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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO.1716/2011
WITH
CIVIL APPLICATION NO.5361/2014**

Laxman S/o Sadashiv Manaspure,
Age-30 years, Occu:Service,
R/o Jamb (Bk),Tq.Mukhed,
Dist-Nanded.

..Petitioner..

Versus

1] The Maharashtra State Board of Secondary
& Higher Secondary Education Board
(Through its Divisional Secretary)
Latur Divisional Board,Latur.

2] The Divisional Secretary,
Maharashtra State Board of Secondary
& Higher Secondary Education Board,
Latur Division, Latur.

3] Zilla Parishad, Nanded,
Through its Chief Executive Officer.

4] The Education officer(Primary)
Zilla Parishad,Nanded

5] The Head Master,
Zilla Parishad Primary School,
Damala Tanda,Tq.Diglur,
District-Nanded.

...Respondents...

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Shri U.R.Awate, Advocate h/f Shri S.B.Talekar, Advocate
for Petitioner.
Ms.S.S.Raut, AGP for Respondent no.1.
Smt.A.S.Rasal, Advocate for Respondent No.2.
Shri S.G.Kawade, Advocate for Respondent No.3 & 4.
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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 15.11.2016

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

1] Heard learned counsel for the parties. Rule.
Rule made returnable forthwith and with the consent of
learned counsel for the parties, the petition is taken up
for final disposal at this stage.

2] The performance of the petitioner of H.S.C.
Examination for March, 1999, is canceled vide the
impugned communication dated 9.9.2010. The same is
assailed in the present writ petition.

3] Mr.Auti, learned counsel for the petitioner
submits that the petitioner had appeared for H.S.C.
Examination for the first time in March, 1998, and had
secured 53.57% marks. To improve his performance, the
petitioner again appeared for H.S.C. Examination as an
external candidate in March, 1999 and secured 69.67%

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marks. Pursuant thereto, the petitioner got admission in D.Ed. course. He completed his D.Ed. in 2002 and on 25.6.2003 was appointed as an Assistant Teacher. After 11 years, the performance of the petitioner of H.S.C. Examination for the year March, 1999, was canceled. The same was without notice to the petitioner. According to the learned counsel, the Rules nowhere bar appearance for the second time to improve the performance. The learned counsel submits that in absence of any provision authorizing the respondents to cancel the performance of an examination appeared for the second time, the impugned communication is illegal. The learned counsel relies on the judgment of the Division Bench of this Court in a case of *Rameshwar v. Divisional Secretary* reported in **2009 (2) Mh.L.J., 363**. The learned counsel submits that even subsequently, the respondent – Board has issued a notification thereby permitting the class improvement. The said notification is dated 4/5-6-2008.

4] Mrs.Rasal, learned counsel of the respondent – Board submits that the provision for class improvement at the relevant time was only permissible if a candidate had failed in the examination. In that contingency only, he

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was allowed to appear for the second time for the said examination. The said facility is not available to candidate, who has passed his examination. The Rules nowhere permit the petitioner to appear for the second time even after passing the same examination. The impugned communication is perfectly legal and valid and within the powers of the Board.

5] The learned AGP also supports the contention of the learned counsel for the Board.

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

7] The factual matrix as narrated above is not disputed. The petitioner had passed the H.S.C. Examination in March, 1998. Thereafter, to improve his performance, had appeared for H.S.C. Examination for the second time in March, 1999 as an external candidate. It is not the case of the respondents that the petitioner had suppressed some material facts. The petitioner, pursuant to his performance in H.S.C. examination of March, 1999, had appeared for D.Ed. examination, passed D.Ed. examination in the year 2002 and was appointed as Assistant Teacher in 2003. After long slumber of 11

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years, the said performance is sought to be canceled by the respondent – Board. In such an event, after long slumber of 11 years, the respondents would be estopped from canceling the performance. It is not a case that immediately after appearing for the H.S.C. Examination for the second time, action was taken by the respondent – authorities. The Division Bench of this Court in the case of *Rameshwar*, referred to supra, has observed that it would not be appropriate of the Board to cancel the performance after long period on the basis of the principle of '*promissory estoppel*'.

8] Considering the aforesaid conspectus of the matter and further the fact that all the parties have acted upon the performance of the petitioner of H.S.C. Examination of March, 1999, it would be inappropriate to unsettle the said position after period of 17 years.

9] In the light of the above, the impugned communication is quashed and set aside. Rule is made absolute in terms of prayer clause [B].

10] As the writ petition is allowed, the learned counsel for the petitioner does not press his challenge to Regulation 92 of the Maharashtra Secondary and Higher

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Secondary Boards Regulations, 1997.

11] Rule is made absolute in above terms. No costs.

12] In view of disposal of writ petition, Civil Application No.5361/2014 also stands disposed of.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)