

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

16 WRIT PETITION NO. 9410 OF 2015

PUSHPA ASHOK PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. Brahme Shailesh P.
Addl.GP for Respondents State: Mrs. A. V. Gondhalekar
Advocate for Respondents 4 and 5: Mr. Shrikant S. Patil
Advocate for Respondents 6 and 7 : Mr. M.S.Sonawane

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 16th November, 2016

ORDER:

1. Mr. Brahme, the learned counsel for the petitioner states that the petitioner was initially appointed and joined the post of Assistant Teacher with the respondent No.4 Institution on 02.03.1988. The present respondent Nos.6 and 7 joined their posts on 01.03.1988. Thereafter, the present petitioner and respondents No. 6 and 7 were re-appointed on 13.06.1988. In the seniority lists for the years 2011-2012, 2012-2013 and 2013-2014, the petitioner was shown as senior to the present respondent Nos. 6 and 7. However, abruptly, in the seniority list for the year 2014-15, the petitioner was shown as junior to respondent Nos. 6 and 7. The learned counsel submits that the Education Officer was directed to decide the

aspect of seniority. Under order dated 31.07.2015, the Education Officer did not pass a conclusive order and only stated that till further orders are passed, the position as existing with regard to the seniority list for the year 2014-15 shall continue. According to the learned counsel, during the pendency of the present writ petition, after one year, i.e. on 05.07.2016 a further order is passed by the Education Officer stating that the seniority list of the year 2014-15 is confirmed. The learned counsel submits that the said order is illegal as having been passed after one year.

2. The learned counsel submits that the petitioner and respondent Nos. 6 and 7 were re-appointed on 13.06.1988 and that is the date of appointment to be considered for determining their seniority. When all the persons are reappointed on same day, then the person who is elder in age has to be considered senior. The same was considered and for the years 2011-12, 2012-13 and 2013-14, the petitioner was shown as senior. This aspect has not been considered by the respondent authority. The learned counsel further submits that the the pay scale could not have been a criteria for determining the seniority and it is the qualification which would be relevant and the date of

appointment.

3. Mr. Patil, the learned counsel appearing for respondent Nos. 4 and 5 submits that considering the entries in the service book and the fact that though appointment of 13.06.1988 is termed as re-appointment, the same is the first date after vacation and continuity has to be considered. The same has been rightly considered by the Authority.

4. Mr. Sonawane, the learned counsel appearing for respondent Nos. 6 and 7 submits that from the date of initial joining, respondent Nos. 6 and 7 are senior to the petitioner. Respondent Nos. 6 and 7 have joined on 1st March, 1988 whereas, the petitioner has joined on 2nd March, 1988. Considering the said aspect and that reappointment was on the first day after vacation, the period of vacation will enure for the benefit of all the parties.

5. Mrs. Gondhalekar, learned Addl.G.P., submits that the Education Officer has rightly passed the order. The Government Resolution dated 6th December, 1988 shall apply in the present case and as the present respondent Nos. 6 and 7 were appointed prior to the petitioner, respondent Nos.6 and 7 are naturally held to be senior.

6. We have gone through the orders dated 31.07.2015 and 05.07.2016. The order dated 5th July, 2016 is a final order and the same is passed when this Court was seized with the matter. Propriety demands that the respondent Authority ought to have stayed its hand off when this Court was seized with the matter. Be that as it may, the said order is also passed after a long slumber of one year, after the hearing had taken place. No justification is coming forth for passing the order after a long slumber of one year. The order has to be passed within a reasonable time after the matter is heard.

7. The order also does not suggest that the Government Resolution dated 1st December, 1988 was considered and what would be the relevance of the said Government Resolution. Whether the said Government Resolution would be relevant for considering the seniority is also required to be considered. All these aspects are not dealt with.

8. Considering the aforesaid conspectus of the matter, the impugned orders are quashed and set aside.

9. The parties are relegated before the Education officer. The parties shall appear before the Education

Officer on 7th December, 2016. The Education Officer shall, after hearing the parties, considering the record before him and the submissions made by the parties, decide the aspect of seniority order expeditiously, preferably within three months from the date of appearance of the parties.

10. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC