

SUPREME COURT OF INDIA

Viman Vaman Awale

Vs.

Gangadhar Makhriya Charitable Trust

C.A.No.7699 of 2014

(J.Chelameswar and A.K.Sikri JJ.)

13.08.2014

JUDGMENT

A.K. SIKRI, J.

1. Leave granted.

2. Dispute in this appeal pertains to the seniority of the appellant vis-a-vis respondent No.4. Both the appellant as well as respondent No.4 are working as teachers in Seth Gangadhar Makhriya High School, Mahabaleshwar, District Satara in Maharashtra. It is not in dispute that the appellant had joined the said school as Assistant Teacher before respondent No.4 and was senior to him in the post of Assistant Teacher. However, respondent No.4 had acquired B.Ed. degree prior to the appellant and on that basis he is treated senior to the appellant in the category of 'Trained Graduate Teachers'. Whether this consequence follows as a result of the rules is the matter of examination in the present case.

3. This question has arisen in the following circumstances: The appellant joined the service with respondent No.3 School as Assistant Teacher on 24.08.1979, whereas respondent No.4 joined the same post in the same School on 01.09.1980. At the time of her joining, the appellant had not completed her graduation, though it is not in dispute that the appellant fulfilled the requisite qualifications for appointment as Assistant Teacher. She completed her BA in the year 1984. Thereafter, she did B.Ed.

as well, with due permission of the School authorities, and passed the said course on 20.05.1986. To improve her academic record, the appellant even acquired the qualification of MA in the year 1997. On the other hand, the academic graph of respondent No.4 discloses that he was already BA when he joined the service as Assistant Teacher on 01.09.1980. He also did B.Ed. and completed that course on 01.11.1984 (that is, before the appellant, who had acquired the same qualification on 20.05.1986).

4. A seniority list was circulated by the School authorities (from the record, the date of this list is not discernible) wherein the appellant was shown as junior to respondent No.4. The appellant claimed that she was senior and, therefore, filed objections to the said seniority list, which, however, did not yield any result.

5. The then Headmaster of the School, one Mr. K.R. Lakeri, was due to retire on attaining the age of superannuation on 31.12.2009. The appellant claimed that she should be promoted as Headmistress, being the senior most teacher on the retirement of Mr. Lakeri and submitted an application to this effect on 16.05.2009, which was followed by another communication dated 01.12.2009. In reply, she received the communication dated 29.12.2009 from respondent No.1, which is a Charitable Trust running the School, asking for grounds and explanations on the basis of which she was staking her claim to the post of Headmistress. However, without waiting for the reply of the appellant and on the same day, that is on 29.12.2009, the Management of the School passed Resolution No.3 resolving to appoint respondent No.4 as the Headmaster of the School. Appointment letter dated 11.01.2010 was also issued in this behalf in favour of respondent No.4. This proposal was forwarded by the School authorities to the Education Officer (Secondary), Zilla Parishad, Satara (respondent No.5 herein) seeking approval for appointment of respondent No.4 as the Headmaster, which was granted by respondent No.5.

6. Feeling aggrieved by the promotion of respondent No.4, the appellant approached the School Tribunal by filing an appeal bearing No. 5/2010 seeking quashing of the orders of the authorities appointing respondent No.4. as the Headmaster of the School. This appeal was contested by the School authorities as well as the Education Officer taking the position that respondent No.4 was senior to the appellant. The School Tribunal, after hearing the matter, passed orders dated 26.09.2012 dismissing the appeal preferred by the appellant. The appellant challenged that order by filing the

writ petition in the High Court of Bombay. This writ petition has also been dismissed by the High Court vide orders dated 25.02.2013. Undeterred by two unsuccessful attempts, the appellant has approached this Court maintaining the posture that she is senior to respondent No.4 and rightful claimant to the post of Headmistress, as per the extant Rules.

7. The aforesaid, thus, is the brief narration of the background in which the dispute has arise, viz. whether it is the appellant who is senior to respondent No.4 or it is respondent No.4 who is senior to the appellant.

8. The reason given by the School Tribunal in accepting the claim of respondent No.4 is that at the time of entry of both these persons as Assistant Teachers in the School, both of them were not having B.Ed. qualification but were only D.Ed. Therefore, they were placed in Category- D of Schedule 'F'. Further, as far as B.Ed. qualification was concerned, the same was acquired by the appellant in the year 1986, whereas respondent No.4 got this qualification on 31.05.1984. According to the School Tribunal, seniority is to be considered from the date of acquisition of this professional qualification, that is being the 'Trained Teacher'. In this context, the School Tribunal took note of the fact that respondent No.3 School is a Secondary School, having classes of V to X and as such, as per Rule 3(1)(b), the required qualification must be graduate teacher possessing bachelor's degree in teaching and five years teaching experience and out of this two years experience shall be after acquiring bachelor's degree. Further, Schedule-B of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the 'Rules') provides the degree qualification for secondary teacher as Graduate plus B.Ed. On that reckoning, the date of acquiring the professional qualification becomes relevant, which was B.Ed., and since it is respondent No.4 who stole the march over the appellant by acquiring this qualification earlier in point of time, he was to be treated as senior to the appellant. The School Tribunal, in support of this conclusion that the date of acquisition of professional qualification would be the date of determining the seniority, relied upon a Full Bench judgment of the Bombay High Court in the case of Shri Vaijanath s/o. Tatyrao Shinde v. The Secretary, Marathwada Shikshan Prasarak Mandal (Writ Petition No. 4907 of 2002 decided on 15.11.2006).

9. The High Court, while dismissing the writ petition of the appellant, has concurred with the aforesaid view of the School Tribunal.

10. Notice in this case was duly served upon the respondents. However, none of the respondents chose to enter appearance. In these circumstances, we had no option but to hear the counsel for the appellant in the absence of the respondents. However, we have ourselves minutely perused the record as well as the relevant statutory provisions.

11. The submission of the learned counsel for the appellant was that criteria followed by the courts below in determining the seniority, namely, the date of acquisition of professional qualification, is totally extraneous and is not reflected in the relevant provisions, namely, the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the 'Act') and the Rules framed thereunder. His submission was that there are specific Rules determining the seniority and respondent No.1 was supposed to follow those Rules. According to him, the relevant Rules did not prescribe acquisition of a particular qualification as the criteria for fixing the seniority. He referred to the provisions of Section 4 of the Act as well as Rules 3 and 12 of the Rules, read with Schedule-F to the said Rules and submitted that these provisions, which are statutory in nature, not only provide the qualification required for the post(s), but also provide formula for determining the inter-se seniority as well as criterion for appointment of the Headmaster of a Private School.

12. In order to appreciate the aforesaid contention, it is necessary to glance through the Rules in question.

13. Section 2(9) of the Act defines 'Head of a School'. Section 2(24A) provides the definition of 'Assistant Teacher (Probationary)'. Section 3, which pertains to the applicability of the Act, inter alia, provides that this Act shall apply to all private schools in the State of Maharashtra, whether receiving a grant-in-aid from the State Government or not. Section 4 of the Act provides for the terms and conditions of service of employees of private schools. Section 5 cast certain obligations of Management of private schools, which includes filling up of permanent vacancies in such schools by appointment of a person duly qualified to fill such vacancy.

14. We would like to reproduce, verbatim, provisions of Section 2(9) and Section 2(24A) as well as Section 4 of the Act, which are as under: Section 2(9)

15. Head of a School, or Head means the person, by whatever name called in- charge of the academic and administrative duties and functions of a school conducted by any management and recognised or deemed to be recognised under this Act, and includes a principal, vice-Principal, head master, head mistress, assistant head master, assistant head-mistress, or superintendent thereof; Section 2(24A)

16. Assistant Teacher (Probationary) means a member of base teaching cadre appointed on honorarium and subject to such terms and conditions as specified in the Government Resolution published in Maharashtra Government Gazette, Extraordinary, No.12, Part-I-Central Sub-section, dated the 15th February 2007, for eventual appointment as a teacher; Section 4

17. Terms and conditions of service of employees of Private schools.

(1) Subject to the provisions of this section, the State Government may make rules providing for the minimum qualification for recruitment (including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of backward classes:

Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the disadvantage of such employee by any such rules.

(2) Every employee of a private school shall be governed by such Code of Conduct as may be prescribed. On the violation of any provision of such Code of Conduct, the employee shall be liable to disciplinary action after conducting an enquiry in such manner as may be prescribed.

(3) If the scales of pay and allowances, post retirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under sub-section (1), the Director shall direct in writing the Management of such school to bring the same upto the level provided by the said rules, within such period or extended period as may be specified by him.

(4) Failure to comply with any direction given by the Director in pursuance of sub-section (3) may result in the recognition of the school concerned being withdrawn, provided that the recognition shall not be withdrawn unless the Management of the school concerned has been given a reasonable opportunity of being heard.

(5) No employee working in a private school shall work in any coaching class. If any employee, in contravention of this provision, works in any coaching class, his services shall be liable to be terminated by the Management, provided that no such order of termination shall be issued unless the employee concerned has been given a reasonable opportunity of being heard.

(6) No employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank, by the Management, except in accordance with the provisions of this Act and the rules made in that behalf.

18. Relevant Rules with which we are concerned are Rule 3 (providing for qualification and appointment of Head); Rule 6 (stipulating qualifications needed for appointment as teachers) and Rule 12 (dealing with the seniority). Relevant portion of these Rules are as under: 3. Qualifications and appointment of Head.

(1) A person to be appointed as the Head -

(a) xx xx xx

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years', total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education:

xx xx xx

(3) 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.

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6. Qualifications of Teachers.

The minimum qualifications for the post of teachers and the non- teaching staff in the primary schools, secondary schools, Junior Colleges and Junior Colleges of Education shall be as specified in Schedule B.

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Schedule 'B'

(See rules 2(1)(j) and 6)

I. Qualifications for Primary Teachers

Appointment to the posts of Primary school teachers (other than special teachers-Drawing teachers) shall be made by nomination from amongst candidates who have passed S.S.C. examination or Matriculation examination or Lokshala examination or any other examination recognised as such by Government and the Primary Teachers Certificate examination or Diploma in Education examination, or a Diploma in Education (per-primary of two years' duration).

Note. - A person holding a Diploma in Education (pre-primary of two year's duration) shall be qualified to teach standards I to IV only notwithstanding anything contained in the foregoing provisions -

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II. Qualifications for trained Teachers in Secondary Schools and Junior Colleges of Education

1. For Graduate Teachers:

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(iv) A Diploma in Education of the Graduates Basic Training Centres;

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12. SENIORITY LIST

(1) Every Management shall prepare and maintain seniority list of the teaching staff including head master and Assistant Head master and non- teaching staff in the school in accordance with the Guidelines laid down in Schedule F. The Seniority List so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the list from time to time shall also be brought to the notice of the members of the staff concerned and their signature for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the management.

(3) Disputes, if any, in the matter of inter-se seniority shall be referred to the Education Officer for his decision.

Schedule F

1. Guidelines for fixation of seniority of teachers in the primary schools:

The Seniority of primary school teachers in Primary Schools shall be based on continuous officiation counted from the date of acquiring the educational

qualification as prescribed under Schedule B' appended to these rules.

2. Guidelines for fixation of seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College Classes attached to secondary schools and Senior College:

For the purpose of Fixation of Seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College classes attached to Secondary Schools the teachers should be categorized as follows:

Category A: Heads of Secondary Schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of their appointments to the respective posts.

Category B: Heads of Secondary Schools having an enrolment of students above 500, Principals of Junior Colleges of Education having four or less divisions and Assistant Heads of Secondary Schools having more than 20 classes on the basis of their appointments to the respective posts.

Category C:

M.A./M.Sc./M.Com, B.T./B.Ed., or its equivalent; or

B.A./B.Sc./B.Com. B.T./B.Ed., or its equivalent; or

B.A./B.Sc./B.Com. Dip.T (old two years course); or

B.A./B.Sc./B.Com., S.T.C./Dip.Ed./Dip.T. (One year course) with 10 years post “ S.T.C. etc. services

Category D:

B.A./B.Sc./B.Com., S.T.C./Dip.T. (One year course) Senior or Junior Hindi Shikshak Sanad or its equivalent

Category E:

S.S.C., S.T.C./ Dip.Ed/ Dip.T. (One year course) Senior or Junior Hindi Shikshak Sanad or its equivalent

Category F:

Untrained Graduates or holders of equivalent qualification

Category G:

Untrained Matriculates or holders of equivalent qualification

Category H:

All teachers other than those mentioned in categories A to G.

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Note 2: The following training qualifications which can be secured two years after S.S.C. examination shall be considered as training qualification for the purpose of seniority even after 1.10.1970:

(1) D.Ed. (2 years)

(2) T.D. (Bombay University)

(3) Dip. Ed. (Nagpur University).

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Note 4: The categories mentioned above represent the ladder of seniority and have been mentioned in descending order.

19. When we read the aforesaid Rules in the context of the present case, the position which emerges is that for appointment of a Primary Teacher, the qualification that is stipulated in Schedule-B is that he or she should have passed S.S.C. examination or

matriculation examination or lokshala examination or any other examination recognised as such by Government and the Primary Teachers Certificate examination or Diploma in Education examination, or a Diploma in Education (per-primary of two years' duration). Thus, among various alternate qualifications which are prescribed for appointment to the post of Primary School Teachers, one of the prescribed qualification is Diploma in Education Examination (D.Ed.). Therefore, a person holding this qualification would be treated as satisfying the qualification stipulated in Rule 6. As a consequence, he would be treated as 'Trained Graduate', as defined in Rule 2(1)(j), which means a person possessing the qualifications mentioned in sub-clauses (i) to (vi) of clause (1) of item II in Schedule B.

20. The appellant herein entered the service in respondent No.3 School as Assistant Teacher of a Primary School with Diploma in Education, i.e. D.Ed. qualification. She, thus, fulfilled the qualification for that post. B.Ed. degree is not the essential qualification prescribed for this post. This is a relevant factor which is to be kept in mind for resolving the controversy in issue.

21. In the aforesaid backdrop, it is to be seen as to whether acquisition of B.Ed. degree by respondent No.4 (who joined as Assistant Teacher after the appellant and was junior to her as Assistant Teacher) earlier in point of time than the appellant would tamper with the seniority of the appellant and steal a march over her? The School Tribunal as well as the High Court has referred to the Full Bench judgment of the Bombay High Court in Shri Vaijanath (supra) while answering this question in the affirmative. The question which was referred for determination by the Full Bench in that case was to the following effect:

22. For promotion to the post of Head Master of a Primary School, whether seniority of the teacher is to be counted from the date of initial appointment, or from the date of acquisition of educational and training qualification?

23. The Full Bench of the High Court answered the aforesaid question by holding that seniority shall be determined from the date of acquisition of educational and training qualification. For providing this answer, the Full Bench took into consideration provisions of Section 5 of the Act as per which permanent vacancy in a private school is to be filled up by appointing a person duly qualified to fill such vacancy. In the facts of that case, the Court noted that since the petitioner there, when he joined the school,

did not have the necessary qualification for the said post, he could not be treated as a person duly qualified in terms of Rule 6 read with Schedule B of the Rules. On that basis, the Court came to the conclusion that as the said petitioner acquired the qualification required for the post at a later date, it is only on the acquisition of such a qualification that he became eligible and qualified for being appointed to the post and, therefore, his seniority would be determined from the date of acquisition of the qualification and not before. For such a conclusion, the High Court relied upon the judgment of this Court in *Shitala Prasad Shukla v. State of U.P. & Ors.*, (1986) II LLJ 298 SC.

24. In the present case, as already mentioned above, the appellant was having the requisite minimum qualification for appointment to the post of Assistant Teacher in the Primary School and it was not a case of appointment of an unqualified teacher when the appellant was appointed to the said post on 24.08.1979. This makes all the difference and renders the judgment in the case of *Shri Vaijanath (supra)* as inapplicable to the facts of the present case. The High Court has failed to notice this relevant distinction and mechanically applied the ratio of the judgment in *Shri Vaijanath (supra)*.

25. In the present case, when we find that the appellant was qualified to be appointed as Assistant Teacher in Primary School on the date of his appointment, acquisition of higher qualification at a later date, even when such a higher qualification is requisite qualification for the higher post, will not be determinative for fixing the seniority. Direct answer thereto is provided by this Court in *R.B. Desai & Anr. v. S.K. Khanolkar & Ors.*, (1999) 7 SCC 54. The appellants therein were appointed to the post of Forest Officer in the year 1964-65 and after the required training joined the Forest Department of the Government of Goa as Foresters with effect from 27.01.1965. They were promoted to the next higher cadre of RFO with effect from 08.03.1974. The first respondent therein directly joined as RFO on 01.11.1975 a date subsequent to the date of promotion of the appellants. In the various seniority lists, including the final seniority list, prepared and published on 30.07.1991 of the officers in the cadre of RFOs, the appellants were shown at S.Nos. 5 and 8 whereas respondent No.1 was placed at S.No. 11. The ranking assigned in that seniority list was not been challenged at any point of time. Next promotion was to the post of ACF. As per the relevant Rules, the said post was a selection post and the method of recruitment to this post was in the ratio of 75% by promotion and 25% by direct recruitment. In the case of

promotion, the eligibility criteria was fixed as under:

(i) Range Forest Officers with 5 years' regular service in the grade and possessing diploma of Forest Rangers' Training from Forest Rangers College in India or equivalent.

(ii) Unqualified Range Forest Officers trained in Forest School with 10 years' regular service in the grade.

Note 1.“ The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/posts.

Note 2.“ Unqualified Range Forest Officers shall after promotion as Assistant Conservator of Forests would be required to complete successfully refresher courses at FRI&C.

(Emphasis supplied)

26. Interpreting Note 1, the High Court had held that date of completion of the prescribed qualifying service would be relevant and since the appellants therein, when they were senior as RFOs, had completed the qualifying service (which was 10 years in their case) and respondent No9.1 had completed qualifying service earlier in point of time (which was only five years), respondent No.1 was senior. This Court reversed the aforesaid view of the High Court by accepting the contentions of the appellants that once they entered the eligible list, the date of eligibility had no preferential benefit and it is only the seniority vis a vis the eligible candidates, as shown in the seniority list of the RFOs that would be taken into consideration. Interpretation given to Note 1 by the High Court was also rejected. The entire issue, while taking the aforesaid view, is dealt with by this Court in the following manner:

9. We are unable to agree with this reasoning of the High Court. As noticed above, promotion to the post of AFOs is made from the post of RFOs to the extent of 75% of the vacancies. There is no dispute that both the appellants and the first respondent belong to the cadre of RFOs. The only difference between them being that the appellants were promotees in the said cadre while the first

respondent was a direct recruit. It is an accepted principle in service jurisprudence that once persons from different sources enter a common cadre, their seniority will have to be counted from the date of their continuous officiation in the cadre to which they are appointed. On facts, there is no dispute that the appellants entered the RFOs' cadre on a date anterior to that of the first respondent, therefore, in the cadre of RFOs, the appellants are senior to the first respondent. However, to be considered for promotion, the rule required RFOs to acquire the eligibility as provided therein. Therefore, the question for consideration is: can the acquisition of an earlier eligibility give an advantage to the first respondent as against the appellants when an avenue for promotion opens in the cadre of ACFs even though at what point of time the appellants had also acquired the required eligibility? We are of the opinion that if at the time of consideration for promotion the candidates concerned have acquired the eligibility, then unless the rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The rule under consideration does not give any such priority to the candidates acquiring earlier eligibility and, in our opinion, rightly so. In service law, seniority has its own weightage and unless and until the rules specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same.

10. The High Court has relied upon the language of Note 1 to the rule to come to the conclusion that the persons with earlier date of eligibility have a weightage over others solely on the basis that the note required the list of eligibility to be maintained on the basis of the date of acquisition of such eligibility, hence eligibility has preference over seniority. Our reading of the said note does not persuade us to give any such preference. If the rule did contemplate such advantage, it would have stated so in specific terms. We also do not see any special objective in giving preference to the date of eligibility as against seniority. Eligibility, of course, has a relevant object but date of acquisition of eligibility, when both competing persons have the eligibility at the time of consideration cannot, in our opinion, make any difference.

11. If on the date of consideration, the appellants did not have the eligibility then certainly it is the first respondent who ought to have been considered for the said promotion and if he was so promoted earlier than the appellants he

would have acquired a higher ranking in the seniority list of ACFs. That not being the case, we are unable to agree with the view taken by the High Court, as stated above, because on the date on which the avenue for promotion to the cadre of ACFs opened both the appellants as well as the first respondent had the necessary eligibility and their names figured in the eligibility list. That being so, as stated above, it is the appellants whose case ought to have been considered first and it was so done and they having been found otherwise suitable, they were rightly promoted earlier than the first respondent. Consequently, they are entitled to a higher ranking in the cadre of ACFs vis a vis the first respondent. The view taken by us also finds support from the judgment of this Court in *Union of India v. B. Jayaraman*, (1994) Supp (1) SCC 95, wherein considering a similar argument this Court held: (SCC Headnote)

27. The note in column 11 is only for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes of being considered for promotion to the post of Superintendent Grade I and not for the purpose of seniority at all.

(Emphasis supplied)

28. That apart, we find that in the case at hand there is a specific Rule, namely, Rule 12 of the Rules, which deals with seniority. The clear and unambiguous criteria for determining seniority is the continuous officiation counted from the date of acquiring the educational qualification as prescribed under Schedule B. It is stated at the cost of repetition that since the appellant was holding the requisite qualifications, i.e. D.Ed., for appointment to the post of Assistant Teacher in Primary School, as prescribed under Schedule B to the Rules, her seniority was to be counted on the basis of continuous officiation. Since she joined the post of Assistant Teacher on 24.08.1979 and respondent No.4 came to be appointed subsequently, i.e. on 01.09.1980. The appellant would naturally be senior to respondent No.4.

29. Insofar as manning the post of Head of the School is concerned, Rule 3 of the Rules provides for the qualifications. It is not in dispute that as on the date of which the Head of the School was to be appointed, the appellant fulfilled all the requisite qualifications mentioned in the said Rule. Further, as already found, she was senior to respondent No.4 as well. Therefore, it is the appellant who was the rightful claimant to

the post of Head of the School. Depriving her of this legitimate right and making the appointment of respondent No.4 as the Head Master of the School was, therefore, clearly erroneous, which resulted in infringement of the rights of the appellant to hold that post.

30. Accordingly, this appeal is allowed. Judgment of the High Court is set aside and a direction is issued to appoint the appellant as Head of the School by replacing respondent No.4 therefrom. This direction shall be carried out within a period of four weeks from today. Since the respondents have not appeared, we are not making any order as to costs.