
(1998) 11 BOM CK 0114
In the Bombay High Court
Case No : Writ Petition No. 478 of 1988

S.D. Kangutkar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Citation : (1999) 101 BOMLR 512

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Judgement

S.H. Kapadia, J.—By this Writ Petition, Petitioner seeks to challenge the Resolution dated 17.9.1980 (Exhibit-B to the Petition) and also the action of Respondents Nos. 2 and 3 in not appointing the Petitioner to the post of the Principal on the ground that the post stood reserved and was not available to the Petitioner as he belonged to the open category.

2. The facts giving rise to this Writ Petition, briefly, are as follows.

3. Petitioner has been working in the School since 17.7.1963 whereas Respondent No. 4 has been working in the School since 5.7.1980. By an order passed by Respondent No. 2 (Education Officer), Respondent No. 4 came to be appointed to the post of the Principal in view of Government Resolution dated 17.9.1980.

4. The short point which arises for consideration in the present case is: whether the reservation was permissible to single isolated post cadre? In view of the Judgment of the Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, , the point is no more res integra. By the said Judgment, the Supreme Court has held that no reservation is permissible in single isolated post cadre. In the present case, it is not in dispute that the post of the Principal in question is an isolated post. Under the above circumstances, the order passed on 21.12.1988 by Respondent No. 2 is required to be set aside.

5. However, the question still remains with regard to payment of back wages. Normally, the Petitioner would be entitled to receive the back wages from the date when the Petitioner was entitled to be appointed to the post of the Principal. However, in the present case, Respondent No. 4 Shri Mane was appointed by the Management on 17th September, 1987 pursuant to the Order passed by the Division Bench in Writ Petition No. 3210 of 1987. This is also reflected in the letter dated 21.12.1987 addressed by Education Officer to the Chairman of the Society. Respondent No. 4 has since then resigned in August, 1998. Under the above circumstances, the following Order is passed :

ORDER

Rule is made absolute in terms of prayer Clauses (a)(b)(c) with a direction to the Respondents to appoint the Petitioner as a Principal of the Institution by giving him deemed date for the purposes of increment and for the purposes of calculating the retirement benefits to which the Petitioner would be entitled to as the Principal. The said deemed date is fixed at 17.9.1987 (See letter dated 21.12.1987 - Exhibit A to the Petition). However, the Petitioner would be entitled to receive the actual full salary as the Principal on the above basis with effect from 26.8.1998 on which date the Respondent No. 4 tendered his resignation.

Accordingly, Writ Petition stand disposed of with no order as to costs.

Issuance of Certified Copy is expedited.