

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5926 OF 2010

Gram Sudharma Mandal, Salve
Taluka Dharangaon, District Jalgaon
Through its president and Another

...Petitioners

versus

The State of Maharashtra and others

...Respondents

.....
Mr. A.G. Talhar, advocate for the petitioners
Mrs. S.A. Dhumal, A.G.P. for respondents 1 and 2
.....

WITH
WRIT PETITION NO. 5927 OF 2010

Arun Shriram Patil and others

...Petitioners

versus

The State of Maharashtra and others

...Respondents

.....
Mr. P.S. Gaikwad, advocate for the petitioners
Mrs. S.A. Dhumal, A.G.P. for respondents 2 and 2.
.....

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

DATED : 31st AUGUST, 2015

PER COURT (PER V.K. JADHAV, J.) :-

1. By way of present writ petitions, the petitioners challenge the order vide which the seniority of the teachers working with the petitioner

institution has been re-determined as per the directions issued by this Court on 4.3.2008 in writ petition No. 1275 of 2008 and on 6.7.2009 in writ petition No. 5298 of 2008.

Brief facts giving rise to the petitions are as follows:-

2. Respondent No.3 Sau. Komal Dnyandeo Kohle was declared to be surplus and as such she had filed writ petition No. 1275 of 2008 before this Court claiming that she was senior to the petitioners in writ petition No. 5927 of 2010 and thus she could not have been declared as surplus. This court vide order dated 4.3.2008 passed in the aforesaid writ petition No. 1275 of 2008 directed the Education Officer to re-determine the seniority on the basis of the application by present respondent No.3. This Court, while passing the aforesaid order, had also directed the Education Officer to invite the petitioner therein to participate and give reasonable opportunity of being heard to the persons likely to be affected. The respondent Education Officer in accordance with the aforesaid directions, re-determined the seniority vide order dated 27.5.2008. The said order was challenged by the petitioners in writ petition No. 5927 of 2010, by filing writ petition No. 5298 of 2008. This Court by order dated 6.7.2009 quashed and set aside the aforesaid order dated 27.5.2008 and further directed the respondent Education Officer to hear afresh the petitioners therein, respondent No.3 herein, respondent management and the respondent Head Master. The respondent Education Officer by impugned order dated 11.1.2010 confirmed the earlier order passed on 27.5.2008.

The petitioners institution has challenged the said order dated 11.1.2010 by filing writ petition No. 5926 of 2010 and affected employees have also challenged the very same order by filing writ petition No. 5927 of 2010. Thus, both these writ petitions are being decided by this common order.

3. The learned counsel for the petitioners submits that the respondent No.3 Komal was appointed on D. Ed. pay scale w.e.f. 14.12.1992. The then Education Officer has also accorded approval to that effect. Accordingly, the name of respondent No.3 Komal was shown in category "E" of Schedule F in the seniority list maintained by the management. Learned counsel further submits that the said pay scale was accepted by respondent No.3 without any protest for near about 14 years. In the academic year 2007, respondent No.3 when she had been declared as a surplus teacher, she raised a dispute for the first time by filing writ petition No. 1275 of 2008, as aforesaid. The learned counsel further submits that after the appointment of respondent No.3, the petitioner institution has appointed several other teachers on B. Ed. pay scale and said teachers were placed in the category "C" Schedule F of the seniority list. Respondent No.3 has however, not raised any objection to the said seniority list and for the first time, raised a dispute in the year 2007, when she was declared surplus. The learned counsel further submits that respondent No.3 was appointed on D. Ed. pay scale in the year 1992 and therefore, the impugned order passed by the Education Officer re-determining the seniority of respondent No.3 by placing her at Sr. No.12 in the seniority list is not legal and proper. The learned counsel further

submits that at present respondent No.3 is not working with the petitioner school and redetermination of seniority as directed by the Education Officer, seriously affected the future claims of the employees serving with the petitioners institution.

4. Learned A.G.P. for respondent Nos. 1 and 2 submits that the Education Officer has rightly re-determined the seniority, as directed by this Court in the aforesaid writ petitions. Learned A.G.P. further submits that respondent Education Officer has given opportunity of being heard to the petitioner institutions as well as other employees, who are the petitioners in writ petition No. 5927 of 2010. Lastly, the learned A.G.P. submits that the respondent Education Officer has passed the impugned order as per the provisions of Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981.

5. We have also heard the learned counsel for the petitioners in writ petition No. 5927 of 2010, who has adopted the arguments canvassed by learned counsel for the petitioner institution in writ petition No. 5926 of 2010.

6. We have carefully perused the order passed by this Court on 6.7.2009 in writ petition No. 5298 of 2008. In para 5 of the said order, this Court has observed that on technical ground the petition is required to be allowed. In that view of the matter, the impugned order dated 27.5.2008 was quashed and set aside and the respondent Education Officer further

directed to give hearing afresh to all parties concerned.

7. Schedule F of the Rules of 1981 prescribes the guidelines for fixation of seniority of teachers in the primary schools and the secondary schools etc. It is obvious that the fixation of the seniority of teachers as per these guidelines based upon the qualification possessed by the teachers and not on the basis of the pay scale granted to them irrespective of qualification possessed by them. The respondent No.3 undisputedly possesses the qualification of B.A. B. Ed. and she was required to be placed in category "C" instead of category "E" as it was done by the petitioner institution. In our considered opinion, the cause of action for determination of seniority is continuous one and it does not lapse only by efflux of time. The respondent Education Officer by order dated 27.5.2008 has correctly re-determined the seniority of respondent No.3 and directed to place her name in category "C" of Schedule F. As discussed above, the said order dated 27.5.2008 was quashed and set aside by this Court only on technical grounds that opportunity of being heard was not given to the affected persons. The respondent Education Officer after giving opportunity of being heard to the petitioners institution and other affected employees (petitioners in writ petition No. 5927 of 2010), passed the impugned order on 11.1.2010. The respondent Education Officer without recording separate reasons has confirmed his earlier order passed on 27.5.2008. Since the earlier order dated 27.5.2008 is reasoned order, we do not find any fault in the impugned order dated 11.1.2010. The respondent Education Officer after considering the provisions of Rules of

1981, more particularly Schedule F, has correctly re-determined the seniority of respondent No.3. There is no substance in the writ petitions.

Hence, we pass the following order:-

ORDER

- I) Both the writ petitions i.e. writ petition No. 5926 of 2010 and writ petition No. 5927 of 2010 are hereby dismissed.

- II) In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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