

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3972 OF 2004

Sau. Sushama Sudhakar Chaudhari, Aged 54 years, Occupation service, Resident of SANGHVI, Bk., Taluka Yawal, District Jalgaon

Appellant

V E R S U S

1 The State of Maharashtra [Secretary],
Minister of Education, Mantralya, Mumbai

Respondents

[Respondent no.1 is dismissed as per Registrar [Judicial] Order dated 04.04.2005]

2 Education Officer [Secondary], Zilla Parishad, Jalgaon

3 Prakash Mandal, Through its Chairman Sanghvi, Taluka Yawal, District Jalgaon

4 Head Master, Jyoti Vidhya Mandir, SANGHVI, Tq. Yawal, Dist. Jalgaon

5 Smt. Mandakini Ramkrishna Chaudhari, Aged 57 years, Occupation Service

6 Sudhakar Jagannath Barole, Aged 56 years, Occupation Service

7 Vanraj Vithu Mahajan, Aged 56 years, Occupation Service

Respondent nos.5 to 7 are resident of SANGHVI BK, Taluka Yawal, District Jalgaon

Mr. G.V. Wani, Advocate for the appellant
Mr. S.D. Kaldate, AGP for the respondent/State
Mr. U.T. Chaudhary, Advocate for respondent no.3
Mr. A.G. Talhar, Advocate for respondent nos.5 to 7

**CORAM : A. V. NIRGUDE &
V. K. JADHAV, JJ.**
DATE : 9th October, 2015

ORAL JUDGMENT [Per A.V. Nirgude, J.] :

1. This petition challenges order dated 5th May, 2004, passed by the Education Officer, Secondary, Zilla Parishad, Jalgaon, in respect of approval for petitioner's appointment as Supervisor and Revision in seniority of the Teachers working in the School, in which the petitioner worked.

2. ***The facts leading to this litigation, are as under:-***

The petitioner was appointed as Assistant Teacher in 1973. Respondent nos.5 to 7 were appointed subsequent to her as Assistant Teachers. The petitioner was already holding Bachelor Degree of Arts and had also acquired B.Ed. Degree prior to 1973. Sometime in 1998, there arose a dispute of seniority amongst the petitioner and respondent nos.5 to 7. The Education Officer vide his order dated 10th February, 1998, clarified that the petitioner was senior to respondent nos.5 to 7. This was his decision under Rule 12 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Rules, 1981. As if this was not enough, the Head Master continued to send his representations to the Education Officer questioning the seniority of the petitioner. Every time the Education Officer clarified that the petitioner was held to be senior most. Such

communication was even sent on 16th May, 2000. In the year 2000, it is clear that the seniority of the petitioner was quite settled. In 2003, Head Master of the School reached the age of superannuation and in his place the next senior teacher was appointed as Head Master. Earlier, he was working as supervisor. The Management appointed her as supervisor and the proposal was sent for approval of the Education Officer. Thereafter, the Education officer visited the School and heard the parties including respondent nos.5 to 7. Even then they were making grievance that they were senior to the petitioner. This time, the Education Officer reviewed his earlier decision and held that the petitioner was not seniormost and she could not be appointed as Supervisor. Her proposal for approval was rejected. He further directed the Head Master to prepare a new seniority list.

3. The question is, whether the Education Officer could have reviewed his own earlier order. Rule 12 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Rules, 1981, reads as under:-

"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 seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures 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."

In this rule, there is no provision permitting review of the order passed under this Rule by the Education officer. Most probably the order which was passed prior to 2000 in favour of the petitioner was passed by a different person who was then working as Education Officer. The Education Officer who passed

the impugned order was probably a different person. He practically sat in judgment over the earlier order. This was not permissible. The petition is therefore succeed.

O R D E R

- [a] The writ petition stands allowed.
- [b] The impugned order is set aside.
- [c] The approval to petitioner's appointment as Supervisor is granted post facto.
- [d] All benefits such as back wages and pensionary benefits shall be given to the petitioner from today.

Rule is made absolute accordingly.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)