

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

LETTERS PATENT APPEAL NO.100 OF 2013

Navnath s/o Ganpatrao Patil
Age: 51 Yrs., occu. Assistant
Teacher, R/o Nipani, Tq.Kallam,
District Osmanabad.

- APPELLANT

VERSUS

- 1) Vidya Vikas Sanstha, Nipani
Tq. Kallam, Dist.Osmanabad,
Through its President
- 2) Vidya Vikas Sanstha, Nipani
Tq. Kallam, Dist.Osmanabad,
Through its Head Master.
- 3) The Education Officer
(Secondary) Zilla Parishad,
Osmanabad.
- 4) Babasaheb s/o Bhimrao Patil,
Age:51 Yrs., occu.H.M.
R/o Nipani, Tq. Kallam,
District Osmanabad.

- RESPONDENTS

Mr. S.S.Jadhavar, Advocate for Appellant
Mr. V.D.Salunkar, Advocate for Respondent No.4.

CORAM : **R.M.BORDE &**
 P.R.BORA, JJ.

DATE OF RESERVING JUDGMENT : **10th February, 2015.**

DATE OF PRONOUNCING JUDGMENT: **9th March, 2015.**

JUDGMENT (PER :- P.R.BORA, J.)

- 1) Judgment and Order dated 21.2.2012 passed by
learned Single Judge in Writ Petition No.1527/2011,

is questioned in the present Appeal by the writ petitioner therein. The aforesaid writ petition was filed by the appellant, challenging the order passed by School Tribunal, Pune Region, Solapur in Appeal No.23/2008, whereby the School Tribunal has rejected the said appeal, wherein, the present appellant had challenged the order dated 31st March, 2008 by which, Respondent No.4 herein, viz. Babasaheb s/o Bhimrao Patil was promoted to the post of Head Master.

. It was the case of the appellant that Respondent No.4 was promoted to the post of Head Master by superseding his claim. It was the further contention of the appellant that since he was senior to Respondent No.4, he ought to have been promoted to the post of Head Master in place of Respondent No.4.

2) Heard Shri Jadhavar, learned Counsel appearing for appellant and Shri Salulnke, learned counsel appearing for Respondent No.4.

3) Learned Counsel for appellant submitted that the appellant and Respondent No.4 were initially appointed in Respondent No.2-School by Respondent No.1 on one and the same date, i.e. 1.7.1986.

Learned counsel further submitted that at the time of initial appointment, while the appellant was having qualifications of B.A.B.Ed., Respondent No.4 was possessing qualifications as B.Com.B.P.Ed.

. Learned Counsel further submitted that since the appellant was senior to Respondent No.4 by age, he must have been treated as senior to Respondent No.4 and must have been placed above Respondent No.4 in the list of seniority. To substantiate his contention, the learned Counsel referred to Note 3 of Schedule-F to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the said Rules).

. Learned Counsel further submitted that the aforesaid aspect has not been duly considered either by the School Tribunal or by learned Single Judge. Learned counsel further submitted that the findings recorded by the School Tribunal as regards the continuity in the service of the present appellant are also ill-founded. The learned counsel submitted that mere non-payment of salary to the appellant would not mean that he was dis-continued or his officiation was not continuous. The learned counsel further submitted that the appellant cannot be

estopped from raising the issue of seniority on the ground that he did not challenge the seniority list on earlier occasions. The learned Counsel, therefore, prayed for setting aside the order passed by the learned Single Judge as well as by the School Tribunal.

4) Learned Counsel for Respondent No.4 opposed the submissions advanced on behalf of the appellant. He submitted that all the objections raised by the appellant in the present appeal have been properly dealt with, at the first instance by the School Tribunal and thereafter by the learned Single Judge of this Court. Learned counsel brought to our notice that since beginning Respondent No.4 was shown senior to the appellant in the school record. The learned Counsel further submitted that the seniority list, prepared in accordance with law, was circulated amongst the employees of the school, which was brought to the notice of the present appellant also, but he did not raise any objection to the said seniority list, on the contrary, put his signature in approval of the said seniority list. Learned Counsel further submitted that since the appellant was below

the Respondent No.4 in the list of seniority, he was declared surplus prior to Respondent No.4 when such contingency arose however, at that time also, the appellant did not raise any objection. Learned Counsel further submitted that subsequently Respondent No.4 was also declared surplus and thereafter was absorbed in some other school and eventually repatriated to his original school. Because his salary for the intervening period was not paid to him, Respondent No.4 filed Writ Petition No.4334/1998 before this court praying for directions to the respondents to pay him salary of the intervening period. Learned Counsel submitted that the writ petition filed by the Respondent No.4 was allowed by the Judgment and Order passed by the Division Bench of this court in the aforesaid writ petition on 27th March, 2001, whereby directions were issued against the respondents to consider entitlement of the petitioner for the salary. Learned Counsel submitted that accordingly Respondent No.4 has been paid the salary of the aforesaid period, meaning thereby that he had continued in service for the entire said period. Learned Counsel further submitted that as against the

case of Respondent No.4, the appellant had also filed a writ petition No.1053/1996, claiming the same relief, however, the writ petition filed by the appellant came to be rejected and no relief, as was granted in favour of the respondent No.4, was granted in favour of the appellant. Learned Counsel submitted that in such circumstances the appellant cannot be said to be in continuous service. Considering all these aspects, according to learned Counsel, the School Tribunal as well as learned Single Judge have rightly rejected the claim of the present appellant. He, therefore, prayed for dismissal of the appeal.

5) We have carefully considered the submissions advanced by both the parties. We have also perused the Judgment of the School Tribunal and learned Single Judge. In so far as the factual aspects are concerned, there is no much dispute. It is not in dispute that on all earlier occasions, the appellant had remained silent on the issue of seniority though he was all the while shown junior to Respondent No.4. It is also not in dispute that the appellant did not raise any dispute at the time when he was declared

surplus prior to respondent No.4 It is also the matter of record that the writ petition filed by the present appellant seeking salary of the intervening period and consequently continuity in service, was rejected by this court. From the record it is further revealed that the issue of seniority interse appellant and Respondent No.4 has also been dealt with by the Education officer and the Education officer has also rejected the claim of seniority raised by the appellant. Even if it is accepted that since the appellant was senior by age, while preparing the list of seniority at the initial stage, he ought to have been shown senior to Respondent No.4 and even if at that time, the appellant did not raise any objection, he cannot be estopped from raising such objection at any later point, since there cannot be estoppel against law, the fact remains that after being declared surplus, appellant remained out of service and without salary for few months whereas the respondent No.4 was granted salary of the entire said period and thus he continued in the same category for more period than the appellant. Thus, at the time when Respondent No.4 was promoted to the post of Head Master, the period of his continuous officiation was

more than the period of services rendered by the appellant and he was, therefore, rightly promoted to the said post. The learned Single Judge has rightly held that it was not only the seniority list alone, prepared since 1986, showing the Respondent No.4 as senior to the appellant, but all other circumstances, more particularly, the fact of rendering the appellant to be surplus prior to Respondent No.4, his subsequent absorption after the absorption of the Respondent No.4, have also illustrated that the appellant had accepted the aforesaid position all throughout. Learned Single Judge has further rightly held that the appellant had rights and remedies available in law immediately when he noticed the discrepancy in the seniority list prepared for the years 1986-1987 or when it was notified to him in the year 2000-2001 when he was declared surplus prior in time to Respondent No.4. However, he did not raise any dispute at that time. Learned Single Judge has further rightly held that the appellant did not render continuous service with the respondent/school to stake claim as senior to Respondent No.4.

6) After having considered all above aspects,

we do not find that any error has been committed by the learned Single Judge. The Letters Patent Appeal filed by the appellant is devoid of merit and deserves to be dismissed and same is accordingly dismissed. Pending civil application, if any, stands disposed of.

Sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/

fldr 27.2.15