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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 627 OF 2015

1 VIJAYKUMAR JANARDHAN GAIKWAD,
Age : 48 years, Occ : Service,
R/o Maher Asthi Vyang Girls Residential
School, MIDC Area, Latur,
Tq. & Dist. Latur.

2 SURESH PANDURANG NIKALJE,
Age : 46 years, Occ : Service,
R/o Maher Asthi Vyang Girls Residential
School, MIDC Area, Latur,
Tq. & Dist. Latur.

...PETITIONERS

-VERSUS-

1 REKHA VITTHAL BAKLE,
Age : 28 years, Occ : Nil,
R/o Walmikinagar, Near Kashi Kunj
Building, New Barshi Road,
Latur, Tq. & Dist.Latur.

2 Marathwada Apang Sanghatana's
Maher Asthi Vyang Girls Residential
School, MIDC Area, Latur,
Tq. & Dist.Latur.
Through it's Administrator.

3 Social Welfare Officer,
Latur, Tq. & Dist.Latur.

4 Appellate Authority/ Regional
Deputy Commissioner,
Social Welfare Division, Latur,
Tq. & Dist.Latur.

...RESPONDENTS

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Advocate for Petitioners : Mr.Patil Indrale Anand V.

AGP for Respondents/ State : Mrs.V.A.Shinde.

Advocate for Respondents : Mr.Kotkar Sanjay D. for R/1.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2015

Oral Judgment:

1 Heard. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioners are aggrieved by the order dated 08.01.2015 by which the Appeal preferred by Respondent No.1 is partly allowed and Respondent No.2/ Management is directed to reinstate Respondent No.1 till Respondent No.3 concludes on the dispute of seniority between the Petitioners and Respondent No.1.

3 The Petitioners contend that their dates of entry in service with the Institution are 12.01.2000 and 13.03.2003.

4 Shri Kotkar, learned Advocate for Respondent No.1, makes a statement that she was appointed on 11.09.2003.

5 It is the case of the Petitioners that presently there are only three positions available for the special teachers out of which two positions as per seniority are occupied by the Petitioners and one position is occupied by Mr.Pralhad Kashinath Patane who has been appointed on 07.06.2002. The grievance, therefore, is that by the impugned order delivered by Respondent No.4, which is without deciding the issue of seniority between these teachers, the reinstatement of Respondent No.1 has been directed. It is, therefore, stated that if Respondent No.1 is to be reinstated, one amongst the above stated three teachers will have to be terminated, which means that the junior most teacher will stand terminated in order to accommodate Respondent No.1.

6 Shri Patil, learned Advocate for the Petitioners, submits that the Appellate Authority/ Respondent No.4 in the entire impugned order has kept the issue of seniority list in between these teachers aside. The said issue is left to Respondent No.3 to be decided after taking into account the records of the Institution and after hearing the concerned teachers, who are 05 in number, including Rajey Govindrao Jadhav.

7 Shri Patil points out that this could not have been done since the order of reinstatement in favour of Respondent No.1 cannot be passed until the issue of seniority is decided. It is imminent that the teacher at

Sr.No.4 amongst these four teachers may be declared surplus and therefore, will have to be terminated. Without deciding the said issue, an order of reinstatement is granted in favour of Respondent No.1.

8 Shri Kotkar, learned Advocate appearing on behalf of Respondent No.1, concedes that the issue of seniority amongst these four teachers has not been decided by Respondent No.4 in the impugned order. He submits that the said issue is left open for Respondent No.3 to consider and by the impugned order, Respondent No.4 has directed Respondent No.3 to decide the seniority list.

9 To a query from the Court as to whether, Respondent No.1 is senior to the Petitioner, Shri Kotkar submits in the affirmative on the ground that the Management has manipulated the seniority list in 2006 and has shown the Petitioners and Mr.Patane as seniors to Respondent No.1. He, therefore, submits that Respondent No.1 deserves to be reinstated in service.

10 Shri Kotkar acknowledges that in the event Respondent No.1 is reinstated pursuant to the impugned order, one amongst the Petitioners and Mr.Patane will have to make way for accommodating Respondent No.1 as there are only three positions available in view of the strength of

students.

11 The learned AGP appearing on behalf of Respondent Nos.2, 3 and 4 submits that a direction may be issued to Respondent No.3 to decide the dispute of seniority between the five teachers within a period of two months from today. The concerned Respondent shall consider the records of the Management and shall hear all the concerned teachers before arriving at a conclusion.

12 Shri Kotkar insists that Respondent No.1 should be reinstated before deciding the said issue by Respondent No.3.

13 Considering the peculiar situation as recorded herein above, it is apparent that Respondent No.4 has, for the reasons best known to the said authority, bypassed the issue of seniority. When Respondent No.1 was terminated being the junior most amongst these four teachers, it was incumbent upon the said Authority to decide the seniority amongst these teachers which would have given a clear picture as regards the junior most amongst these teachers. By leaving the said issue to be decided by Respondent No.3, Respondent No.4 could not have set aside the termination of Respondent No.1 in the light of the fact that the reason for her termination was that she was the junior most teacher as per the

records of the Management.

14 In the light of the above, it is necessary to protect the services of the Petitioners since there is no conclusion arrived at by any competent authority that they are juniors to Respondent No.1 whose termination has been set aside on the presumption that she could be senior to the Petitioners and Mr.Patane.

15 As such, this Writ Petition is partly allowed. Respondent No.3 is directed to decide the seniority amongst the five teachers, namely, Vijaykumar Janardhan Gaikwad (Petitioner No.1), Suresh Pandurang Nikalje (Petitioner No.2), Rekha Vitthal Bakle (Respondent No.1), Pralhad Kashinath Patane and Rajey Govindrao Jadhav, within a period of TWO MONTHS from today.

16 Needless to state, Respondent No.3 shall follow the Rules applicable, shall take into account the original records of Respondent No.2/ Management and shall hear all these teachers before delivering it's order deciding their seniority.

17 Needless to further state, till such decision is arrived at, Respondent No.2/ Management shall not proceed to terminate any one

amongst the three teachers, who are in service today viz. the Petitioners and Mr.Patane.

18 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)