

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4615 OF 2009

Nafisa Adenwala  
V/s.  
Lissy Joseph & Ors.

....Petitioner

....Respondents

Mr.Mihir Desai for the Petitioner.

Mr.A.K. Jalisatgi for Respondent No.1.

Mr.Mandar Limaye for Respondent No.2.

Mr.P.I. Khemani, A.G.P. for Respondent No.3.

**CORAM : S.J. VAZIFDAR, J.**  
**DATE : 29TH JANUARY, 2010.**

**P.C. :-**

1. The Petitioner has challenged the order of the School Tribunal allowing the first Respondent's appeal. The first Respondent has challenged the Petitioner's promotion as Headmistress of St. John Convent High School of which Respondent No.5 is the Principal. The school is managed by the fourth Respondent trust. Respondent Nos.2 and 3 are Education Officer and the State of Maharashtra respectively.

2. The issue is whether the Petitioner was senior to Respondent No.1. The Petitioner was born on 13.8.1960. Respondent No.1 was born on 30.3.1967. Had all things been equal, the Petitioner may have been entitled to seniority over Respondent No.1 as she was older in age. As

things are however they are not equal between them.

3. The Petitioner was appointed as an Assistant Teacher on 13.6.1989 in the pre-primary section. The Petitioner however, contended that she was appointed in the primary section. The appointment letters in respect of the Petitioner and Respondent No.1 were silent as to whether they were appointed in the pre-primary or the primary sections. The School Tribunal considered the evidence relied upon by all the parties and came to the conclusion that the Petitioner's appointment was in the pre-primary section and not in the primary section. I am unable to hold that the findings of the School Tribunal are perverse or unsustainable. For instance, the School Tribunal has observed that the muster roll of the pre-primary section of June, 1997 indicates that the Petitioner had signed it as an Assistant Teacher of the pre-primary section. The School Tribunal has also observed that the muster roll of June, 1997 of the primary section does not reflect the Petitioner's name. These certainly are relevant and important facts to determine whether the Petitioner was appointed in the primary section or the pre-primary section. Further the list of such members of the primary section forwarded by the erstwhile Headmistress of the School to the Education Officer under cover of a letter dated 18.10.2001 also did not include the Petitioner's name as an Assistant Teacher from the primary section. It is not necessary to deal with other factors which the School Tribunal considered in rejecting the Petitioner's case that her initial appointment was in the primary section and not in the pre-primary section.

4. On the other hand, Respondent No.1 was appointed in the primary section on 21.8.1989. Thus as far as her appointment in the

primary section is concerned, Respondent No.1 was senior to the Petitioner. The Petitioner and Respondent No.1 did not hold the requisite qualifications on the date on their appointments to the said post namely Assistant Teacher, although the Petitioner and Respondent No.1 obtained the necessary qualification namely B.Ed. on 30.5.2002.

5. Thus on 30.5.2002, Respondent No.1 was in the primary section, whereas the Petitioner was still in the pre-primary section. The Petitioner first signed the muster roll of the primary section only on 14.6.2002. Thus Respondent No.1 was clearly senior to the Petitioner.

6. Faced with this Mr.Desai, the learned counsel appearing on behalf of the Petitioner, contended that Respondent No.1 could be deemed to have been appointed in the primary section only on 30.6.2002 i.e. the first day of new term. Between 13.5.2002 to 13.6.2002 the school was on vacation and therefore according to Mr.Desai, Respondent No.1 could not have been appointed to the primary section during this period.

7. The submission is not well founded. There is nothing in any of the Acts which suggests that an appointment cannot be made when the school is on vacation. Merely because the classes are not being conducted also does not lead to the conclusion that the school was not working. For both these reasons, the contention is rejected.

8. Mr.Desai also contended that the School Tribunal did not have jurisdiction to entertain the first Respondent's appeal. He submitted that the school does not fall within the purview of the M.E.P.S. Act in view of the provisions of Sections 2(6) (6A) (20) and ( 21). A perusal of these sections indicates that the question of jurisdiction is not a pure question of

law. It is a mixed question of law and fact. For instance, it would be necessary to consider whether the school was recognized by the relevant authorities or not under the said Act. This point was not pleaded in the reply to the appeal. It was not pleaded in the Writ Petition. I am not inclined to allow this point to be raised at this stage during the arguments.

9. Mr.Desai also contended that the school can only be recognized under the provisions of the Bombay Primary Education Act, 1947 and not under any other Act including the M.E.P.S. Act. Section 39 of the BPE Act relied upon by Mr.Desai however does not contain any statutory bar to this effect.

10. In the circumstances, the Writ Petition is dismissed. The interim order shall continue upto and including 28.2.2010.