

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICITON

CIVIL APPEAL NO.6145 OF 2013
(Arising out of S.L.P.(C)No.23404 of 2009)

GURUDEO EDUCATION SOCIETY & ANR.

Appellant (s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal arises out of order dated 25.06.2009 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur whereby the High Court has disposed of Writ Petition No.4265 of 2006 filed by respondent no.4-Bhimrao with a direction to the Deputy Director of Education to take appropriate action against the Management including action in the nature of appointment of an Administrator, if the Management fails to respond to the communications which the Deputy Director of Education has addressed to the former. The controversy arises in the following backdrop:

Respondent no.4-Bhimrao is employed as an Assistant Teacher in Nagpur Mahila Vidyalaya established and managed by appellant no.1-Society. Having acquired an M.Ed. Qualification in February 2004 and considering himself to be eligible for appointment as lecturer in appellant no.2 College (Ravindra B.Ed. College, Nagpur) also established and managed by appellant no.1-Society, Bhimrao appears to have represented to Education Officer, Nagpur, asking for a direction of his transfer from the girls' school (Nagpur Mahila Vidyalaya) to appellant no.2 College. On receipt of the said representation, the Deputy Director of Education, appears to have issued a direction asking the Management of the Society to respond to the prayer made by Bhimrao. Since the Management did not consider the proposed transfer of the employee from the girls' school to the appellant no.2 College viable, it did not respond to the proposal. This forced Bhimrao to file Writ Petition No.4265 of 2006 before the High Court of Judicature at Bombay, Nagpur Bench. In the said petition the principal grievance made by the writ petitioner (respondent no.4 herein) was that although he was duly qualified for appointment as lecturer in appellant no.2 College and although a common seniority of the employees serving in the institutions established and managed by appellant no.1-Society was maintained by the Management of the Society, the management was unfairly denying to the said Bhimrao the opportunity of serving as lecturer in appellant no.2 College. Bhimrao on that premise sought a writ of mandamus against the Management and the Deputy Director of Education directing his transfer and posting in appellant no.2 college. The High Court has by the order impugned in the present appeal disposed of the writ petition with a direction to the Deputy Director to take appropriate action against the Management including appointment of Administrator, if necessary, if the Management failed to respond to the communication sent to it within a period of four weeks.

We have heard learned counsel for the parties at some length and perused the order under challenge. The essence of the grievance made by respondent no.4-Bhimrao is that he is entitled to be transferred and appointed as lecturer in appellant no.2 College not only because appellant no.1-Society maintains a common seniority list serving in its institutions but also because he is fully eligible on account of his academic qualifications for appointment as lecturer in the said College. This position is disputed by appellant no.1-Society, according to whom the Management of the Society does not maintain a common seniority list nor is it legally permissible for the Society to transfer an employee serving in one institution to another, no matter such an employee may be otherwise

eligible for appointment against any such available vacancy. The Deputy Director of Education has not had an opportunity to pronounce upon these two aspects ostensibly because the Management did not respond to the communication sent by him to the Society. This has led the High Court to direct the Deputy Director to take appropriate action against the Management if it fails to respond. It is common ground that although a show cause notice was issued by the Deputy Director of Education proposing to appoint an Administrator, yet no such appointment has so far been made.

We are also informed by learned counsel for the parties that all disputes relating to educational institutions and those serving in such institutions are amenable to the jurisdiction of a Statutory Tribunal established under an enactment of the State of Maharashtra. We do not, for the present, propose to examine whether the Tribunal has any such jurisdiction, if so, what are the limits of such jurisdiction. We say so because the Management of appellant no.1-Society has not so far passed any reasoned order on the representation of respondent no.4-Bhimrao for transfer and appointment as lecturer in appellant no.2 College. The question of respondent no.4-Bhimrao's seeking redress before the Tribunal or before the High Court would arise only if and when the Management passes an appropriate order on the subject.

In that view, therefore, and we deem it fit to give an opportunity to respondent no.4-Bhimrao to file a detailed representation claiming transfer and appointment as lecturer in appellant no.2 college and also raise all such grounds as are otherwise open to him. On receipt of the representation, the Management of the Society shall, within six weeks thereafter pass a reasoned order on the subject. Bhimrao if aggrieved of the same may seek such redress as may be otherwise open to him in accordance with law either before the statutory Tribunal or before any other appropriate forum. With the observations and modifications of the order impugned, the appeal is disposed of leaving the parties to bear their own costs.

.....J.
(T.S. THAKUR)

.....J.
(VIKRAMAJIT SEN)

NEW DELHI

DATED 29th July, 2013

ITEM NO.42

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).23404/2009

(From the judgement and order dated 25/06/2009 in WP No.4265/2006 of The HIGH COURT OF BOMBAY AT NAGPUR)

GURUDEO EDUCATION SOCIETY & ANR.

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(With appln(s) for directions and prayer for interim relief and office report))

Date: 29/07/2013 This Petition was called on for hearing today.

CORAM :

