

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

WRIT PETITION No. 712 OF 2014

Vijay s/o Lalsingh Suradkar

-Vrs.-

The Education Officer, (Secondary), Zilla Parishad, Buldhana and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. N.B. Kalwaghe, counsel for petitioner.

Mr.Rao, AGP for respondent nos. 1 &2.

Mr.Abhay Sambre, counsel for respondent nos.3 & 4.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 14th SEPTEMBER, 2015

Heard Advocate Kalwaghe for petitioner, learned AGP for respondent nos.1 & 2 and advocate Sambre for respondent nos.3 & 4. Perused order dated 7.3.2014 and 24.8.2015 passed by this court in this petition.

Advocate Kalwaghe submits that petitioner is a permanent clerk working with respondent nos. 3 & 4 in one of their schools which imparts education in MCVC. He states that the said school and other schools of respondent no. 3 and 4 are all regulated by Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder. As such, seniority of non-teaching cadre of these schools must be one. The name of petitioner, therefore, needs to be included in such common seniority list and his entitlement to promotion to the post of senior clerk needs to be examined.

He has invited our attention to communication dated 23.5.2011 filed as Annexure-F with this writ petition. He further states that since 2011 the vacancy in the post of senior clerk in the school with respondent no. 3 & 4 has not been filled in and the petitioner being senior most needs to be considered first.

According to learned AGP, the school imparting education in MCVC cannot be equated with regular school of respondent nos. 3 & 4 and as such there cannot be common seniority. He further submits that in MCVC school there is no post of senior clerk.

Advocate Sambre states that before May, 2011 management has with previous approval of Joint Director of Education transferred two employees working in MCVC to regular schools and that transfer has been allowed and accepted. He further submits that if grievance of petitioner is entertained, at the most his name can be added to the seniority list and whenever a vacancy in the post of senior clerk is available, the claim of petitioner can be evaluated. According to him, there is no vacancy of senior clerk even in regular school.

During the course of arguments we find that fact that there is no post of senior clerk in MCVC school is not in dispute. It also appears that one Shri Rangole and Shri Pote, earlier working at MCVC school, have been transferred to regular school by respondent nos. 3 & 4 prior to 23.5.2011. These instance are included by respondent nos.3 & 4 in the communication sent to Joint Director of MCVC.

The communication dated 23.5.2011 seeks leave to transfer petitioner from MCVC side to regular side. It has been pointed out that his service prospectives are much better on regular side. However, after perusal of said communication, it is apparent that no administrative exigency as such has been pointed out in that communication. Merely because service prospectives of a particular employee are better on regular side that cannot be construed as an administrative exigency.

We, therefore, find that interest of justice can be met with by directing respondent nos. 3 & 4 to forward a proper proposal as if the post of senior clerk is available on regular side and is to be filled in by promoting any junior clerk/clerk who in common seniority shall be junior to present petitioner.

Such proposal shall be submitted within period of 8 weeks from today. After receipt of such proposal, the respondent no. 2 Joint Director shall evaluate it in accordance with law, after looking into past instances and if necessary after providing opportunity to present petitioner as also to respondent nos. 3 & 4. The decision on claim of petitioner to have common seniority shall be taken within next 8 weeks.

Till such decision is taken, the respondents shall not fill in vacancy in the cadre of senior clerk.

With these directions and keeping all rival contentions open, we dispose of this petition. No costs.

JUDGE

JUDGE