

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

WRIT PETITION NO. 4545 OF 2003

Jagannath s/o. Kashinath Majge .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. N.P. Patil, Advocate for the petitioner.

Mr. D.B. Bhange, A.G.P. for respondent/State.

Mr. N.B. Patil, Advocate for respondent Nos. 2 & 3.

**CORAM : A.V. NIRGUDE &
V.K. JADHAV, JJ.**

DATED : 14.09.2015

P.C. :-

1. Heard. This petition has checkered history. In 1990 the petitioner was the senior most Assistant Teacher working in the school run by respondent No.2-Education Society. Then, at that time, respondent No.2 decided to create a post of Assistant Head Master which would be available to the senior most teacher. But the management erroneously decided to reserve this post for Scheduled Caste candidate. Accordingly, instead of the petitioner one Mr. Gavali was appointed as Assistant Head Master, who was junior to the petitioner. The petitioner then filed Writ Petition No.1829 of 1991 and challenged the decision of appointing Mr.Gavali as Assistant Head Master and of approval granted to his such appointment. The petition was hotly contested and

ultimately this Court on 26th September, 2002, held that the appointment of Mr. Gavali was illegal and the management should appoint a person on this post assuming that the post was not reserved for Scheduled Caste candidate. Prayer clauses (B) & (C) of the petition were allowed. Said prayers are as under :-

"(B) This Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ in the like nature setting aside the impugned order dated 05.12.1990 appointing the respondent No.5 on the newly created post of Assistant Head Master with effect from 01.08.1990 and also the impugned order dated 08.10.1990 passed by the Education Officer, Zilla Parishad, Latur granting approval to the appointment of the respondent No.5.

(C) To issue a writ of mandamus or any other appropriate writ directing the respondent Nos.2 and 3 to fill up the post of Assistant Head Master on the basis that the post did not fall in the reserved category."

2. In addition to this, the Court mentioned specifically in the order that :-

"14..... The respondent No.2 - Society shall proceed to fill up the post of Assistant Head Master on the basis that the post did not fall in the reserved category at the time of filling the post."

3. Respondent No.2 then appointed the petitioner as Assistant Head Master by order dated 30.01.2003. Unfortunately for the petitioner, he stood retired due to superannuation within two months. The petitioner filed this petition for getting effect to his appointment as Assistant

Head Master from 05.12.1990. According to him, the order of the Court virtually declared that he ought to have been appointed as Assistant Head Master in place of Shri Gavali w.e.f. 05.12.1990. On careful reading of the judgment in the previous Writ Petition, we realized that assumption of the petitioner is correct. However, we are not inclined to give to the petitioner the difference of salary which he would have been earned as Assistant Head Master from 05.01.1990 to 30.01.2003. But we would certainly hold that his seniority in the cadre of Assistant Head Master should be counted from 05.12.1990. He should, therefore, be entitled to revised additional pensionary benefits according to the pay-scale of the Assistant Head Master assuming that he was appointed on 05.12.1990.

4. The petition is allowed in above terms. Rule made absolute accordingly.

5. Revised pension bill shall be sent by respondent No.2 to the competent authority within three months from today.

[V.K. JADHAV,J.]

[A.V. NIRGUDE,J.]