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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6226 OF 2011

Sangita Ramanlal Solanki

@ Sangita Anil Pasad

Age: 43 Yrs., Occ: H.M.

C/o: M.P. Kenia Gujrati School,
Mamal Apatrment, Subhash Road,
Dombivali (W).

...Petitioner

Vs.

1. Smt. Reeta Dilip Choksi

Age: 55 Yrs., Occ: Service,

R/at: 202, Hari Iccha Apartment,

Near harsh Dharmesh Society,

Karve Road,

Dombivali (W), Dist : Thane.

2. The President

Sai Trust, Mamal Apatrment,

Navapada, Subhash Road,

Dombivali (W) Dist: Thane.

3. The Headmistress,

M.P. Kenia Gujrati School,

Sai Trust, Mamal Apatrment,

Navapada, Subhash Road,

Dombivali (W) Dist: Thane.

4. The Administrative Officer,

Kalyan Dombivali Mahanagar

Palika Shiksahn Mandal,

Jojwala Complex, Agra Road,

Kalyan (W).

...Respondents

Mr. Mandar Limaye a/w Ms. Deepali Deherkar and Mr. Vedant Bende
for the Petitioner.

Mr. Shaikh Nasir Masih for Respondent No.1.

Mr. R.V. Dighe i/b. Mr. A.S. Rao for Respondent No.4.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 29th JULY, 2026
PRONOUNCED ON : 9th SEPTEMBER, 2026

JUDGMENT :

1. This petition is filed invoking Articles 226 & 227 of the Constitution of India challenging the Judgment and Order dated 28/29-06-2011 passed in Appeal No. 7 of 2010 by Presiding Officer, Addl. School Tribunal, Navi Mumbai by which the appeal filed by Respondent No. 1 is allowed and her supersession dated 14.06.1995 is quashed and set aside and present Respondent Nos. 2 and 3 (Management and School) are directed to reinstate the Respondent No. 1 to the post of Headmistress w.e.f. 14.06.1995 and to pay her salary, dues including back wages, emoluments etc.

2. At this stage itself it is necessary to mention that the petition was argued by the Petitioner and supported by learned Advocate for the Respondent No. 2-Management.

SUBMISSIONS

3. Learned counsel Mr. Limaye appearing for the Petitioner submitted as under.

3.1. That initially appointment of Respondent No.1 directly as Headmistress itself was illegal and was never sanctioned by the concerned Administrative Officer ('AO', for short) of Kalyan Dombivli Mahanagar Palika Shikshan Mandal.

3.2 That Respondent No.1 was not holding appropriate qualification (D. Ed) at the relevant time.

3.3 That the charge was given by Respondent No. 1 to the Petitioner as Headmistress on 26.12.1994 and thereafter the Petitioner was appointed as Headmistress on 14.06.1995, after completing 5 years experience. That therefore, the appointment/promotion of the Petitioner is in accordance with provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 & Rules, 1981 ('the said Act' and 'the said Rules' for short).

3.4. That Respondent No.1 acquired necessary qualification of D. Ed. in February 1996 and therefore it cannot be said that she was superseded.

3.5. That after handing over charge of Headmistress in December 1994, Respondent No.1 kept working as Assistant Teacher under protest till she was terminated and which termination was set aside later on and therefore Respondent No.1 was only working as Assistant Teacher and her appointment on the post of Headmistress was never approved.

3.6. That Respondent No.1 has retired on 30.06.2012 as Assistant Teacher and even the Petitioner has retired as Headmistress on 30.04.2026.

3.7. That in the year 1995, when the alleged supersession had taken place, there existed gray area as to which is appropriate

qualification (D.Ed. or B.Ed.) for appointment as Primary Teacher and this issue got resolved only in May 2004, when this Court held that teachers qualified as B.Ed. can be appointed in the primary schools upto 25% of posts of teachers for 5th to 7th standards. He submitted that therefore Respondent No.1 cannot claim that in June 1995 there was supersession inasmuch as she completed D.Ed. course only in February 1996 and therefore she was and is junior to the Petitioner.

3.8. Lastly he submitted that on the aspect of delay, the appeal filed by Respondent No.1 before School Tribunal was hopelessly delayed because the alleged supersession of June 1995 is challenged in 2010 after a gap of 15 years and the only explanation offered is pendency of her earlier litigation and pendency of Writ Petition No. 3323 of 2002 and subsequent pendency of the issue in Supreme Court.

3.9. That there is no explanation as to why Respondent No.1 kept mum from 1995 to 2002 when she filed writ petition with other petitions including that of association. That even after the issue was settled in 2007 by Hon'ble Supreme Court, there is no explanation why she has waited for a period of about 3 years thereafter, till the filing of the appeal on 23.02.2010.

3.10 He relied on the Judgment of **Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and Others, (2013) 10 SCC 627** in support of his submission that in case of supersession even if limitation is not provided under the said Act, the challenge must be raised within reasonable time. Relying on **State of Maharashtra and Others Vs.**

Tukaram Tryambak Chaudhari and Others (2007) 9 SCC 201, he submitted that pending issue was only in respect of pay-parity and there was no reason to wait for such a long time.

4. Respondent No. 1 has filed Affidavit in Reply affirmed on 02.09.2011 contending *inter-alia* as under.

4.1. That she was M.A. B.Ed. qualified and after following due process of law, she was appointed as Headmistress on a clear and vacant post under appointment orders dated 01.08.1989, 06.06.1990, 10.06.1991 and 07.06.1992.

4.2. That on 25.11.1992, the appointment of Respondent No.1 as Headmistress, was not approved by the concerned AO on the ground that Respondent No.1 was qualified as M.A. B.Ed. But, for the post of primary teacher required qualification was D.Ed. That on issue being raised with Dy. Director of Education and despite his order, the AO did not sanction appointment of Respondent No.1 as Headmistress.

4.3. That the Respondent-Management asked Respondent No.1 to complete D.Ed. course, which she successfully completed on 26.02.1996. However, meanwhile on 24.12.1994, the Petitioner was promoted to the post of Headmistress under conditional appointment letter with clear understanding that Petitioner's appointment is subject to completion of D.Ed. qualification and sanction to Respondent No.1. That at the relevant time, the Petitioner had not completed experience of 5 years required for promotion as Headmistress.

4.4. That she was working as Assistant Teacher under protest and on 14.06.1995, when the Petitioner was given post of Headmistress, it amounted to supersession of Respondent No.1.

4.5. That despite Respondent No. 1 being senior to the Petitioner and despite completing D.Ed. Course, the Petitioner did not allow the Respondent No. 1 to join the duty. That the Respondent-Management informed Respondent No.1 that she will be allowed to sign on muster only if she forgoes her claim of Headmistress. However, Respondent No.1 on 01.03.1996 wrote a letter to the President of the Management asking for Headmistress post and immediately thereon, the services of Respondent No. 1 were terminated. Aggrieved by the order of termination, Respondent No.1 preferred Appeal No.12 of 1996 before the School Tribunal, which stayed the order of termination and subsequently allowed the appeal by Order dated 24.09.2003.

4.6 That in the meantime, the Respondent No.1 along with the Association of Teachers filed Writ Petition No. 3323 of 2002 raising the issue in respect of pay scale of B. Ed. Teachers appointed as Primary Teachers. A prayer was made in the petition seeking direction that Teachers holding B. Ed. qualification who are teaching in primary section having 5th to 7th standard, within 25% of total strength of teachers, be treated as trained graduate qualified teachers. That on 06.05.2004, the said petition was allowed by this Court.

4.7. That when the Management was asked to implement the order

of the Hon'ble High Court, it kept mum and then the government had challenged the decision of the High Court in the Hon'ble Supreme Court, but ultimately on 20.02.2007, the order of the High Court was confirmed by the Hon'ble Supreme Court in **State Vs. Tukaram (supra)**.

4.8. That when the matter was pending in Supreme Court, present Petitioner and AO declared Respondent No.1 as surplus and her service book was spoiled. However, after order of Deputy Director of Education dated 02.12.2009 the Petitioner (being Headmistress) was directed to delete unnecessary remarks against Respondent No.1 in service book and to prepare new service book. That the Petitioner is not ready to sign the new service book. That again legal notice was given by Respondent No.1, but no action was taken. So ultimately in 2010, the Respondent No.1 filed the present Appeal No. 7 of 2010 challenging the supersession dated 14.06.1995.

4.9. That despite various correspondence by Respondent No.1 and the Teacher's Association, the post of Headmistress was not given to Respondent No.1.

4.10. That the pendency of the earlier Appeal No. 12 of 1996 up to 24.09.2003 (challenging termination) and thereafter pendency of WP/3323/2002 filed by the Association regarding the issue of B. Ed. qualification and subsequent pendency of SLP and thereafter pursuing the matter further has resulted in wait till 2010 when appeal was filed.

5. Mr. Shaikh appearing for Respondent No.1 submitted as under.

5.1. That Respondent No. 1 was appointed as a Headmistress within the permissible ratio of 3:1, as permitted for primary schools having 5th to 7th standard. That since her appointment itself was legal, it should have been approved by the AO.

5.2. That being subsequently appointed, the Petitioner was junior to Respondent No. 1.

5.3. That Respondent No. 1 was given to understand by the Management that after securing qualification of D.Ed., she will be given post of Headmistress and therefore, she was hopeful.

5.4. That documents on record indicate that she was pursuing the matter with Management as well as with the Education Authorities, however, they did not pay any attention, and Respondent No.1 continued to work without prejudice to her rights and contentions.

5.5. That the larger issue involved was subject matter of Writ Petition No. 3323 of 2002 filed by the Teachers Association in which Respondent No. 1 was also party and said issue was decided ultimately on 06.05.2004 in the case of **Tukaram Tryambak Chaudhari V/s. State of Maharashtra & Ors [Bombay High Court WP/4632/1992]** along with connected petitions. That the Division Bench of this Court held that, teachers who possess BA. B.Ed qualification are duly qualified and entitled to receive salary as trained teachers. He submitted that this decision was then carried by the State Government in Hon'ble Supreme Court, which remained pending till 20.02.2007 when Hon'ble Supreme Court confirmed the view taken by the High Court. He submitted that therefore, till

February 2007, the issue was under consideration and therefore, the appeal was not filed by Respondent No. 1 in the Tribunal.

5.6. That thereafter, till filing of the appeal in the year 2010, the Respondent No. 1 was continuously following up with the Management as well as Education Authorities for grant of appropriate pay-scale as well as about seniority. That these circumstances are considered by the Tribunal and appeal has been entertained. Hence no interference is required.

5.7 He relied on following judgments and Government Resolution (GR) in support of his case.

- (i) Shri Tukaram Tryambak Chaudhari V/s. State of Maharashtra and Ors. in Writ Petition No.4632 of 1999, along with other petitions Judgment dated 06.05.2004 (Coram: F. I. Rebello and N. H. Patil J.J.).
- (ii) State of Maharashtra and Ors. V/s. Tukaram Tryambak Chaudhari and Ors. (2007)9 SCC 201.
- (iii) GR dated 12.11.2001 issued after the judgment of Full Bench of this Court in Jayashree Sunil Chavan V/s. State of Maharashtra and Ors. (2000) 3 Mh. L.J. 605 (FB).

REASONS AND CONCLUSION

6. I have considered the rival contentions and perused the record.

7. At the outset, it is material to note that the Petitioner as well as Respondent-Management had taken a clear stand in the written statement that the appeal filed by Respondent No.1 was time barred. The case of the Petitioner as well as the Management that

Respondent No.1 was not having requisite qualification on the date of her appointment directly as Headmistress on 05.08.1989 requires serious consideration. It is not in dispute that Respondent No.1 was directly appointed as Headmistress and at that time, she was holding qualification of B.Ed. which was not the requisite qualification. It is also material to note that the concerned AO never granted approval to the appointment of Respondent No.1 as Headmistress. Therefore, the Petitioner and Management are justified in contending that such appointment of Respondent No.1 as Headmistress (which was admittedly not as per qualification required as well as which was not approved at the relevant time) will not give any seniority to Respondent No.1.

8. At this stage itself, it is material to note that the Respondent No.1 acquired necessary qualification of D.Ed. on 26.02.1996, which was after the appointment of Petitioner as Headmistress on 14.06.1995. Petitioner's appointment was with approval of the AO and it was after completing 5 years experience as required under the said Rules. It is important to bear in mind that at the relevant time, the issue of B.Ed. Assistant teachers being treated at par with D.Ed. Assistant teachers in primary schools with 5th to 7th standard was not even raised.

9. Learned counsel for the Petitioner is justified in contending that at the relevant time in June 1995, required qualification was D.Ed. and not B.Ed. Also, the issue regarding graduate teachers with B.Ed. being treated at par with D.Ed. was not clear and there was ambiguity. The issue was first time raised before Full Bench of this

Court in **Jayashree Sunil Chavan (Supra)**.

10. Thereafter, in a batch of petitions including WP/3323/2002 filed by Respondent No. 1, final order was passed by this Court on 06.05.2004 and it was duly confirmed by the Hon'ble Supreme Court on 20.02.2007.

11. Perusal of **Jayashree Sunil Chavan (Supra)** indicates that the issue involved before the Full Bench was on a reference of question "whether the qualification of B.Ed is requisite qualification for teaching the students in primary school ?". The Full Bench considered the provisions of the said Act and the said Rules and also various earlier Judgments and held that "D.Ed. is the requisite minimum qualification for teaching students in primary schools and the B.Ed. qualification cannot be treated as equivalent thereto".

12. Pursuant to this view taken by the Full Bench of this Court, the Government of Maharashtra, Education Department issued GR dated 12.11.2001, directing that such of the B.Ed. degree holder teachers, who have been appointed and approved prior to date of the Full Bench judgment (05.05.2000), be treated and continued as untrained primary teachers and such teachers shall be eligible for correspondence D.Ed. Course.

13. Therefore, it is clear that pursuant to the view taken by Full Bench in **Jayashree Sunil Chavan (Supra)** by issuing specific GR, B.Ed. holder teachers appointed in primary school were treated as untrained primary teachers.

14. Therefore, in the year 1989, when the Respondent No. 1 was appointed, she did not have requisite qualification. Her appointment directly as Headmistress was not approved. On 14.06.1995, when Petitioner was appointed as Headmistress, she had completed 5 years as per applicable Rules. It is important to note that on 14.06.1995 the decision, either about eligibility or pay-parity had not come. Initially in May, 2000, Full Bench held in **Jayashree Sunil Chavan (Supra)** that D.Ed. is the requisite qualification for teaching students in primary schools and B.Ed. qualification cannot be treated as equivalent thereto. Therefore even under full bench decision, Respondent No. 1 was not eligible. First time, on 06.05.2004, the Division Bench in **Tukaram V/s. State (Supra)** held that teachers like Respondent No. 1 could be appointed and paid trained graduate pay-scale. But by this time, much water had flown under the bridge for Respondent No.1.

15. So, let us now turn to the aspect of limitation.

16. The Tribunal in paragraph No. 18 has initially observed that the issue of limitation is not raised or framed. This is factually incorrect. As already observed above, in the initial paragraphs of the reply filed by the Petitioner and the school issue of limitation was clearly raised. The Tribunal has simply stated that since the appeal is against an order of supersession, there is no limitation provided and since the issue related to the matter was pending in High Court and Supreme Court, the appeal is filed within reasonable time. This finding, to say the least, is perverse. In **Londhe Vs. Dattatraya (Supra)**, the Hon'ble Supreme Court Court, while considering the aspect of limitation under the said Act and Rules, has clarified that

even if assuming that there is no limitation provided or prescribed in statute, aggrieved person cannot be permitted to come before the Court at his sweet will and appeal/petition must be filed within reasonable time. In the present case, the impugned action of supersession has taken place on 14.06.1995. From 1996 till 2003, Respondent No.1 was prosecuting Appeal No. 12 of 1996, which was filed against 'otherwise termination' of Respondent No. 1. Therefore, pendency of Appeal No. 12 of 1996 filed by Respondent No.1 cannot help her because said appeal was only challenging her 'otherwise termination' and the issue of seniority was not at all agitated there.

17. Considering these dates, it is clear that from 14.06.1995, till 2002 when the Respondent No.1 filed WP/3323/2002, the Respondent No.1 did not take any step to challenge the alleged supersession on 14.06.1995. This period of 7 years is not at all explained. That apart, even after the issue was finally resolved by Supreme Court in February 2007, there is no explanation why Respondent No.1 did not file the appeal or challenge the supersession till 2010. The explanation that the Respondent No.1 was in communication with the Management and Government Authorities, is not sufficient considering the time spent from 2007 till 2010.

18. Assuming the argument of Mr. Shaikh that the issue of both eligibility as well as pay-parity was pending before this Court or Supreme Court to be correct, there is no explanation why from 1995 till 2000 [when for the first time, this issue came before Full Bench in **Jayashree Sunil Chavan (Supra)**], the Respondent No. 1 did not approach the Tribunal. Similarly, after the decision in **Tukaram**

Tryambak Chaudhari (Supra) by Hon'ble Supreme Court on 20.02.2007, there is no explanation why Respondent No. 1 waited for a period of 3 years to file the appeal.

19. In that view of the matter, since Respondent No.1 has not explained the delay and has not challenged the action of supersession for a long period of eight years initially from 1995 till 2000 and thereafter from 2007 till 2010, the appeal could not have been entertained. The Tribunal was not justified in entertaining the appeal beyond reasonable time.

20. Considering that the aspect of eligibility and seniority are closely connected in the peculiar facts of the present case, assuming that Respondent No. 1 was eligible to be appointed, however, since grievance about seniority, based on eligibility is not made before the statutory Tribunal within reasonable time, the Tribunal was not justified in entertaining the grievance about seniority, long after reasonable time.

21. Therefore, the petition succeeds on the ground of delay and laches alone. The impugned order dated 28/29.06.2011 passed in Appeal No. 7 of 2010, is quashed and set aside. Appeal No. 7 of 2010 is dismissed on the ground of delay and laches.

22. Writ Petition is partly allowed and Rule is made partly absolute in above terms. No order as to costs.

23. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)