

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

WRIT PETITION NO. 10178 OF 2015

Savita D/o Lakshmanrao Tayde,
Age : 39 Years, Occu. : Teacher,
Residing presently at N – 7,
C – 1 / 21 CIDCO,
Aurangabad – 431 003.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary to the
Government, School Education
and Sports Department,
Mantralaya, Mumbai.
 2. The Director of Education,
Maharashtra State, Pune.
 3. The Deputy Director of Education,
Marathwada Region, Aurangabad.
 4. The Education Officer,
Primary Education,
Zilla Parishad, Aurangabad.
 5. Mukul Mandir Primary School,
N – 7, CIDCO, Aurangabad,
Through its Head Mistress.
- .. Respondents

Shri Hemant Surve, Advocate for the Petitioner.
Ms. Vaishali N. Patil, A.G.P. for Respondent Nos. 1 and 3.
The Respondent No. 2 is served.
Shir D. K. Rajput, Advocate for the Respondent No. 4
Shri S. B. Kadu, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.
DATE : 19TH DECEMBER, 2016.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Surve, the learned counsel for the petitioner states that, the petitioner is working with the respondent No. 5/school since the year 2001-2002. Each year the petitioner was given appointment orders upto the year 2009-2010. In the year 2010 the petitioner was given appointment as Shikshan Sevak. The learned counsel submits that, it is because of the fault of the management the proposal was not submitted earlier in the year 2010. The learned counsel submits that, in the year 2010 the petitioner was over age by 03 months 26 days. The earlier service rendered by the petitioner of more than seven years ought to have been counted. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **Sau. Rekha Damodar Joshi Vs. State of Maharashtra and others** reported in **2011(2) Mh.L.J. 786**.

3. The learned counsel for the respondent No. 5 submits that, the petitioner is appointed by following due process of law. An advertisement was issued and thereafter vacancy has been filled

in. The school has forwarded the proposal on 08.08.2011 to the Education Officer. Some deficiencies were pointed. Said deficiencies were also cleared. The learned counsel submits that, the respondent No. 5 does not have any objection, if the over age is condoned.

4. The learned Assistant Government Pleader submits that, Rule 9(4)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules is abundantly clear, which lays down the age limit for the appointment to the post of teacher. Proviso to said Rule 9(4)(a) further states that, the upper age may be relaxed in case of woman, ex-serviceman and persons having previous experience with the previous permission of the Deputy Director. In the present case, previous permission of the Deputy Director was not obtained. As such, the Deputy Director of Education has rightly passed the order.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The head master of the school has issued certificate, clearly accepting the fact that, the petitioner is working with the respondent No. 5 school since the year 2003-2004 consistently till 2009-2010. It further states that, the work of the petitioner is satisfactory. An appointment order as Shikshan Sevak has been

given in the year 2010. The petitioner has an experience at least of seven years of working with the respondent No. 5, prior to appointment order as Shikshan Sevak in the year 2010. The previous experience is also required to be considered along with the fact that, the petitioner is a woman. Proviso to Rule 9(4)(a) of the M.E.P.S. Rules would squarely apply in the present case.

7. Considering the long service rendered by the petitioner that is almost since 2003-2004 till date, we are inclined to exercise out discretion and equitable jurisdiction.

8. It is also further submitted by the petitioner that, the petitioner is appointed from reserved category. Considering all these factors that the petitioner is consistently working since 2003-2004, the petitioner is a woman, the petitioner is from backward class category and that in the year 2010 the petitioner was over age only by 03 months 26 days, considering the totality of all these facts, we are exercising our discretion.

9. In the light of the above, the impugned order dated 31.03.2015 is quashed and set aside. The Deputy Director of Education, Aurangabad Division, Aurangabad shall condone the over age of the petitioner. Thereafter, the Education Officer shall consider the proposal of the petitioner for approval to the appointment on its own merits, in accordance with law.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Dec. 16