

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3784 OF 2015

Dipak Motiram Walde Vs. State of Maharashtra Deptt. of Sec. & Higher Sec. Edu.& Ors.

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

Court's or Judge's Order

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Shri C. B. Dharmadhikari, Advocate for the petitioner.
 Shri K. L. Dharmadhikari, Assistant Government Pleader for
 respondent Nos. 1, 3 & 6.
 Shri A. B. Patil, Advocate for the respondent No. 8.
 Shri N. B. Kalwaghe, Advocate for the respondent Nos. 6 & 7.

CORAM: A. S. CHANDURKAR J.

DATED: 9th JUNE, 2016.

Heard. Challenge in the present writ petition is to the order passed by the Education Officer (Secondary) dated 02.05.2015 deciding the dispute as regards the seniority between the petitioner and the respondent no. 8. The petitioner possessing the qualification of B. S. W. and B. Ed. was appointed in the middle school as Assistant Teacher on 01.01.1998. The respondent no. 8 possessing the qualification of H. Sc. and D. Ed. was appointed on 30.07.1990. The respondent no. 8 obtained the qualification of B. A. in the year 2001 and the qualification of B. Ed. in the year 2004. One post admissible for graduate teachers became vacant in the year 2003. This gave rise to a dispute as regards

entitlement to said post between the petitioner and the respondent no. 8. The respondent no.8 came to be promoted and a proposal in that regard was forwarded to the Education Officer. On 04.08.2014 the Education Officer rejected said proposal. This order was challenged in Writ Petition No. 5659 of 2014. However, said order dated 04.08.2014 came to be withdrawn during pendency of the said writ petition. The aforesaid writ petition was disposed of with liberty to the parties to raise a dispute with regard to inter-se seniority before the Education Officer. Vide impugned order dated 02.05.2015 the Education Officer held that the respondent no.8 was senior to the petitioner in service. Hence this writ petition.

Shri C. B. Dharmadhikari, the learned counsel for the petitioner submitted that the post of graduate teacher became vacant in the year 2003 and the respondent no.8 having obtained training qualifications in the year 2004, she could not be considered senior to the petitioner. He submitted that the petitioner had obtained training qualifications since inception and was therefore entitled to be considered in the category 'C' from 01.01.1998 itself. Entry of respondent no.4 in the category 'C' ought to have been considered from the year 2004 when she obtained the B. Ed. degree. He further submitted that while passing the impugned order the Education Officer merely referred to certain earlier communication and observed that in view of the order dated 26.12.2005 the petitioner could not be treated as senior. He also submitted that the

undertaking obtained from the petitioner as per Government Resolution dated 25.06.1992 was subsequently withdrawn and therefore the claim of the petitioner was liable to be upheld. In support of his submissions the learned counsel placed reliance on the judgment reported in ***Lakhwinder Kaur Gurai Vs. Garison Children Education Society and others*** 2006(5) ***Maharashtra Law Journal*** 332 as well as the judgment in ***Lok Seva Mandal, Bhadravati & ano. Vs. State of Maharashtra & Ors. in Writ Petition No. 6493 of 2014 dated 15.09.2015.***

Shri A. B. Patil, the learned counsel for respondent no.8 supported the impugned order. He submitted that since the respondent no.8 was duly qualified to hold the post of Assistant Teacher in the middle school since her appointment, she had entered category 'C' when she was initially appointed. According to him, the subsequent acquisition of higher qualification would not affect the entitlement of respondent no.8. Merely because one post of graduate teacher was available in the year 2003 and the B. Ed. degree was obtained in the year 2004, the same would not be a ground to hold that respondent no. 8 was junior to the petitioner. He place reliance upon the judgment of the Hon'ble Supreme Court in ***Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust & Ors.*** 2014(9) ***SCALE*** 389.

Shri K. L. Dharmadhikari, learned Assistant Government Pleader appeared for respondent Nos. 1, 3 to 5 while Shri N. B. Kalwaghe learned counsel appeared for respondent nos. 6 and 7.

Heard the respective counsel for the parties at length. It can be seen that the respondent no. 8 was appointed prior to the petitioner. When the respondent no.8 was appointed on 30.07.1990 on the post of Assistant Teacher in the middle school she was duly qualified. The petitioner who was also duly qualified was appointed thereafter on 01.01.1998. In *Viman Vaman Awale* (supra) it was held by the Hon'ble Supreme Court that if the requisite minimum qualification was held on the date of appointment, subsequent acquisition of a higher qualification would not be a determinative factor while fixing the seniority. Considering the admitted position that the respondent no. 8 was duly qualified when she was initially appointed, she was rightly placed in category 'C' when she was so appointed. The subsequent acquisition of B. Ed. degree would not have the effect of disturbing her seniority as she was duly qualified when appointed. Merely because a post of graduate teacher became vacant in the year 2003 the same would not have any bearing on the question of seniority.

In the impugned order reference has been made to certain earlier communications on the aspect of seniority and entitlement of the petitioner. Even assuming that the communication dated 26.12.2005 issued by the Education Officer was on the basis of the Government Resolution dated 25.06.1992 and the said undertaking given by the petitioner was subsequently withdrawn, the same would not have material bearing considering the undisputed fact that the respondent no.8 was

holding the necessary qualifications since her initial appointment.

The decisions relied upon by the learned counsel for the petitioner are distinguishable on facts. In *Lok Seva Mandal* (supra) it was found that essential qualifications at the stage of recruitment could not be acquired later on while claiming seniority. Same is not the case herein . The decision in *Lakhwinder Kaur* also does not come to the aid of the petitioner. It was held that Government Resolution dated 25.06.1992 cannot take away the right of an employee to receive higher pay scale. More over, that was the case where necessary training qualifications were acquired after appointment.

In view of aforesaid, it cannot be said that the Education Officer has wrongly decided the question of seniority. Hence, there is no case made out to interfere in writ jurisdiction.

Though it is submitted by the learned counsel for the petitioner that there were other Assistant Teachers who were junior to the petitioner but they were placed above him in the seniority list, that question cannot be resolved in this writ petition. It is open for the petitioner to take necessary steps in that regard if so advised. The writ petition is dismissed with no order as to costs.

JUDGE