

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10120 OF 2014

Mohammad Abdul Quadeer
S/o Mohammad Abdul Khalil,
Age 36 years, Occ. Service as
Secondary Teacher,
R/o Mill Area, Vazirabad,
Nanded.

..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Department of School Education,
Mantralaya, Mumbai 32

2. Divisional Commissioner,
Aurangabad Division,
Aurangabad.

3. Chief Executive Officer,
Zilla Parishad, Nanded.

4. Education Officer (Primary),
Zilla Parishad, Nanded.

..Respondents

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Advocate for Petitioner : Shri S.R.Choukidar h/f Shri H.S.Bali
AGP for Respondents 1 & 2 : Shri D.R.Korde
Advocate for Respondents 3 & 4 : Shri S.B.Pulkundwar
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 01, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 27.3.2014, delivered by respondent No.2 by which, the contention of the petitioner and the proposal of respondent No.3 indicating that the petitioner is entitled for promotion as a Secondary School Teacher from 22.8.2006, has been rejected.

5. The submissions of Shri Choukidar, learned Advocate for the petitioner are as follows:-

(a) The petitioner acquired D.Ed. qualification on 16.6.2001.

(b) He was appointed as a Shikshan Sevak in English subject in the Zilla Parishad Primary School on 19.11.2001.

(c) A Scheme was introduced by the Zilla Parishad, by which, D.Ed. qualification holders would be upgraded as Secondary School Teachers.

(d) Government Circular dated 21.5.2004 mandates that the date of acquiring D.Ed. qualifications shall be the crucial date for deciding the seniority of such Teachers.

(e) The said Government Circular dated 21.5.2004 further provides that if more than one teacher acquires D.Ed. qualification on a single

date, the seniority would be decided on the basis of his / her date of appointment as a Primary School Teacher.

(f) The seniority list prepared by the Education Department in relation to the B.Ed. qualified English teachers indicates the name of the petitioner at Sr. No.16.

(g) The candidate at Sr. No.15 - Shri Parshuram Bapurao Jadhav acquired B.Ed. qualification on 14.8.2001 after the petitioner acquiring the said qualification on 16.6.2001.

(h) Shri Jadhav at Sr. No.15 and all other English teachers from Sr. No.17 upto Sr. No.33 have acquired D.Ed. qualification after the petitioner had acquired the same qualification.

(i) The petitioner was promoted on 22.2.2008 instead of 22.8.2006.

(j) Respondent No.3 Chief Executive Officer, Zilla Parishad forwarded his proposal dated 11.7.2013 to respondent No.2 Divisional Commissioner, Aurangabad clearly setting out the reasons and the provisions of seniority under the Maharashtra Civil Services (Seniority) Rules, 1982, by which the petitioner was held entitled for the promotion as a Secondary School Teacher from 22.8.2006.

(k) The Annexure "A" to the said proposal bears the details of the fact situation and the Rules applicable by which the petitioner is held to be entitled for promotion with effect from 22.8.2006.

(l) Respondent No.2 by communication dated 6.8.2013, informed respondent No.3 that the case of the petitioner be examined through the Divisional Promotion Committee.

(m) By yet another communication dated 4.9.2013, respondent No.3 intimated respondent No.2 that the petitioner would be entitled for the promotion w.e.f. 22.8.2006.

(n) By order dated 27.3.2014, impugned in this petition, respondent No.2 Divisional Commissioner has concluded that not a single person, who has acquired B.Ed. qualification after the petitioner has been promoted.

6. Shri Choukidar further submits that the conclusion of respondent No.2 is factually incorrect in the light of his own conclusion in paragraph No.2 of the impugned order that the seniority amongst the eligible teachers for up gradation as Secondary School Teachers shall be on the basis of the date of acquiring B.Ed. qualification in view of the Government Circular dated 21.5.2004. He, therefore, submits that the conclusion of respondent No.2 in the impugned order is in contra-distinction to the observations set out in paragraph No.2 of the impugned order and the seniority list placed on record.

7. The learned AGP appearing on behalf of respondent Nos.1 and 2 relies on the affidavit in reply, dated 12.1.2015 filed by the Block Development Officer (Administration) on behalf of respondent Nos.1 and 2.

8. He points out from paragraph No.3 that the letter dated 21.5.2004 lays down the eligibility criteria for promoting Primary School Teachers to

the post of Secondary School Teachers or to the post of Cluster Head (Kendra Pramukh). It is conceded in paragraph No.3 that the seniority is to be decided precisely on the date of passing B.Ed. examination.

9. He further relies upon the said document dated 21.5.2004 indicating that the date to be considered for seniority while upgrading the primary school teachers to the position of secondary school teachers would be the date of acquiring B.Ed. qualification.

10. The learned counsel appearing on behalf of respondents 3 and 4 supports the proposal submitted by respondent No.3 to the respondent No.2 Divisional Commissioner dated 11.7.2013 and 4.9.2013, which have been referred to herein above

11. I have considered the submissions of the learned Advocates for the respective sides.

12. There is no dispute with regard to the Government Circular dated 21.5.2004, which lays down the criteria of date of acquiring B.Ed. qualification for deciding the seniority list of the Primary School Teachers for considering them for up gradation as Secondary School Teachers. There is no dispute as regards the seniority list placed on record indicating the petitioner at Sr. No.16. Though the petitioner has not made a grievance about Shri Jadhav, being shown at Sr. No.15, by virtue of acquiring B.Ed.

qualification on 14.8.2001 after the petitioner, the fact is undisputed that Shri Jadhav ought to have been shown junior to the petitioner.

13. The documents at Sr. No.49 to 51 indicate the seniority list of the persons, who could be said to be eligible for up gradation as Secondary School Teachers. Page 54 is the promotion order of Smt. Rekha R. Honrao, who is at Sr. No.17 below the petitioner having acquired D.Ed. qualification on 12.12.2001. Similar is an order dated 22.8.2006 in favour of Shri B.V.Raje, who is at Sr. No.19 having acquired B.Ed. qualification on 25.5.2003. Several such orders have been placed on record from page No.54 to 68 by which, all these Teachers have been promoted as Secondary School Teachers w.e.f. 22.8.2006 despite being junior to the petitioner.

14. As such, this petition is allowed.

15. The impugned order dated 27.3.2014, delivered by respondent No.2 is quashed and set aside. The proposal forwarded by respondent No.3, dated 11.7.2013 and 4.9.2013 is sustained.

16. The petitioner shall be granted the promotion as a Secondary School Teacher w.e.f. 22.8.2006 and shall be accordingly placed in the seniority list, strictly as per the date of his acquiring B.Ed. qualification, which is undisputedly 16.6.2001. Needless to state, in the event, the petitioner is entitled to any incidental and consequential benefits of promotion w.e.f.

22.8.2006, inclusive of monetary benefits, the respondent - competent authorities shall accordingly accord such benefits to the petitioner within a period of sixteen weeks from today, failing which such monetary benefits shall carry simple interest at the rate of 3% p.a. w.e.f. 22.8.2006.

17. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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