



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1369 of 1999

Bhimrao s/o Keshao Telang,
Aged _____ years,
Occupation – Service,
Resident of Parshioni,
District Nagpur.

... Petitioner

Versus

1. Shri Prabhudas s/o Pundlik Rangari,
Aged about 43 years,
Occupation – Service,
Resident of Ward No.5,
Parshioni,
District Nagpur.

2. Sarvodaya Shikshan Mandal,
through its Secretary,
Parshioni,
District Nagpur.

3. The Education Officer (Secondary),
Zilla Parishad, Nagpur.

4. The Presiding Officer,
School Tribunal, Nagpur.

... Respondents

Shri Anand Parchure, Advocate for Petitioner.

Shri M.G. Bhangde, Senior Advocate, assisted by

Shri G.R. Agrawal, Advocate for Respondent No.1.

Shri D.B. Patel, AGP for Respondent Nos.3 and 4.

Coram : R.K. Deshpande, J.

Date of Reserving the Judgment : 10-6-2013.

Date of Pronouncing the Judgment : 21-6-2013.

Judgment :

1. Heard Shri Anand Parchure, the learned counsel for the petitioner; and Shri M.G. Bhangde, the learned Senior Counsel, assisted by Shri G.R. Agrawal, Advocate, for the respondent No.1.

2. The petitioner was promoted to the post of Head Master of the School by an order dated 23-4-1997, which was the

subject-matter of challenge in Appeal No.STN/40 of 1997 filed by the respondent No.1 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“MEPS Act”) before the School Tribunal, Nagpur. The School Tribunal, by its judgment and order dated 19-3-1999, has allowed the said appeal by setting aside the order of promotion of the petitioner as Head Master and directing the respondent No.2-Management to appoint the respondent No.1-Prabhudas Pundlik Rangari to the post of Head Master of the School. Hence, this writ petition.

3. The facts of the case are in a very short compass. The question of *inter se* seniority between the petitioner and the respondent No.1 is concluded by the common judgment passed by the Division Bench of this Court in Letters Patent Appeals

Nos.70 and 71 of 1999 on 20-6-2012. The petitioner-Bhimrao Keshao Telang is held to be senior to the respondent No.1-Prabhudas Pundlik Rangari in the cadre of Assistant Teacher.

4. The promotion of the petitioner to the post of Head Master has been set aside by the Tribunal on the ground that the petitioner has failed to submit his willingness for promotion within a period of fifteen days from the date of communication of occurrence of vacancy, issued by the Management in terms of the Explanation to sub-rule (3) of Rule 3 under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (“MEPS Rules”) and this amounts to relinquishment of claim by the petitioner. It has been held that when the willingness of the petitioner was called for the first time by the Management on 17-2-1997, the petitioner expressed his

unwillingness in writing on 24-2-1997 and thereafter in response to second offer given on 6-3-1997, the petitioner expressed his willingness for the same on 14/15-3-1997. According to the Tribunal, the requirement to submit the willingness within a period of fifteen days was mandatory and breach of it, has resulted in relinquishment of the claim for the post of Head Master by the petitioner.

5. It is not in dispute that the Management by its communication dated 17-2-1997, called upon the petitioner to express his willingness for being appointed as Head Master within a period of fifteen days from the date of receipt of the communication. The communication states that if the petitioner is not willing to have such an appointment, then he should express his voluntary unwillingness in his own handwriting

before the Education Officer and to submit it to the Management duly endorsed by the Education Officer.

6. Initially, the petitioner expressed his **unwillingness** to the Management for being appointed as Head Master on 24-2-1997, with an intimation that he shall produce his statement of voluntary unwillingness duly endorsed by the Education Officer, to the Management. The Management sent a reminder to the petitioner for it on 6-3-1997, but the petitioner on 14/15-3-1997 expressed his **willingness** for being appointed as Head Master and informed the Management that the earlier communication was given in haste and that he has not submitted his statement of unwillingness before the Education Officer, as required by the rule. He, therefore, submitted that his earlier communication dated 24-2-1997 is being withdrawn and claimed

an appointment to the post of Head Master by way of promotion.

7. Shri Parchure, the learned counsel appearing for the petitioner, submits that the Tribunal has committed an error in holding that there is a requirement of submitting the willingness by a teacher concerned, within a period of fifteen days from the date of receipt of the communication of occurrence of vacancy, issued by the Management. He further submits that even if there is any such requirement, the same is not mandatory, and failure to submit the willingness within a period of fifteen days shall not result in the consequences of disregarding the claim of a teacher. He submits that there is no prohibition under the rule for the Management to repeatedly ask for willingness of a concerned teacher, and even if it is shown that a teacher has communicated his willingness within a period of fifteen days from the date of

receipt of any such communication from the Management, the same will be sufficient to show the compliance. He further submits that in response to the second communication dated 6-3-1997, the petitioner had furnished his willingness on 14/15-3-1997, which was within a period of fifteen days, and hence the claim of the petitioner could not have been disregarded.

8. Shri Bhangde, the learned Senior Counsel appearing for the respondent No.1, submits that the first part of the Explanation below sub-rule (3) of Rule 3 of the MEPS Rules obliges a teacher to furnish his willingness within a period of fifteen days. He further submits that the last part of the said Explanation clearly provides that in the event of a teacher, failing to submit his willingness to the appointment to the post, it shall be assumed that he has relinquished his claim for the post. He submits that

the requirement of submitting the willingness within a period of fifteen days from the date of receipt of the communication from the Management regarding occurrence of vacancy, is mandatory, and failure to comply with it by a teacher results in the consequences of disregarding the claim of such a teacher on the ground that he has relinquished his claim.

9. Rule 3 of the MEPS Rules deals with the qualification and appointment of Head. The controversy revolves around the interpretation of the provision of sub-rule (3) of Rule 3 of the MEPS Rules along with the Explanation therein; the relevant portion of which, is reproduced below :

Sub-rule (3) of Rule 3 – Qualifications and appointment of Head :

“The Management of a school including a night school shall fill up the post of the Head by appointing the

seniormost member of the teaching staff (in accordance with the guidelines laid down 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 school (excluding night school) conducted by it] who fulfills the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

Explanation.- *For the purpose of this rule, the Management shall communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily*

relinquished his claim to the post. This shall not debar him from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period of fifteen days, it shall be assumed that he has relinquished his claim on the said post. ...”

10. Rule 3 deals with the qualifications and appointment of Head. Sub-rule (3) therein confers a right upon a senior-most member of the teaching staff, who fulfills the conditions laid

down in sub-rule (1), having satisfactory record of service, to be appointed to the post of the Head of the School. The Explanation below sub-rule (3) is in the nature of proviso dealing with the situation in which only, a teacher can be deprived of his right of being appointed as the Head of the School, under sub-rule (3) of Rule 3. The Explanation also provides the mode and manner in which a claim of a teacher for appointment to the post of Head can be disregarded. It is, therefore, clear that a claim of a teacher for appointment to the post of Head can be disregarded only in the mode and manner, which is prescribed and not in any other manner. The requirement is mandatory. The deprivation of claim in any other manner or in breach of the mode and manner prescribed shall stand vitiated.

11. The Division Bench of this Court has rendered the

judgment in the case of *Sukhdeo Ragho Deore v. Chairman, Gram Shikshan Samiti, Umrane, Dist. Nasik and others*, reported in *2002(1) Mh.L.J. 885*, holding that the procedure contemplated under Rule 61.2(a) of the Secondary School Code (which is similar to the provision in the Explanation in question, though may not be in *pari materia*) is mandatory in nature and must be complied with strictly. By applying the ratio of the said decision also, it will have to be held that the mode and manner prescribed, to disregard the claim of a senior-most teacher in the second part of the Explanation is mandatory. The strict compliance of it is required to be shown by the Management so as to disregard such claim by treating it as relinquished.

12. In order to deprive a claim under the Explanation, it has to be shown that a teacher has on his own freewill, given a

statement in his own handwriting to the Education Officer, stating that he has voluntarily relinquished his claim for the post of Head Master, within a period of fifteen days from the date of receipt of the communication of the offer by the Management and that such a statement is duly endorsed by the Education Officer, as having been recorded in his presence. A statement once duly made by such a teacher before the Education Officer is not permitted to be withdrawn, and it is assumed that such a teacher has relinquished his claim for the said post. Thus, the burden of proof is upon the Management, if it wanted to disregard the claim of such teacher, to show that there is a relinquishment of a claim by such a teacher.

13. The last portion of the Explanation heavily relied upon by Shri Bhangde states that in the event of a teacher failing to

submit his willingness for appointment to the post or to give a statement to the Education Officer, within a period of fifteen days, it shall be assumed that he has relinquished his claim for the post. Two questions fall for consideration in respect of the interpretation of the this provision, viz. (i) whether a teacher concerned is required to submit his willingness for the appointment to the said post, within a period of fifteen days from the date of receipt of the communication regarding occurrence of vacancy by the Management?, and (ii) if there is any such requirement, whether it is mandatory, and failure to submit such willingness within a period of fifteen days should result in disregarding the claim of a teacher as relinquished?

14. The first part of the Explanation casts a duty upon the Management to communicate the occurrence of such vacancy and

to ask a teacher concerned to submit his willingness for the appointment to the post. The further obligation upon the Management is, to provide a period of fifteen days to a teacher, to think of submitting his willingness for the appointment to the post. Thus, the provision deals with the duties and obligations of the Management and not with the duties and obligations of a teacher. The provision does not create any obligation upon a teacher concerned to submit his willingness, within a period of fifteen days. It is open for such teacher to submit his willingness, even after expiry of the period of fifteen days. It is, therefore, difficult to accept the proposition that in terms of the first part of the Explanation, the teacher is bound to submit his willingness within a period of fifteen days, as urged.

15. There is no provision preventing the Management from

issuing repeated communications calling upon a teacher to furnish his willingness for the appointment to the post of Head upon occurrence of vacancy. Similarly, there is no provision preventing a teacher concerned from withdrawing any such willingness, if submitted within a period of fifteen days. It is open for a teacher to withdraw such willingness and he is not bound to accept the offer of the Management for appointment to the post of Head Master, even if the willingness furnished is not withdrawn. It is, therefore, held that the submission of willingness by a teacher for appointment to the post, in response to any one of the communications repeatedly issued, can be accepted and acted upon by the Management.

16. In the first part of the Explanation, it is merely an expectation from a teacher concerned, to submit his willingness

asked for by the Management, within a period of fifteen days. Simultaneously, a teacher unwilling to accept the offer of the Management is expected to furnish within a period of fifteen days, a statement on his own freewill recorded in his own handwriting before the Education Officer stating that he has relinquished his claim to the post and such statement is endorsed by the Education Officer as having been recorded in his presence. It may happen that a teacher submits his unwillingness for appointment to the post, within a period of fifteen days, but fails to give a statement to the Education Officer within such period. Significantly, this is not the event or situation to be considered under the second part of the Explanation to disregard the claim and/or to treat the claim of such a teacher as relinquished. It may also happen that a teacher may not submit his willingness, within a period of fifteen days, but he may give a statement of his

unwillingness to the Education Officer, in the manner prescribed and submits it to the Management, as contemplated by the second part of the Explanation. In such an event, a statement once duly made cannot be permitted to be withdrawn, and mere failure to submit willingness within a period of fifteen days, as contemplated in the first part of the Explanation, will not prevent the assumption of relinquishment of claim. Such assumption shall start operating upon endorsing the statement of unwillingness by the Education Officer. It is, therefore, difficult to accept that the requirement, if any, of submitting willingness within a period of fifteen days, is mandatory.

17. Relying upon the two decisions of the Apex Court – one in the case of *Mohd. Shabir v. State of Maharashtra*, reported in (1979) 1 SCC 568; and second in the case of *Dr. M.K. Salpekar v.*

Sunil Kumar Shamsunder Chaudhari and others, reported in (1988) 4 SCC 21, Shri Bhangde has urged that the absence of punctuation *comma* before the word '*or*' in the last part of the Explanation, indicates that the sentence is one indivisible whole and hence the period of fifteen days specified in the sentence applies also to the event of a teacher failing to submit his willingness for the appointment to the post. As against this, the argument of Shri Parchure is that the word '*or*' in the last portion of the Explanation has to be read as '*and*' to urge that mere failure to submit willingness within fifteen days will not suffice to disregard the claim, but in addition to it a statement duly made in the mode and manner prescribed, also needs to be established to assume the relinquishment of claim.

18. The entire scheme of the Explanation shows that a claim

of a teacher can be disregarded only upon the assumption to be drawn, as contemplated by the Explanation, in respect of the relinquishment of the claim by such a teacher. It is only in the mode and manner prescribed under the Explanation that a claim can be relinquished. It is not the case of the Management, nor it is established that the petitioner has relinquished his claim in the mode and manner prescribed under the Explanation, which is held to be mandatory. Mere failure to submit willingness within a period of fifteen days from the date of receipt of offer by the Management for appointment to the post of Head, does not result in the consequences of relinquishment of claim. Keeping in view the object of the Explanation, and the context in which the requirement is placed, it is not possible to hold that the last portion of the Explanation is indivisible and the period of fifteen days specified therein applies also to the event of a teacher failing

to submit his willingness for appointment to the post. This provision has to be construed keeping in view the object and the context in which the requirement is prescribed. Hence, the decisions relied upon by Shri Bhangde, are not at all attracted. It is also not possible to read the word '*or*' occurring therein as '*and*', as suggested by Shri Parchure. If such argument is accepted, then even if a teacher submits his unwillingness to accept the offer of the Management in the mode and manner prescribed under the provision, it will not be treated as the claim relinquished.

19. In view of above, the School Tribunal has committed an error of law in holding that the requirement to submit the willingness within a period of fifteen days was mandatory and the breach of it, has resulted in relinquishment of claim for the post

of Head Master by the petitioner. The judgment and order passed by the School Tribunal, impugned in this cannot, cannot, therefore, be sustained. The same needs to be quashed and set aside and the appeal filed by the respondent No.1 needs to be dismissed.

20. In the result, the writ petition is allowed. The judgment and order dated 19-3-1999 passed in Appeal No.STN/40 of 1997 by the School Tribunal, Nagpur, is hereby quashed and set aside and the said appeal filed by the respondent No.1 is dismissed.

21. Rule is made absolute in above terms. No order as to costs.

JUDGE.

22. At this stage, the learned counsel for the respondent No.1

submits that the respondent No.1 is working as Head Master since 1999 and, therefore, the effect, operation and implementation of this judgment be stayed for a further period of six weeks. It is informed that the petitioner is left with one year for his retirement on superannuation. In view of this, the prayer for grant of stay of this judgment, is rejected.

JUDGE.

PDL