

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

WRIT PETITION NO. 4152 OF 1996

Rev.Fr.James Konat,
Age : 55 years, Occupation : Service,
R/o Bishop's House, Cantonment,
Aurangabad.

...PETITIONER

-VERSUS-

- 1 Ashok Krishnaji Kulkarni,
Age : 55 years, Occupation : Service,
R/o Aurangabad.
- 2 The President,
Rt.Rev.Dr.Ignatius D'Cunha
St.Francis De-Sales Education Society,
C/o Bishop's House,
Cantonment, Aurangabad.
- 3 The Secretary,
Rev.Fr.Leslie Rodrix,
St.Francis De-Sales Education Society,
Jalna Road, Aurangabad.
- 4 The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
- 5 The Deputy Director of Education,
Aurangabad Region, Aurangabad.

...RESPONDENTS

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None for Petitioner.

Advocate for Respondent No.1 : Shri B.A.Darak.

AGP for Respondents 4 and 5 : Shri P.N.Kutti.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th October, 2016

Oral Judgment :

1 After the learned Advocate for the Petitioner was elevated as the Honourable Judge of this Court, he had caused an appearance through another Advocate. Subsequently, the second Advocate for the Petitioner was also elevated as the Honourable Judge of this Court. Hence, a fresh notice was issued and it was not served on the Petitioner since he had left India and was abroad. The report dated 17.06.2013 submitted by the Section Officer, Writ Petition Branch of this Court, indicates that service on the Petitioner was attempted after this Court passed an order on 03.05.2013 and the Petitioner could not be served because he has left India. A subsequent report dated 31.08.2016 of the Section Officer also indicates the same.

2 Instead of dismissing the petition in default, I find it appropriate to decide the same on its merits.

3 The Petitioner has challenged the judgment of the School Tribunal dated 15.04.1996 by which Appeal No.46/1994 filed by Respondent No.1 herein has been allowed. The Respondent/ Management has been directed to promote Respondent No.1/ original Appellant as the

Headmaster of St.Francis De-Sales High School, Aurangabad w.e.f. 01.06.1994 with all consequential benefits.

4 It is not in dispute that by resolution dated 29.03.1994, the Management resolved to appoint the Petitioner as a Headmaster of the said school. A grievance was raised by Respondent No.1 herein by filing an appeal that the said resolution is unsustainable since Respondent No.1 was senior to the Petitioner. The record reveals that Respondent No.1 was already working as an Assistant Headmaster of the said school and he was placed in Category-B of Schedule-F of the MEPS Rules, 1981. The Petitioner was working as a Supervisor and he was placed in Category-C of Schedule-F. There is no dispute that the Petitioner as well as Respondent No.1 possess the requisite qualifications and experience for being appointed as a Headmaster.

5 The School Tribunal concluded that going by the rule of merit-cum-seniority, as both these employees were at par on merits and Respondent No.1 was senior to the Petitioner since he was already placed in Category-B, the resolution dated 29.03.1994 was unsustainable. The appeal was, therefore, allowed under Section 9(1)(b) of the MEPS Act, 1977 and the Petitioner was held to have illegally superseded Respondent No.1.

6 Considering the above, I do not find that the School Tribunal
has committed any error in delivering the impugned judgment.

7 This Writ Petition being devoid of merit is, therefore,
dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)