

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6493/2014.

Lok Seva Mandal, Bhadravati and another.

-VERSUS-

The State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI
& P.N. DESHMUKH, JJ.**

DATE : SEPTEMBER 15, 2015.

Heard Shri A.D. Mohgaonkar, learned
Counsel for the petitioners and Mrs. B.H. Dangre,
learned Government Pleader for respondent nos.1 to 3.
None appears for respondent no.4 though served.

2. Only question is to be looked into is -
Whether seniority list at Annexure-5, submitted by the
petitioners to respondent no.3 for approval has been
rightly turned down ?

3. Shri Mohgaonkar, learned counsel is
placing reliance upon a judgment reported at

2014(13) SCC 219 (Viman Vaman Awale .vrs.

Gangadhar Makhriya Charitable Trust and others),

delivered by the Hon'ble Apex Court to urge that it is date of joining as a teacher, which is relevant and not the date of acquiring training qualification. He submits that in view of this clear position which emerges from the judgment of the Hon'ble Apex Court, the Education Officer is not right in concluding that till the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 are duly amended by the State Government, the said judgment cannot be implemented.

4. Mrs. Dangre, learned Government Pleader has invited our attention to the facts looked into by the Hon'ble Apex Court to urge that essentially the seniority list of persons working as primary teachers has been looked into by inviting attention to the seniority list submitted by the petitioners. She states that persons who were not found qualified to enter the employment and obtained necessary training qualification later on, have been shown as senior only because their date of joining appears to be earlier to a trained graduate teachers.

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5. Shri Mohgaonkar, learned counsel has attempted to invite attention to the fact that Hon'ble Apex Court has considered a school in which classes 5th to 10th standards were being run. He further states that the observations made by the Hon'ble Apex Court therefore shows that it is date of joining, which is relevant.

6. With the assistance of respective learned counsel, we have perused the said judgment. The Hon'ble Apex Court has in paragraph no.3 given the facts. It found that the appellant had joined the employment on 28.04.1979, whereas the respondent no.4 joined the same on 01.09.1980. Appellant had not completed her graduation, but, then she fulfilled the requisite qualification. She obtained graduation (B.A.) Degree in 1984. She also subsequently obtained B.Ed. Degree (Training degree) on 20.05.1986. She also subsequently obtained Post-graduation (M.A.) degree in 1997. The respondent no.4 was already B.A. when he joined services on 01.09.1980, and he obtained B.Ed. degree on 01.11.1984. In seniority list appellant was shown junior to respondent no.4 and promoted as Headmaster. Aggrieved thereby the

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appellant then approached the School Tribunal. The School Tribunal dismissed that appeal. Writ Petition filed before this Court was also dismissed and then the appellant approached the Hon'ble Apex Court. The Hon'ble Apex Court has allowed the appeal, after holding that necessary qualification for joining the employment was possessed by the appellant. When she initially joined the employment. Subsequent acquisition of graduate degree or B.Ed. Training Qualification did not have any relevance with the basic eligibility. As such, as appellant had joined prior to respondent no.4, the Hon'ble Apex Court found that the appellant was senior.

7. The Hon'ble Apex Court has not stated that person not holding necessary educational or training qualification i.e. qualification essential for recruitment, can acquire it later on and still become senior, as he joined the employment prior to an eligible trained graduate teacher, who joined services as such after him, but, before he attained the eligibility.

8. Seniority list submitted by the petitioners, thus misconstrues the judgment of the Hon'ble Apex

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Court and only on the basis of date of joining the same has been prepared. With the result, the person namely Shri Vinod Pandhare, who joined the employment in 1974 with SSC qualification, and obtained D.Ed. qualification on 04.07.1977 and then came to Middle school on 08.08.1980, and to high school on 01.07.1994, has been shown senior to the person at Sr.No.5 Shri Chandrakant Shridharrao Deshpande. Shri Pandhare, obtained graduate qualification (B.A.) on 14.01.1985. Thereafter he completed B.Ed. On 16.06.1989. Thus, before 16.06.1989, he was not eligible to be appointed as Assistant Teacher in high school. As against this, Shri Deshpande, was M.A., B.Ed., when he joined employment on 10.09.1985, as an Assistant Teacher in High School. As such, Shri Pandhare, who joined high school 9 years after him, has been shown as senior. Both these teachers are not parties before us.

9. In this situation, we find no case made out warranting interference. Writ Petition is dismissed. No costs.

JUDGE**JUDGE**

Rgd.