
(2019) 12 BOM CK 0117
In the Bombay High Court
Case No : Writ Petitions No. 410, 808 Of 2019

Shubhangi Manerkar And Ors

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Goa School Education Rules, 1986 — Rule 78, 78(a), 78(b), 86
Goa School Education (Amendment) Rules, 2007 — Rule 78

Citation : (2019) 12 BOM CK 0117

Hon'ble Judges : M.S. Sonak, J; M.S. Jawalkar, J

Bench : Division Bench

Advocate : S.D. Lotlikar, J. Karn, V. Rodrigues, V. Naik, S. Mangeshkar, Neha Kholkar, Vivek Rodrigues, Vithal Naik, Neha Kholkar

Final Decision : Disposed Of/Dismissed

Judgement

M.S. Jawalkar, J

1. Heard Learned Counsel for the parties.
2. Learned Counsel for the parties agree that both these Petitions can be disposed of by a common Judgment and Order. Since any decision in Writ Petition No.410/2019 is bound to affect the decision in Writ Petition No.808/2019, it is only appropriate that both these Petitions are disposed of by a common Judgment and Order.
3. Rule in both these Petitions. Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.
4. The Petitioner in Writ Petition No.410/2019, Ms. Shubhangi Manerkar (Shubhangi) was appointed as a teacher at the Kamakshi High School, Shiroda, Ponda, Goa (said School) on 19th June, 1985. On completion of 12 years service as a teacher, the School granted her Senior Scale. On completion of 24 years service as a teacher, the School granted her selection scale. In the seniority list finalised by the School on 28th March, 2018, Shubhangi's name appears at serial

No.1, she being the senior most teacher, having completed 33 years service as on the date of finalisation of the seniority list. It is necessary to note at the very outset that for all these 33 years' of service, there was no complaint of whatsoever regards the conduct of said Shubhangi in the matter of discharge of her duties as a teacher.

5. On 31st July, 2018, then incumbent Headmaster Shri P.V. Dessai retired and there was a regular vacancy to the post of Headmaster at the said School. On the same date, Shubhangi was appointed as Incharge Headmistress to function as such, with effect from 1st August, 2018. This was pending the constitution of the Departmental Promotion Committee (DPC) in order to make regular promotion to the post of Headmistress.

6. Again, it is pertinent to note that until this date, there was absolutely no allegation of any type of misconduct against said Shubhangi. This is important because Rule 86 of the Goa School Education Rules, 1986 (said Rules) which deals with filling up of vacancies, inter alia, provides that the vacancy to the post of Headmistress shall be filled up by promotion subject to the eligibility conditions prescribed in Rule 78. While filling up of these posts, the managements shall first explore the possibility of selecting the senior most teacher from the next below category indicated in column 5 of Table under Rule 78. While making such selection, the management shall also give very careful consideration and shall select the best qualified and most competent person among those available for selection to the post. Seniority shall be the first criteria subject to fitness and merit. If the claim of a senior eligible teacher is by-passed, the reason for the same in writing will have to be recorded in the minutes by the promotion committee. The claim of the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons.

7. In terms of Rule 86 of the said Rules, therefore, in all probabilities, Shubhangi was bound to be promoted on regular basis to the post of Headmistress subject, no doubt, to something adverse being found against her.

8. The Deputy Director of Education, on 23rd July, 2018, issued an NOC for filling up the post of Headmistress from the senior most eligible teachers. Possibly since the School Management was not taking steps to convene the DPC, Shubhangi addressed a communication dated 19th September, 2018 to the Director of Education, requesting the Director of Education to look into the issue of convening of the DPC, at the earliest. The Director of Education, by a communication dated 5th October, 2018, instructed the School Management to fill up the post of Headmistress within 45 days by convening a regular DPC as per the norms laid down under the Goa School Education Rules, 1986. The Director of Education had also issued a circular dated 5th January, 2011 regarding filling up of post of Headmasters by adhering to the rule of seniority.

9. The School Management, possibly irked by the correspondence in the form the communication dated 19th September, 2018, initiated by Shubhangi with the

Director of Education, served upon Shubhangi two charge memoranda dated 3.11.2018 and 21.2.2019, containing some charges in respect of the discharge of her duties as Incharge Headmistress during the brief period between 1.8.2018 and 21.2.2019. From the perusal of the two charge memoranda, it is very obvious that the School Management is conscious of the rule of seniority in the matter of making of promotions to the post of Headmistress and also conscious that there was absolutely nothing adverse against the said Shubhangi for almost 33 years of service discharged by her in the same school was now bent upon creating some material in order to deny her promotion on regular basis to the post of Headmistress.

10. Shubhangi replied to the charge memoranda denying the charges and specifically pointing out that all this was being done solely to deny the Petitioner regular promotion to the post of Headmistress. However, since the School Management appeared to be in a tearing hurry to proceed with the inquiry into the two charge memoranda, the Petitioner instituted Writ Petition No.410/2019 to quash the charge memoranda and the inquiry commence in pursuance thereof.

11. During the pendency of this Petition, taking cognizance of the peculiar facts and circumstance, this Court made an interim order dated 16th September, 2019, directing the DPC to take up the cases of all eligible candidates falling within the zone of consideration for promotion to the post of Headmaster/Headmistress to the vacancy which had arisen on 31st July, 2018 consequent upon retirement of Shri P. V. Dessai. In the order dated 16th September, 2019, it was made clear that the DPC should have due regard to the provisions of Rule 86 of the said Rules.

12. The nominee of the Director of Education, who was one of the components of the DPC, was directed to file an affidavit, including the minutes of the DPC which was convened on 27th September, 2019, were produced before us in a sealed cover. Upon opening the same, we noted that the two School Management Committee Members had recommended promotion of Respondent No.5 i.e. Shri Prakash Naik for promotion to the post of Headmaster though the said Prakash Naik is admittedly junior to the Petitioner.

13. The two School Management Committee Members, however, reasoned that since the previous Headmaster Shri P.V. Dessai was holding a B.Ed. Degree, the present vacancy was required to be filled in by a teacher who held a diploma i.e. D.Ed. They also reasoned that even though the Petitioner was senior and possessed Bachelor qualification i.e. B. Ed, Respondent No.5 who was junior and possessed only a D. Ed. qualification, deserves to be recommended for promotion to the post of Headmaster in preference to Petitioner. The nominee of the Director of Education, however, recorded his express dissent and recommended the name of the Petitioner for promotion to the post of Headmistress by applying the provisions of Rule 86 of the said Rules.

14. The Petitioner was then permitted to amend the Petition. By amending the

Petition, the Petitioner has applied for an appropriate writ to reject the recommendation of the two School Management Committee Members on the DPC and to promote the Petitioner to the vacant post of Headmistress. In the meanwhile, since Respondent No.5 came to be appointed as Incharge Headmaster, in place of the Petitioner, the Petitioner also applied for a relief to restore her position as Incharge Headmistress. Relief to quash and set aside the order dated 19th February, 2019, appointing the Inquiry Officer to inquire into the charge memoranda dated 3rd November, 2018 and 21st February, 2018 was also applied for.

15. Though the prayer clauses in Writ Petition No.410/2019 are not properly worded, in sum and substance the Petitioner seeks quashing and setting aside of the two charge memoranda issued against her on the eve of her consideration to the post of Headmistress and for an appropriate writ to promote her as a Headmistress on regular basis by setting aside the recommendations of the two School Management Committee Members on the DPC, which are at variance with the recommendations made by the nominee of the Director of Education.

16. Writ Petition No.808/2019 has been instituted by the School Management, seeking withdrawal of letter dated 1st March, 2019 issued by the Director of Education. This letter dated 1st March, 2019 withdraws the earlier letter dated 23rd January, 2019, in terms of which the School Management was directed to proceed to convene the DPC, but to keep the minutes of the DPC in a sealed cover, till the conclusion of the inquiry into the charge memoranda issued to Shubhangi-Petitioner in Writ Petition No.410/2019. Mr. Naik, learned Counsel for the Petitioner in Writ Petition No.808/2019 agreed that in case the reliefs of quashing the two charge memoranda as prayed for in Writ Petition No.410/2019 were to be granted, then, the reliefs in Writ Petition No.808/2019 would be rendered infructuous.

17. Mr. Naik, however, submitted that if the two charge memoranda are to be sustained, then, the DPC was obliged to adopt the sealed cover procedure until the conclusion of the inquiry against Shubhangi. He relied upon the decision of the Hon'ble Supreme Court in the case of Harsh Kumar Sharma, IFS vs. State of Punjab and another(2017) 4 SCC 366 to urge that what is crucial in such matters is, the date on which the DPC meets and not the date on which the vacancy to the post of Headmaster may have arisen. He submits that since the date on which the DPC met or was to meet, admittedly, inquiries into the two charge memoranda were pending, the Director of Education had quite correctly permitted adoption of the sealed cover procedure. He submits that thereafter, the Director of Education, clearly erred in withdrawing its communication dated 23rd January, 2019, dispensing with the adoption of the sealed cover procedure. Mr. Naik submits that the principles of natural justice were also not followed while withdrawing the letter dated 23rd January, 2019. For these reasons, Mr. Naik submits that the impugned order dated 1st March, 2019 is liable to be set aside.

18. Mr. Lotlikar, learned Senior Advocate for the Petitioner submits that the two charge memoranda issued to the Petitioner have been issued malafide and only to deny the Petitioner opportunity of being considered for promotion to the post of Headmistress. He points out that for almost 33 years the career of the Petitioner Shubhangi was blemishless. He points out that the charges sought to be foisted upon her at such a belated stage, are totally frivolous and in fact vexatious. He submits that in this manner, the School Management cannot deprive the senior-most teacher promotion to the post of headmistress. He points out that various averments in the Petition will demonstrate frivolity of the charges belatedly included in the charge memoranda and submits that continuance of the inquiry proceedings will amount to virtually abuse in the facts and circumstances of the present case.

19. Mr. Lotlikar submits that the vacancy in the present case arose on 31st July, 2019. Therefore, the DPC even if it meets later, is required to assess the position on the date on which the vacancy arose. He submits that the School Management, in order to deny proper consideration to the candidature of any employee, still in the first instance delayed holding of the DPC and in the meanwhile, initiated disciplinary proceedings against such employee on frivolous grounds, simply to deny such employee proper consideration for promotion. Mr. Lotlikar submits that this precisely what has happened in the present case.

20. Mr. Lotlikar submits that Rule 86 of the said Rules is quite clear, in that seniority has to be the main criteria. He submits that Rule 86 commences with the non obstante clause qua Rule 78 of the said Rules. He submits that in case of any conflict between Rule 86 and Rule 78, it is the former rule which will have to prevail. He submits that 2007 amendment relied upon by the School Management nowhere provides that first vacancy has to be filled in from among the teachers having only diploma qualification. He submits that the Circular dated 27th August, 2007 is only the opinion of the Director of Education and the same is not quite relevant when it comes to interpretation of statutory rules.

21. Without prejudice, Mr. Lotlikar submits that even if the Circular dated 27th August, 2007 is required to be interpreted in the manner which the School Management seeks to interpret, it is apparent that the first vacancy after coming into force of the amendment arose in 2009, at which stage, the 5th Respondent claims that he was eligible for consideration to this vacancy. The candidate having B. Ed. qualification came to be appointed. Respondent No.5 neither protested, nor challenged such appointment. Second vacancy arose on 20th January, 2010, when again a teacher with B. Ed. qualification came to be promoted. Third vacancy arose on 13th June, 2013 when, again, an employee with B. Ed. qualification came to be promoted. On this occasion also, the 5th Respondent neither protested, nor challenged such appointment. The vacancy which has arisen on 31st July, 2018 is, therefore, the fourth vacancy. Accordingly, this vacancy has to be filled in by an employee having B. Ed. qualification. Mr. Lotlikar, therefore, submits that even on the basis of the

Circular dated 27th August, 2007, it is the Petitioner Shubhangi who is required to be promoted to the post of Headmistress.

22. Mr. Rodrigues, learned Counsel for the School Management in Writ Petition No.410/2019 and Mr. Naik, learned Counsel for the Petitioner-School Management in Writ Petition No.808/2019, submit that there is no mala fide in the charge levelled against Shubhangi. They submit that in respect of the second charge memorandum, there is CCTV footage available which indicates that Shubhangi was lax when it came to supervision duty at the examination. They pointed out that the acts of misconduct, if proved, will amount to misconduct in terms of the said Rules. They point out that the circumstance that there was no misconduct alleged against Shubhangi for 33 years is quite irrelevant consideration, because it is always possible for an employee to commit misconduct after 33 years of service. They point out that in fact, in the year 2007, a memorandum had been issued to the Petitioner. Therefore, they submit that the conduct of the Petitioner for the last 33 years cannot be said to be blemishless. They submit that there is no case made out for quashing the charge memoranda.

23. Mr. Rodrigues and Mr. Naik rely on Harsh Kumar Sharma, IFS (supra) to submit that the sealed cover procedure is required to be followed when on the date the DPC meets, there is charge memorandum pending inquiry against any employee within a week of consideration.

24. Mr. Rodrigues and Mr. Naik point out that for the vacancies which arose on the previous three occasions, the 5th Respondent was not at all eligible to be considered for promotion to the post of Headmaster, because on all the three occasions, he did not fulfill the requirement of 7 years post-training experience. They point out that Respondent No.5 was appointed as a trained Graduate Teacher between the years 1994 - 1996, but, thereafter, was declared surplus and had to serve as an untrained teacher. Thereafter, Respondent No.5 was appointed as trained Graduate Teacher in the year 2013. They point out that it is only the experience gained by the 5th Respondent during the period 1994 - 1996 and from 2013 - 2018 i.e. the post training experience of 7 years which renders the 5th Respondent eligible for promotion to the post of Headmaster. They submit that it is for this reason that they propose to take into consideration the candidature of the 5th Respondent to the promotion to the post of Headmaster.

25. Mr. Mangueshkar, learned Counsel for Respondent No.5-Prakash Naik, submits that Respondent No.5 was eligible for promotion when the vacancies of 2009, 2010 and 2013 arose to the post of Headmaster. He submits that there was injustice on the part of the School Management in not considering his candidature on the three occasions. He, therefore, submits that if, on the fourth occasion the School Management proposes to set right this injustice, the action of the School Management may not be interfered with by this Court. He submits that Respondent No.5 obtained the decree of graduation (B.A.) in 1988. He obtained training qualification i.e. Diploma in Education (D.Ed.) in 1984.

26. Accordingly, Mr. Mangueshkar submits that Respondent No.5 fulfilled the requirement prescribed in Rule 78 even when 2009 vacancy arose. He submits that Rule 78 does not contemplate experience as a trained graduate teacher, but only contemplates post-training experience. He submits that the 5th Respondent obtained training qualification in the year 1984 itself and, therefore, had almost 32 years experience post-training and 28 years experience after obtaining graduation i.e. B.A. qualification. He points out that the post of Trained Graduate Teacher involves no difference in duties, as compared to Assistant Teacher, but the difference is in the pay scale only. For all these reasons, Mr. Mangueshkar submits that Writ Petition No.410/2019 may be dismissed.

27. In order to evaluate the rival contentions, it is necessary to state at the very outset that the Petitioner-Shubhangi who was appointed as a Teacher on 19th June, 1985 has, on the date when the vacancy arose to the post of Headmaster on 31st July, 2018, completed 33 years of totally blemishless service. In fact, on this basis, the School Management with effect from 1st August, 2018 appointed her as Incharge Headmistress.

28. Since the School Management in breach of the provisions of the said Rules, was not intent upon holding the DPC or to make regular promotion to the post of Headmistress, the Petitioner Shubhangi addressed a communication requesting the Director of Education to look into the issue of convening of DPC of the School Management at the earliest. This letter was, obviously, in the context of communication dated 5th October, 2018, issued by the Director of Education instructing the School to fill up the post of Headmaster within 45 days by convening regular DPC as per the norms laid down under the said Rules.

29. It is this letter of 19th September, 2018 addressed by the Petitioner Shubhangi to the Director of Education which has invited wrath of the School Management upon her. The Petitioner Shubhangi who has had blemishless service of 33 years at the School, was suddenly served with charge memorandum dated 3rd November, 2018. The Memorandum issued to the Petitioner way back on 19/7/2007 had merely alleged that despite the due intimation, it was found that Shubhangi was absent for the P.T.A. General Body meeting held on 15th July, 2007. There is yet another Memorandum dated 14th August, 2007 on record which alleges that Shubhangi did not attend her regular periods during 10.55 a.m. to 11.30 a.m. in Std. Xth-A on 13th and 14th August, 2007. These memoranda were responded to by the Petitioner. Ultimately, though the charge memorandum dated 27th October, 2007 was issued to the Petitioner, no action as such was taken against the Petitioner. There is nothing on record to establish that charges were established in course of any duly constituted inquiry.

30. The charges levelled against the Petitioner-Shubhangi pertain to the period between 1st August, 2018 and 3rd November, 2018 i.e. a period of hardly 3 month. The charge memorandum dated 3rd November, 2018 refers to the following charges:

(I) That the Petitioner Shubhangi concealed and embezzled the application for leaving certificate dated 11/9/2018 made by Ms. Kanchan Chari of her son Master Vedang;

(II) That the Petitioner Shubhangi, without obtaining prior sanction of leave from the management absented herself from duties for 3 days w.e.f. 19th October, 2016 to 22nd October, 2016;

(III) That the Petitioner Shubhangi forwarded communication of the Director of Education without going through proper channel in respect of constitution of a DPC. (This is in the context of the letter dated 19th September, 2018 addressed by the Petitioner Shubhangi to the Director of Education, requesting for convening of DPC);

(IV) That the Petitioner Shubhangi allowed one driver and one attendant to erase their signatures on the muster roll;

(V) That the Petitioner Shubhangi refused to accept communication from the Management dated 29th September, 2018; and

(VI) That the Petitioner Shubhangi compromised the interest of School Administration by allowing the P.E. Teacher Mr. Nitish Jangli to attend the 51st State Senior Union Athletic Competition at Bambolim on 25th August, 2018.

31. The Petitioner Shubhangi submitted a detailed response dated 15th November, 2018, denying the charges. The charges, according to us, are absolutely frivolous and foisted upon the Petitioner Shubhangi solely for creation of grounds for denying the promotion to the post of Headmistress. It is inconceivable for the Petitioner Shubhangi, who has at blemishless service of 33 years, would even think of 'concealing' or 'embezzling' of the application for leaving certificate made by one of the parents. There is ample explanation for addressing the communication dated 19th September, 2018 to the Director of Education. The Director of Education had, in fact, instructed the School to complete the process of regular appointment to the post of Headmaster within 45 days from the date of the vacancy. The School Management was dragging its feet. It is in these circumstances that the Petitioner Shubhangi addressed the communication dated 19th September, 2018, requesting the Director of Education to look into the inaction in the matter of convening the DPC. There is no misconduct whatsoever involved in the address of any such communication to the Director of Education.

32. Again the allegation that the Petitioner Shubhangi permitted two employees i.e. a driver and an attendant to erase the muster roll, is also totally frivolous and foisted upon the Petitioner only to deny her promotion to the post of Headmistress. Same goes for the allegation that the Petitioner Shubhangi refused to accept some communication from the Management. To say that the Petitioner Shubhangi has compromised the interest of the School administration by allowing the P.E. Teacher to attend the 51st State Senior Union Athletic

Competition at Bambolim, is also too far-fetched. In any case, this can never be construed as any misconduct. The charge of absence without leave has to be viewed from the context that the Petitioner Shubhangi was herself the Incharge Headmistress.

33. On the basis of such charges, there was really no question of issuing any charge memorandum to the Petitioner Shubhangi. The circumstances in which the said charge memorandum has been issued, make it apparent that the School Management simply wishes to deny the Petitioner promotion to the post of Headmistress and in order to achieve this objective, this charge memorandum came to be issued. The charge memorandum contains charges which neither constitute any serious misconduct and, in any case, contains charges which are extremely frivolous. In these circumstances, to allow such charge memorandum to stand, would amount to conferring premium upon the School Management, which premium, the School Management does not deserve. This charge memorandum is, therefore, required to be quashed and is, hereby, quashed.

34. The School management perhaps, realising that there was no substance in the charge memorandum dated 3rd November, 2018 and such charge memorandum was also questioned by the Petitioner before this Court, issued yet another charge memorandum under cover of a letter dated 21st February, 2019. In fact, the charge memorandum is dated 28th January, 2019.

35. In this second charge memorandum, it was alleged that the Petitioner Shubhangi was preoccupied in checking some papers while sitting at the teachers table during supervision of examination. It was alleged that the Petitioner failed to provide supplement papers to students at their desk and letting the students to move from their desks to seek clarifications and queries from the Petitioner; that the Petitioner allowed one of the students to exist the examination hall without inquiring about the urgency; that after the examination time was completed, the students were made to submit the answer sheets at the teachers' tables and that one of the students was permitted to continue writing the answer sheet beyond the permissible time.

36. Mr. Rodrigues and Mr. Naik for the School Management pointed out, with vehemence that the allegations are backed by CCTV footage. According to us, looking to the circumstances in which the successive charge memoranda are being issued to the Petitioner Shubhangi, it is apparent that there are no bonafides involved in the process. Besides, even the charges according to us are quite frivolous. On the basis of such charges, the Petitioner Shubhangi cannot be denied the promotion to the post of Headmistress. All this has to be seen in the background that the Petitioner has had 33 years of blemishless service. All these charges have surfaced on the eve of the Petitioner's claim for promotion. The charges, according to us, are quite frivolous and deserve to be quashed in the facts and circumstance of the case.

37. Once the two charge memoranda are quashed, there is no question of

granting of any relief to the School Management in its Writ Petition No.808/2019. This petition proceeds on the basis that as long as the inquiry into the two charge memoranda is pending, the DPC will have to adopt the sealed cover procedure and the directions of the Director of Education not to follow the seal cover procedure is, therefore, illegal. However, once the charge memoranda are quashed, obviously, there is no question of following any sealed cover procedure. Accordingly, Writ Petition No.808/2019 instituted by the School Management is required to be dismissed and is, hereby, dismissed.

38. In order to appreciate the contention based upon the circular dated 27th August, 2007, reference is necessary to to be made to the relevant extract of Rule 78, which deals with the appointment of Headmaster of Secondary School, Rule 86 and the Circular dated 27th August, 2007 itself. Rule 78 reads thus:

"78. Minimum qualifications for the appointment of teaching staff. - The qualifications for the recruitment/ promotion of the teaching staff in the recognized schools, whether aided or not shall be as prescribed in the following table which is subject to change in future on the recommendation of the Advisory Board or the directives of the Central Government to fall in line with the National Educational Policy (ii)"

39. The relevant extract from Rule 78 of the said Rules reads as follows:

Sr. No.

Name of the post

Qualifications for Direct Recruits Qualifications

Upper age Qualification for promotions.

limit.

Pay scales subject to revision.

1

2

3

4

5

6

2

Headmasters of Secondary Schools

40 years

(i) A Master's Degree from a recognised University;

(ii) Degree in Education/Teaching from a recognised University or equivalent;

(iii) At least 5 years teaching experience after graduation in a secondary school or a training institute, out of which at least 3 years teaching experience after training;

(a) A Degree from a recognised University; and a Degree in Education / Teaching from a recognised University, with 7 years teaching experience as an Assistant Teacher in the school after graduation out of which 5 years should be post B. Ed./ B. T. experience; OR

(b) A Degree from a recognised University and Diploma in Education (2 yrs. course) of any recognised University or a diploma sanctioned as equivalent by the Govt. with 9 years teaching experience in the school after graduation out of which at least 7 years should be post training experience];

50 % of the posts shall be filled from amongst persons having qualifications specified as at (a) above and 50% of the posts shall be filled from amongst persons having qualifications specified as at (b) above.

2000-3500

6

Asst. Trs./Jr. instructtoys (i. e. Trained graduate Trs.)

30 years

(i) A degree from a recognised University.

(ii) A Degree in Education/Teaching from a recognised Univesity

(a) Undergraduate teachers working in the secondary schools having 3 years service in the grade and possessing qualifications prescribed for direct recruits in column no. 4 OR Undergraduate teachers possessing a Deree from a recognised university and a Diploma in Education (2 years course) and having 5 years experience, out of which at least 3 years experience after obtaining Diploma in education.

50 % of the posts shall be filled from amongst persons having qualifications specified as at (a) above and remaining 50% of the posts shall be filled from amongst persons having qualifications specified as at (b) above.

1400 - 2600

40. The portion of Rule 78 provides that 50 % of the posts shall be filled from amongst persons having qualifications specified as at (a) above i.e. B. Ed. qualification and 50% of the posts shall be filled from amongst persons having qualifications specified at (b) i.e. D. Ed. qualification, was introduced vide amendment which came into force on 19th July, 2007. It appears that a query was raised by all Goa Secondary School Teachers' Association and some of the

School Managements regarding filling up of the first vacancy (promotional) pursuant to the 2007 amendment. The Director of Education, vide Circular dated 27th August, 2007, purported to answer this query in the following terms :

"While filling up the first vacancy arisen (promotional) after the said amendment came into force, the Management should give preference to senior most eligible employee having qualifications specified as at (b) against Sr. No.2 and Sr. No.6 in column 5 in the Table under amended Rule 78 of the Goa School Education (Amendment) Rules, 2007. In regard to further vacancies the prescribed ratio of 50% shall be scrupulously followed".

41. According to us, in absence of any specification for Rule 78, it was not ordinarily open to the Director to introduce such an interpretation to a statutory rule. At the highest, the circular dated 27th August, 2007, which is in fact in the nature of a reply to the query raised by the all Goa Secondary School Teachers' Association, might be the interpretation of the said Director in the matter. It is settled position in law that such interpretations by an officer, never bind the Courts of law, when called upon to interpret the statutory provisions.

42. In the present case, however, we are really not required to go into the issue as to whether the circular or the clarification issued by the Director of Education is indeed in consonance with the statutory rules or not. This is because even if we go by the clarification contained in the circular dated 27th August, 2007, there is no case made out to deny the relief to the Petitioner. Independently, the nominee of the Director of Education on the DPC in his dissent note has also held that the Petitioner should not have been denied the promotion on the basis of 2007 amendment, but was entitled to be recommended for promotion on the basis of Rule 86 of the said Rules.

43. There is no doubt whatsoever that after 2007 amendment came into force with effect from 19th July, 2007, the first vacancy to the post of Headmaster arose a little before 10th July, 2009. To this post, Shri Pralhad Joshi, who had B. Sc., B. Ed. Qualifications, came to be promoted. This means that the candidate having qualification at Rule 78(a) came to be promoted. It is the case of the 5th Respondent that he was very much eligible to be promoted to the post of Headmaster on the basis of the 2007 amendment in the year 2009 itself. However, the 5th Respondent neither protested, nor challenged his non-promotion or promotion of Shri Pralhad Joshi.

44. The second vacancy after 2007 amendment was required to be filled in by a candidate having qualification at Rule 78(a) i.e. B.Ed. qualification. Indeed this vacancy was filled in by promotion to Mr. Alex Noronha, who had B.A. D. Ed. qualifications on 20/1/2010. On this occasion, the 5th Respondent really had no occasion to protest and, therefore, rightly did not protest or challenge the promotion of Alex Noronha.

45. The third vacancy after 2007 amendment arose little before 13th June, 2013 which, according to the interpretation putforth by the School Management, the

clarification in the circular dated 27th August, 2007 about the vacancy to be filled in by a candidate having qualification at Rule 78(b) i.e. having D. Ed. qualification. However, even this vacancy was filled in by promotion of Shri Padmanath Desai, who had B. Sc. B. Ed. qualification. Again, even on this occasion, the 5th Respondent neither protested, nor challenged the promotion of Shri Padmanath Desai.

46. The fourth vacancy, with which we are today concerned, arose on 31st July, 2018 upon retirement of said Shri Padmanath Desai. In terms of 2007 amendment, as well as the Circular dated 27th August, 2007, this vacancy has to be filled in by an employee having qualifications prescribed at Rule 78(a) i.e. by an employee having B. Ed. qualification. The Petitioner has B. Ed. qualification in contrast to the 5th Respondent who has only D. Ed. qualification. Therefore, even accepting the interpretation put forth by the School Management, and the 5th Respondent upon 2007 amendment or going by the circular dated 27th August, 2007 it is very clear that the vacancy which has arisen on 31st July, 2018, is a vacancy which will have to be filled in by an employee having qualification prescribed under Rule 78(a) i.e. B. Ed. qualification. Therefore, it is very clear that this is a turn of the Petitioner to be promoted to the post of Headmistress. Recommendation to the contrary made by the nominees of the School Management, is contrary to the provisions of the said Rules, as well as the circular dated 27th August, 2007 upon which the School Management relies.

47. The contention of the School Management that Respondent No.5 was eligible to be promoted as Headmaster upto 31st July, 2018 is a contention which is not even agreed to by the 5th Respondent for whose benefit such a contention is raised. Even, otherwise, upon plain reading of the provisions of Rule 78, it is apparent that such contention deserves no merit. As noted earlier, the 5th Respondent obtained D. Ed. qualification in 1984 i.e. prior to his appointment as a teacher in 1985. The 5th Respondent also obtained B.A. qualification in 1988. Thus construed, the 5th Respondent was very much eligible to be considered for the promotion to the post of Headmaster in the year 2009 itself. The 5th Respondent, however, raised no challenges to the appointments made in 2009, as well as 2013. Now that it is the turn of the employee having B. Ed. qualification to be promoted, the 5th Respondent obviously cannot claim consideration. Incidentally, it is necessary to note that the 5th Respondent has not even instituted any petition, but is merely impleaded as the Respondent in the Petition instituted by Shubhangi.

48. The contention of the School Management that the experience in the scale of a trained graduate teacher is all that is required to be considered, really is not required to be gone into in the present Petition at the behest of the School Management. However, if this is assumed as correct, even then in terms of 2007 amendment to Rule 78, as interpreted in the Circular dated 27th August, 2007, upon which the School Management itself placed heavy reliance, the vacancy which has arisen on 31st July, 2018, is required to be filled in by an employee

having B. Ed. qualification. Therefore, even assuming that Respondent No.5 has acquired eligibility only in the year 2018, it cannot be said that Respondent No.5 is now required to be considered for the fourth vacancy since the coming into force of the 2007 amendment, since, this vacancy has to go to the Petitioner having B. Ed. qualification. Thus, construed, it is quite clear that even this contention of the School Management, which is obviously in the nature of an afterthought to some how or the other deny the promotion to the Petitioner, deserves rejection and is, hereby rejected.

49. Normally, in a matter of this nature, the appropriate direction to issue would be reconvening of the DPC for consideration of the case of the employees who come within the zone of consideration for promotion to the post of Headmaster. However, in this case, the DPC has already been convened. The DPC did not find the Petitioner Shubhangi to be unfit, but her case was not recommended only because two of the Members of the DPC decided that the vacancy which has arisen on 31st July, 2018 was required to be filled in by an employee holding diploma qualification i.e. D. Ed. On this basis, Respondent No. 5 was recommended for promotion. The nominee of the Director of Education put his dissenting note, in which he had disagreed with the recommendation of the two members, and recommended the promotion of the Petitioner Shubhangi taking into consideration provisions of Rule 86 of the said Rules. In these peculiar circumstances, no useful purpose would be served by once again directing reconstitution of the DPC.

50. Besides, the manner in which the School Management has conducted itself in this matter, any direction for reconstitution or reconvening of the DPC will only contribute to delaying the Petitioner Shubhangi's promotion to the post of Headmistress, which she is entitled to in terms of the law. There is absolutely no doubt that the Petitioner Shubhangi is the senior-most teacher in the School, having B. Ed. qualification. In contrast, the 5th Respondent, whose case the School Management seeks to support is both, junior and has only diploma qualification i.e. D. Ed. qualification. For all these reasons, it is only appropriate that directions are issued for promotion of the Petitioner Shubhangi forthwith to the post of Headmistress, on regular basis

51. The School Management, in the present case, not only issued charge memoranda against the Petitioner Shubhangi after she was appointed as Incharge Headmistress, but further without even minimum compliance of the natural justice and fair play, removed her from the position as Incharge Headmaster and appointed Respondent No.5 to the said position. Obviously, such appointment creates no right in any party including, in particular, Respondent No.5. Such an appointment, in any case, is ex facie illegal and deserves to be set aside. Now that the Petitioner Shubhangi is directed to be promoted on regular basis to the post of Headmistress, there is no question of Respondent No.5 insisting upon continuing as Incharge Headmaster which was nothing, but some ad hoc arrangement, pending regular promotion.

52. For all the aforesaid reasons, we dispose of these Petitions by making the following order:

(A) The two memoranda dated 3rd November, 2018 and 21st February, 2019 (or 28th January, 2019) are hereby quashed and set aside. The order appointing Inquiring Officer to inquire into these charge memoranda does not survive and is also quashed.

(B) The Petitioner Shubhangi is directed to be promoted to the post of Headmistress, on regular basis, forthwith. The School Management to issue such orders latest within 7 days from today to take effect from the date of this Judgment and Order. In case the School Management fails to issue such orders, then, the Director of Education to issue such orders, within a period of 7 days thereafter;

(C) The appointment of Respondent No. 5 as incharge is, hereby quashed and set aside. He shall forthwith cease to function as Incharge Headmaster;

(D) The Petitioner Shubhangi shall be entitled to all financial and consequential benefits in pursuance of her promotion to the post of Headmistress on regular basis with effect from the date of this Judgment and Order. The School Management and the Directorate of Education to ensure that all such benefits are duly made available to the Petitioner-Shubhangi.

(E) Writ Petition No.808/2019 is, hereby, dismissed.

(F) In the facts and circumstances of the present case, there shall be no order as to costs.

53. All concerned to act on the basis of authenticated copy of this order.

M.S. Jawalkar, J. M.S. Sonak, J.

At this stage, Mr. Vithal Naik, learned Counsel for the Respondents-School Management prays for stay on the implementation of this order. In the peculiar facts of this case, we do not deem it appropriate to stay our order at the behest of the School Management. Accordingly, the prayer for stay is not granted.