding a vague and cryptic finding of the School Tribunal in that regard. The learned Single Judge has, with greatest respect, in the impugned order, referred to the argument not only of the management, but of other teachers as well as is apparent from paragraph nos. 12 and 13 of the impugned judgment. They had urged not only for the sake of arguments, but their arguments were backed up by a specific stand in the affidavits in reply filed in the writ petition. Yet, the learned Single Judge, with great respect, has, without making any reference to the pleadings before the Tribunal, the respective stands and equally the contents of the affidavits filed in reply, endorsed the finding of the Presiding Officer. Paragraph no. 19 of the learned Single Judge's order would show that it is a copy by copy endorsement of the finding of the Presiding Officer. That apart, the learned Single Judge holds that there is no contra material brought on record to disturb the Tribunal's finding. That there was ample contra material, not only in the form of the version of the management, but the uncontested and un-controverted stand of the respondent no. 2-Shaikh Shabbir Shaikh Ajij and the respondent nos. 3 to 6, as reflected in their affidavits in reply filed in the writ petition. The learned Single Judge has completely omitted from consideration this vital material and, therefore, his finding cannot be sustained and upheld.

43. Thus, on the above point and namely of the respondent no. 1 having relinquished his claim, we are of the opinion that the judgment and order of the learned Presiding Officer and equally that of the learned Single Judge is vitiated by an error apparent on the face of the record. That cannot be sustained and we are not in agreement with Shri Sapkal that the findings, being concurrent, need not be disturbed or interfered with.

44. In this regard, Shri Sapkal's argument overlooks the fact that an appeal under Clause 15 of the Letters Patent is an appeal in which the judgment of the learned Single Judge can be questioned and challenged on the ground that it is vitiated by obvious and patent error of law and apparent on the face of the record so also perversity. The same can be questioned on the ground that vital and material documents and piece of evidence have been omitted from consideration. Thus, on the ground of errors of law apparent on the face of the record and perversity, it is open for the Appellate Bench to interfere with the judgment of the learned Single Judge. We are only abiding by that principle and applying a settled test in upsetting and reversing the view of the learned Single Judge. If any authoritative pronouncement is required to be referred, then, it would be sufficient to refer to the judgment of the Hon''ble Supreme Court reported in the case of Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others, .

45. The learned Single Judge as also the Presiding Officer have completely failed to take into consideration the fact that the original respondent no. 1-Ravindra was working at Saraswati Madhyamik Vidyalaya. That was a school situate at village Sadawan Tq. Amalner Dist. Jalgaon. He claimed that he was appointed

there as an Assistant Teacher in the year 1998. He claimed that he was appointed as an in-charge head for 9 years. He himself states that the school got 100% aid and was thus entitled to have a permanent head or principal from June, 2008. However, if it was entitled to aid and equally bound by the Government rules and regulations, then the post of head of this school was reserved for scheduled caste. That there were four schools of the same management. It is not the case of the parties that the post of head of the school namely Saraswati Madhyamik Vidyalaya was an isolated or a single post and which could not have been reserved. They proceed on the agreed basis that the post of head of the school could be reserved for scheduled caste or scheduled tribe by reservation policy and Roster system as the management was managing more than one school. In that regard, the Tribunal as also the learned Single Judge completely overlooked the fact that the 40 Point Roster reserved the post of head of Saraswati Madhyamik Vidyalaya for scheduled caste. That was by applying the settled principle and Rule. If by Roster Point, the post of head of this school was to be filled in by a scheduled caste candidate, then, only a scheduled caste teacher and senior-most in that category, was eligible for being appointed. The respondent no. 1 is not a scheduled caste candidate. The respondent no. 1, therefore, could not have been appointed as a head of Saraswati Madhyamik Vidyalaya of which he was in-charge Head Master for 9 long years, as claimed by him. That he was interested in the post of head of this school is thus apparent. He was aggrieved and agitated by the fact that a scheduled caste teacher was appointed as head of the school and that teacher was junior to him in service. Thus, there was no supersession or denial of promotion in such a case at all. The written statement of the management before the Presiding Officer and equally of all teachers jointly shows that the only eligible candidate for this post was the senior-most scheduled caste teacher namely the respondent no. 6 Shyamkumar Bhimrao Jadhav. He was appointed with effect from 1.6.2009. It is only when his appointment was approved that the respondent no. 1 approached the School Tribunal. This also shows that he was not interested in working as head of other three schools, but desired to be appointed as a permanent head of Saraswati Madhyamik Vidyalaya. Having found that he could not be appointed on that post that the respondent no. 1 tried to reopen the promotions and appointments of all others and put them in issue before the Tribunal. He approached the Tribunal only in the year 2009 and questioning the appointments made in the years 2005 and 2006. Therefore, though the appeal could not have been thrown out on the ground of delay and laches or limitation, but the Tribunal as also the learned Single Judge could not have awarded or granted any relief, assuming that the appeal was competent, so as to set at naught the promotions made four years back. This has upset not only the appointments of the affected teachers, but created a peculiar problem for the management as well. The management could not have deviated from the rule of law and in appointing a head of the school by reservation. That the management made appointment to one such post of head of school by reservation is apparent and clear. Even that appointment is set at naught when it was in accordance with law. As a result of the above discussion,

we find that not only the respondent no. 1 could not have been granted any relief assuming that his appeal was competent, maintainable, as he raised his grievance as an afterthought. We are of the opinion that on the above count namely that the respondent no. 1 has relinquished his claim voluntarily and secondly in an appeal filed belatedly, the appointments of heads of schools made four years prior to the appeal being filed, could not have been set aside without any justifiable grounds, that these Letters Patent Appeals deserve to succeed. They accordingly succeed. The order passed by the Presiding Officer of the School Tribunal on 17.7.2010, which was challenged and impugned in Writ Petition No. 8744/2010, is quashed and set aside. The Rule in that writ petition is made absolute accordingly. Consequently, the judgment and order of the learned Single Judge dated 6.9.2011 dismissing the Writ Petition No. 8744/2010 is quashed and set aside. There shall be no order as to costs. The record and proceedings be returned to Shri S.G. Karlekar, learned AGP.

In view of above order, pending civil applications, if any in these appeals, stand disposed of.