

(2005) 08 BOM CK 0057

In the Bombay High Court

Case No : Letters Patent Appeal No. 73 of 2004 in Writ Petition No. 4499 of 2003

Somsingh Chandrasingh Thakur

APPELLANT

Vs

Head Master, Captain R.M. Oak School and Others

RESPONDENT

Date of Decision : 26-08-2005

Acts Referred:

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

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 3, 3(3), 9(10)

Citation : (2005) 4 ALLMR 610 : (2006) 2 BomCR 673 : (2005) 4 MhLj 946

Hon'ble Judges : R.S. Dalvi, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : V.A. Thorat and Surel S. Shah, for the Appellant; R.S. Apte, for Respondents Nos. 1 and 2, C.R. Sonawane, A.G.P. for Respondent No. 3 and S.M. Oak, for the Respondent

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—This Letters Patent Appeal seeks to challenge the order passed by a Single Judge on 9th February 2004 dismissing the writ petition filed by the Appellant herein to challenge the decision and order of the Respondent No. 5 herein, Presiding Officer of the School Tribunal dated 23rd June 2003. That decision of the Respondent No. 5 dismissed the Appeal filed by the Appellant herein to the School Tribunal wherein he had challenged his reversion from the post of Head Master to that of the Assistant Teacher under the order dated 1st May 2003 issued by the Respondent No. 2, Secretary of the concerned educational institution, whereunder the Respondent No. 4 was promoted to the post of Head Master. Respondent No. 1 to this Appeal is the concerned school through its Head Master and Respondent No. 3 is the Educational Officer (Secondary) of the Zilla Parishad, Thane.

2. The short facts leading to this Appeal are as follows:-

Balak Mandir Sanstha is an Educational Institution situated at Kalyan in District Thane which runs two schools; one is a Marathi Medium School known as Cap. R.M. Oak School and the other is an English Medium School which is started much later in 1995. The Appellant herein joined in this Marathi Medium School as an Assistant Teacher on 2nd July 1982. He belongs to the Thakur Scheduled Tribe. On 3rd December 1984, he was promoted as an Assistant Head Master initially on a probation of two years. His appointment came to be duly approved by the Respondent No. 3 herein on 8th April 1985. Having become an Assistant Head Master, the Petitioner moved in a position higher to the other Assistant Teachers and, therefore, came to be included in what is known as Category "B" to Schedule-F under the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (hereinafter referred to as "the MEPS Rules"). There is no dispute that the conditions of service of the teachers in the 1st Respondent School are governed under the Maharashtra Employees of Private Schools (Condition of Service) Act, 1977 (hereinafter referred to as "the MEPS Act"). It is material to note that at no point of time was the elevation of the Appellant to the post of Assistant Head Master challenged by any of the teachers of the school. It is further material to note that the Appellant had not applied for his elevation.

3. It so happened that the Head Mistress of the said school one Smt. Karmarkar retired on account of superannuation in September 1992. Since the Appellant was the Assistant Head Master, he was eligible to be considered for the post of Head Master. One Smt. Sharayu Duraphe, an Assistant Teacher, at that point of time filed a writ petition in the High Court being Writ Petition No. 3744 of 1992 contending that the post of Head Master was an isolated post and the vacancy could not be filled by promoting a candidate from a reserved category. In this petition, an order came to be passed in terms of the minutes on 9th October 1992 which reads as follows:-

"Minutes of Order

(1) It is agreed that as and when the vacancy of Assistant Head Master occurs in the School, the 5th Respondent may be appointed in the said post Subject to the result of the present Petition and subject to the rights and contentions of the Petitioner in this petition.

Respondent No. 5 and Respondent No. 6 may be appointed as Assistant Head and Head Master of the School if they are entitled as per rules and subject to the result of the Petition.

(2) The Petitioner's present status as supervisor will not be disturbed pursuant to the impugned orders.

Advocate for Respondent Advocate for the Nos. 5 & 6 Petitioner"

The Appellant herein was Respondent No. 6 in that writ petition. Subsequently, the Appellant came to be promoted as the Head Master on 21st November 1992, though initially on probation with effect from 1st October 1992. His appointment

was duly approved by Respondent No. 3 on 11th February 1993. Smt. Duraphe retired later on and thereafter the petition came to be disposed of on 10th February 2003.

4. It is at this stage that the 2nd Respondent institution passed an order on 1st May 2003 demoting the Appellant to the post of Assistant Teacher and elevating the Respondent No. 4 to the Appeal to the post of Head Master. The order stated that this decision has been arrived at since the Appellant had been appointed as the Head Master in view of the interim order of the High Court in Writ Petition No. 3744 of 1992. The petition had been disposed of on 10th February 2003 and the interim order did not survive. There was only one post of Head Master in the school, and hence the rules of reservation did not apply. The post had to be filled as per the service seniority and, therefore, the seniormost teacher was being appointed as the Head Master.

5. The Appellant protested against this decision by his representation dated 3rd May 2003. Since it was of no effect, he filed Writ Petition No. 3274 of 2003 in this Court. An interim order came to be passed protecting him on 6th May 2003, but when the petition reached for final hearing, the 2nd Respondent Management took the stand by filing a reply that the Appellant had an alternative remedy u/s 9 of the MEPS Act. The Division Bench, which heard the matter, accepted this submission and permitted the Appellant to file an Appeal to the School Tribunal while continuing the interim relief for a period of further 3 weeks and disposed of the petition on 5th June 2003.

6. Accordingly, the Appellant filed Appeal No. 24 of 2003 before the Respondent No. 5 herein and applied for continuation of stay. The Tribunal, however, heard the matter at the earliest and dismissed it vide its order dated 23rd June 2003. In the Tribunal, the Respondent No. 2 strangely took a stand that the Tribunal did not have jurisdiction. Amongst other reasons, the Tribunal accepted this submission, namely that this was not a case of reduction in rank which is one of the circumstances that is challengeable u/s 9 of the MEPS Act apart from dismissal, removal and termination. Basically, the Tribunal took the view that the post of an Assistant Head Master and that of the Head Master were isolated posts and the Appellant could not claim the same on the basis of reservation. The Tribunal did not find merit in the submission of the Appellant of having worked on the post of Assistant Head Master and the Head Master for a very long time.

7. The Appeal having been dismissed, the Appellant herein filed Writ Petition No. 4499 of 2003. The learned Single Judge also accepted the submission of the 2nd Respondent that the post of Head Master and that of Assistant Head Master were isolated posts and this went to the root of the matter. For that reason, the post could not be filled as per the reservation policy in view of the law laid down by the Apex Court in Chakradhar Paswan Vs. State of Bihar and Ors, . The learned Judge relied upon the decision of a Division Bench of this Court in Sulabha Govind Vidwans Vs. Shravan M. Shevale and Others, , and in para 14 of the judgment, he held that since the origin of the appointment of the Petitioner as an

Assistant Head Master was not lawful, he could not claim a vested right to continue merely on the basis of the fact that he was continued over a period of time. The petition was therefore dismissed. Hence this Appeal.

8. Before we deal with the rival submissions, we may note that the finding of the School Tribunal that it did not have the jurisdiction to try the Appeal has been reversed by the learned Single Judge. The fact that the Tribunal did have the jurisdiction to try and entertain the Appeal is not disputed by Mr. Apte, learned counsel appearing for the Respondent No. 2 School.

9. There have been principally two submissions which are to be considered in this Appeal. The first submission of the Appellant has been that since the institution was running two schools, one post of the Head Master had to be filled according to the roster governing reservation. Reliance was placed for that purpose on the judgment of a Division Bench of this Court in (3) All M.R. 882 In that matter, the concerned school management was running two schools; one was a girls school and the other was a boys school. The two schools were required to maintain separate seniority lists. The Division Bench held that the post of Head Master in one of the schools could not be said to be an isolated post and held that one of them will have to be reserved for the teachers belonging to reserved category. Mr. Apte, learned counsel appearing for the Respondent No. 2 Management, pointed out that this decision was not good law and was subsequently over-ruled by a Full Bench of this Court in *Asha v. Director of Education* - 2003 (3) MLJ 1010 of this judgment, the Full Bench held that the Division Bench had not taken into consideration that the post of Head Master of a girls school is a single post and is not inter-changeable. The Full Bench held that the Division Bench had not considered that the reservation to such post would result in 100% reservation.

10. That apart, the Appellant was appointed as a Head Master on 21st November 1992. The English Medium School was started much later in 1995. Thus, at the relevant time, the school management was running only one school and as held by the Apex Court in *Dr. Chakradhar Paswan (supra)*, a reservation could not be lawfully made to an isolated post. This position has been reiterated by a Constitution Bench of the Apex Court in *Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association* - 1998 (2) M. L.J. 353. Mr. Apte has alternatively submitted that assuming that the subsequent setting up of the English Medium School is to be considered and one post out of the two posts of Head Masters is to be given to the Appellant, it would mean 50% reservation which is not permissible. He pointed out that under Rule 9(10) of the MEPS Rules permissible reservation is only 24% and therefore only one out of 4 such posts can be subjected to reservation. The submissions of the Respondents are well founded. It is therefore not possible to accept the submission of the Appellant to treat this post as subject to reservation.

11. It is the second submission of the Appellant which has a greater merit. Mr. Thorat, learned counsel appearing for the Appellant, pointed out that from the record of the proceedings it is very clear that when the Appellant was appointed

as an Assistant Head Master on 3rd December 1984 and continued in that position until he became Head Master on 21st November 1992 (with effect from 1st October 1992), nobody had protested against this posting. There is no objection whatsoever from anybody on record to this elevation. There is no objection either from the teachers or from the school and the Respondent No. 3 - Education Officer had approved this decision. The consent minutes were signed in the writ petition filed by Smt. Duraphe and it was provided thereunder that the Appellant may be appointed as the Head Master if he was entitled as per the Rules and subject to the result of the petition. The minutes which were signed on 9th October 1992 did not provide that the Appellant was to be appointed contrary to the Rules. The law laid down in Chakradhar Paswan's case in 1988 was very much clear that isolated posts were not to be subjected to reservation and yet the Appellant was so appointed in that post and the Government granted the approval on 11th February 1993. It was not mandatory on the management to appoint the Appellant as the Head Master even under the minutes. Yet the management chose to appoint the Appellant as Head Master. In para 4 of the written statement of the 2nd Respondent filed in the School Tribunal, it was stated amongst others that the Respondent No. 4 to this Appeal (who was also Respondent No. 4 to the Appeal in the School Tribunal) had taken several objections to the appointment of the Appellant in the post of Head Master. However, no such objection has been placed on record and it is only a bald assertion. This Respondent No. 4 himself did not file any reply either in the School Tribunal or before the Single Judge. Mr. Thorat, therefore, submitted that the learned Single Judge was in error in observing in para 11 of the impugned judgment that many senior members of the staff had objected to the appointment of the Appellant both as Assistant Head Master and as Head Master.

12. That apart, Mr. Thorat submitted that there was nothing on record to show that the performance of the Appellant was unsatisfactory either as Assistant Head Master or as Head Master. There was no such plea taken at any level either by the school management or by Respondent No. 4. In this connection, we may note that on the last date of argument, Mr. Apte for Respondent No. 2 submitted that just two days prior thereto a notice had been given to the Appellant on which Mr. Shah for the Appellant commented that it was motivated. Even during the course of this Appeal, no material has been placed to indicate any failure in the performance of the Appellant.

13. Mr. Thorat, therefore, submits that when there was no challenge by anybody to the posting of the Appellant as an Assistant Head Master from 1984 and when there was no objection to his appointment as Head Master, which was made in the year 1992, could he be removed now in the year 2003 merely because the particular petition was disposed of? In his submission, in the absence of any objection by any teacher as well as by the school, the School Tribunal ought to have allowed the Appeal filed by the Appellant. He submitted that once the Appellant became an Assistant Head Master in the year 1984, he moved into a position which was higher than that of Respondent No. 4 or for that matter any

other teacher and was therefore placed in Category "B" of the employees. It is the seniority in this category which was to be reckoned when he was made Head Master in the year 1992 and there was nothing wrong therein. The decision of the school management dated 1st May 2003 chose to take away the promotion of the Appellant to the post of Head Master effected in the year 1992 and also that of the Assistant Head Master effected in 1984 when nobody ever challenged it and thus had acquiesced therein.

14. Mr. Apte, learned counsel for Respondent No. 2, relied on a judgment of a Division Bench of this Court in Sulabha Govind Vidwans Vs. Shravan M. Shevale and Others, which is also referred to by the learned Single Judge. The Petitioner in that matter had joined the concerned school in the primary section in June 1973 and moved to the secondary section in June 1977. The 1st Respondent, who belonged to a Scheduled Caste, joined the school much later in January 1979. In August 1983, the Petitioner became a Supervisor and from June 1985 to August 1985 she functioned as the Acting Head Mistress. In April 1985, a vacancy had arisen in the post of Assistant Head Master. The Petitioner made a representation for that post. The management supported it. The Government however insisted that the post be treated as a reserved post and the Respondent No. 1 was promoted to that post in 1985 although the Petitioner was the seniormost teacher. In March 1991, the vacancy of Head Master occurred and the Petitioner again made a representation for being promoted. By that time, the judgment in Chakradhar Paswan was available, yet the management was compelled to appoint Respondent No. 1 as the Head Master. The Petitioner then represented for being appointed as an Assistant Head Mistress and was accordingly appointed in that post in August 1992. She continued to represent. In December 1992, she again reiterated that the post of Assistant Head Master as well as Head Master was an isolated post and she should have been appointed as an Assistant Head Mistress in June 1985 and Head Mistress in April 1991. Since it had no effect, she ultimately filed a writ petition in March 1993 and sought a declaration accordingly. It is in the facts of that case that the Division Bench allowed the writ petition filed by Sulabha Vidwans. In fact, the plea of laches was raised in that matter, but in view of what is pointed out above, the Court turned it down and rightly so. The Court, therefore, observed at the end of para 15 of that judgment that the original seniority as per the date of appointment of the Petitioner and of Respondent No. 1 as Assistant Teacher shall have to be taken into consideration for the purpose of deciding the subject matter of the controversy. Mr. Apte submitted that in the present case, there is no dispute that Respondent No. 4 is much senior and the seniormost teacher in the school. Therefore, in his submission, on the same analogy, the management cannot be faulted if it took the necessary decision in the year 2003.

15. Now, as can be clearly seen from the facts of the above case, the Petitioner Sulabha Vidwans was contesting for her appointment as Assistant Head Mistress right throughout and has taken the necessary steps from time to time. Subsequently she became an Assistant Head Mistress and claimed the post of

Head Mistress once again. As against that, the present case is one where we do not have a single letter of objection from any of the teachers including the Respondent No. 4 to the posting of the Appellant as the Assistant Head Master except for the bare statement of the Respondent No. 2 in their written statement before the School Tribunal which is also to the effect that Respondent No. 4 had raised several objections to the appointment of the Appellant as the Head Master (and not as Assistant Head Master). The Appellant having become Assistant Head Master in the year 1984 was on a position higher than that of Respondent No. 4 since thereafter. There cannot be any grievance with respect to the proposition laid down in para 15 in Sulabha Vidwans's case as quoted above. However, the question is whether that can be pressed into service in the facts of the present case. The glaring difference between the two cases is that whereas Sulabha Vidwans was diligently agitating the grievance, in the present case there is complete inaction and thereby acquiescence to the Appellant's continuation in higher positions. The two cases are clearly distinguishable.

16. Mr. Apte relied upon the judgment of the Apex Court in the case of Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions . In that matter, the Appellant did not have the requisite qualifications on the date of the application and hence his selection and appointment was illegal. He however continued in the post for a very long time, i.e. over 23 years and 7 1/2 months in that case, under the orders of the court pending the litigation. The Apex Court held the appointment to be illegal and upheld the termination of his services and refused to give directions for regularisation. It is however material to note that it further observed that this did not preclude the Government to consider at its option the case of the appointee for regularisation. Hence, although the appeal was dismissed, the Court directed that his services may not be terminated for a period of 3 months and in the meanwhile he may make a representation and the same be considered. The second judgment relied upon by Mr. Apte was in the case of State of Madhya Pradesh and Another Vs. Dharam Bir, , where the Apex Court held that the nature of appointment did not change with the long passage of time. That was however a case of an adhoc appointment which had continued for over a decade and the Court held that the same continued to be adhoc even after the long passage of time.

17. Mr. Oak, learned counsel appearing for the Respondent No. 4, adopted the submissions of Mr. Apte. Amongst other, he submitted that the provisions of Rule 3(3) of the MEPS Rules require the seniormost staff member to be appointed as the Head Master, and therefore the decision of the management was correct. As against that, Mr. Shah for the Appellant, pointed out that the appointment of the Appellant as the Head Master was approved by the Respondent No. 3 on 11th February 1993 by relying upon Rule 3(b) of the MEPS Rules and rightly so since the Appellant had become Assistant Head Master earlier in the year 1984 and on that footing he was senior to others. He, therefore, submitted that it cannot be said that the relevant Rules had not been followed.

18. Mr. Thorat, on the other hand, submitted that every such action has got to be taken within some reasonable time and cannot be taken to unsettle a settled position. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, , the Apex Court was concerned with the exercise of power of revision under the Bombay Land Revenue Code where no particular time limit was prescribed thereunder for the same. The Apex Court held that absence of any such limitation did not mean that one can exercise such a power at any time. It held that such right has to be exercised within a reasonable period. As far as reasonable period is concerned, it depends upon the scheme of an Act, the nature of action likely to be taken, consequences likely to ensue and such other relevant factors. This position has been reiterated in the context of a suo motu enquiry by a Mamlatdar under the Bombay Tenancy and Agricultural Act, 1976 in *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, .

19. In *Anil Vasantrao v. State of Maharashtra* - 2002 (4) M. L.J. 365, a Division Bench of this Court was concerned with a situation wherein the Petitioner was appointed in the year 1994 on the basis of his claim as belonging to a Scheduled Tribe in the Kalyan-Dombivali Municipal Corporation as a Pharmacist. He completed 2 years of probation and was regularised in 1996. Five years thereafter proceedings were initiated on the ground that he did not belong to a Scheduled Tribe and his services came to be terminated. On behalf of the Respondents, it was contended that the termination was on the basis of the proceedings before a Committee constituted by the State Government and, when the Petitioner did not belong to the particular community, he was not eligible to get an appointment. It was specifically submitted that the order, which was otherwise legal, could not be objected on the ground that there was delay in taking action by the Respondents. The Division Bench [per C.K. Thakker, CJ. (as he then was)] referred to the judgment in the case of *Patel Raghav Natha* (supra) and also another Division Bench judgment of this Court in *Chandrabhan Yamaji Nandanwar v. Director of Health Services, Maharashtra State*, 1999 (1) M. L.J. 536 on the question of scrutiny being done in reasonable time. The Division Bench set aside the order of termination only on the ground that the proceedings were not initiated within a reasonable period. The Court however clarified that it should not be taken to have upheld the validity of the Petitioner's claim to Scheduled Tribe. This view has been reiterated by a Full Bench of this Court in *Prakash Namdeorao Kedar and Others Vs. Union of India (UOI) and Others*, .

20. We have two judgments of the Apex Court on a similar situation. In *M.S. Mudhol and Another Vs. S.D. Halegkar and Others*, , the appointment of the 1st Respondent to the post of Principal of a school was under challenge. Under the relevant Rules, the person had to have amongst others a Masters Degree with at least IIInd Division from a recognised university. The 1st Respondent did have this degree, but it was in IIIrd class. Experience of 10 years as a Vice Principal was required whereas the 1st Respondent had worked as an Inspector of School prior to his selection as a Principal. The other requirement was Degree of Master in Education which he had. Thus, except for the Degree of M.Ed., which he

possessed, he did not have the other two statutory essential qualifications at the time of his appointment as the Principal. The 1st Respondent was holding the office of Principal right from 1981 and for the first time his appointment was challenged in the year 1990, i.e. after a lapse of 9 years. The High Court declined to exercise writ jurisdiction and the matter was carried to the Apex Court. The Apex Court did hold that the Director of Education (2nd Respondent) had committed a clear error in approving the academic qualifications of the 1st Respondent when he was not so qualified. Yet in para 6 of its judgment, the Apex Court noted that by the time the matter was being decided, the 1st Respondent was holding the post for last 12 years. The Court held that it would be inadvisable to disturb him from the said post at that late stage, particularly when he was not at fault when his selection was made. There was nothing on record to show that he had at that time projected his qualification other than what he possessed. Thereafter, the Court observed at the end of para 6 as follows:-

"If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

Thereafter the Court observed in para 7 as follows:-

"7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the court was moved in the matter after a long lapse of about 9 years. The post of Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ."

21. The other relevant case is the *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, . In that case, the Respondent No. 1 was functioning as Secretary of the Appellant Bank for over 13 years. The Registrar had sought to disapprove his appointment on the ground that he was functioning as a Secretary without his approval. In para 4, the Court observed as follows:-

"4. the writ petition filed by respondent 1 could succeed, in our opinion, on the

narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent 1 as secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent 1's appointment as a secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years."

22. Similar is the approach in *Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others*, . In that case, the Court observed that if a Petitioner is remiss or negligent so as to approach a court for relief after an inordinate and unexplained delay, he certainly jeopardises his claim as it may become inequitable with circumstances altered by lapse of time and other facts to enforce a fundamental right to the detriment of similar claims of innocent third person. In that matter, the Petitioner had restricted himself to only filing representation and moved the court much later. In the meanwhile, those who were promoted and had been satisfactorily discharging their duties for considerable time would acquire new claims and qualifications by lapse of time and due discharge of their new functions. It was observed that if their position were to be disturbed, relief had to be sought speedily against their illegal confirmations and promotions and not otherwise and not belatedly.

23. In the present case, as pointed out above, we are not saying for a moment that the concerned post could go by the roster. We however cannot ignore the fact that the Appellant was promoted as an Assistant Head Master way back in the year 1984 and nobody protested against the same. In view of that promotion, he was on a position higher than that of Respondent No. 4 who is otherwise the seniormost teacher. He occupied that post until October/November 1992, i.e. over eight years when he became Head Master. Mr. Apte submitted that the Appellant is taking advantage of his posting after the interim order. The submission is not correct. The Appellant was to be appointed only if he was entitled as per the rules as recorded in the minutes. It cannot be said that he was appointed on the post of Head Master on the strength of the interim order passed in the earlier writ petition filed by Smt. Duraphe. The interim order did not mandate that the Appellant should be appointed as the Head Master. The 2nd Respondent Management did not oppose his posting as Head Master nor did anybody nor the Education Officer. We do not find anything on record to indicate that anybody or for that matter Respondent No. 4 objected except the bald assertion of the 2nd Respondent Management in its written statement to the School Tribunal that the Respondent No. 4 had objected to the Appellant's elevation as Head Master and which was not supported by any document whatsoever. There is nothing to indicate that the Appellant did not discharge his duties as Head Master satisfactorily where he worked over 10 and half years. He

was being demoted to the post of Assistant Teacher after working in higher posts over 18 years. The School Management appointed the Appellant as the Head Master on an isolated post in the year 1992 in spite of the judgment in Chakradhar Paswan rendered in 1988. If it decided to implement it, the same had to be done prospectively. The management was undoubtedly in error in reducing him from the post of Head Master to that of Assistant Teacher in 2003 after allowing him to work for over 18 years as Assistant Head Master and Head Master. The School Tribunal has ignored this fact of delayed action on the part of the Management. In view of the observations of the Apex Court in Mudhol's case (supra), in our view, it was improper and unjustified to disturb the Appellant from the post of Head Master which he was occupying for such a long time. The learned Single Judge has also committed an error of law in ignoring this aspect.

24. In the facts of the present case, we allow the present Appeal and set aside the order passed by the learned Single Judge as also the order passed by the School Tribunal. We allow the Appeal filed by the Appellant to the School Tribunal and thereby set aside the order of reduction from the post of Head Master to an Assistant Teacher. The Appellant will be restored to the position of the Head Master forthwith with all consequential benefits. Appeal is accordingly allowed without any order as to costs.

25. Mr. Apte applies for stay of this order. He points out that Respondent No. 4 has been now functioning as the Head Master after the Appellant was removed from that post in May 2003. He points out that there is no stay order after Appellant's reduction was confirmed by the School Tribunal on 23rd June 2003. Mr. Shah opposes the request. However, considering the aforesaid factors that the Respondent No. 4 has been functioning as the Head Master now for last about 2 years, this order will remain stayed for a period of 8 weeks hereafter.