

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

WRIT PETITION NO. 2570 OF 2014

NAVNATH RAMBHAU KADKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.U.R.Aute, Advocate for the petitioner
Mr.S.W.Mundhe, AGP for the respondent/State
Mr.D.J.Chaudhari, Advocate for respondent Nos. 4 and 5

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.**

DATED : 06.11.2017

P.C. :-

. The petitioner assails the order dated 19.10.2013 passed by the Education Officer (Secondary) thereby condoning the break in service of respondent No.5 and further also challenges the seniority list.

2. Mr.Aute, learned counsel submits that respondent No.5 was appointed on 01.12.1983 as against the reserved seat and on temporary basis up to 30.04.1984 thereafter w.e.f. 01.07.1984 he was appointed afresh by following fresh selection process. The service rendered for a temporary period and as against reserved seat cannot be considered for the purpose of seniority. Respondent No.5 and the petitioner were appointed as Assistant Teacher as against the clear vacancy on 01.07.1984. The petitioner

being senior in age is shown as senior up to the year 2011. The petitioner was always shown senior to respondent No.5. Even otherwise the Education Officer does not have power to condone the said break in service.

3. Learned counsel relies on the judgment of the Apex Court in the case of State of Tamilnadu and another Vs E.Paripoornam and others reported in 1992 Supp (1) Supreme Court Cases 420 & Dinkar Anna Patil and another Vs State of Maharashtra and others reported in (1999)1 Supreme Court Cases 354.

4. Mr. Chaudhari, learned counsel for the institution and respondent No.5 submits that the Management had condoned the break in service which is approved by the Education Officer. The petitioner challenged his supersession. He has remedy before the School Tribunal. The Management can condone the break in service and same can be approved by the Education Officer. Learned counsel relies on the judgment of the Single Judge of this Court in the case of Sumangala W/o. Manoharrao Sakharkar Vs The State of Maharashtra through Department of Education and others reported in 2010 (1) Mhlj 63.

5. Learned AGP states that the Education Officer

could not have exercised his power. The impugned order is in excess of power of Education Officer. He should have referred to Deputy Director of Education.

6. It appears that Education Officer has not considered all the relevant aspects of the matter as are placed before this Court by the petitioner. It appears that the petitioner was also not heard by the Education Officer, while impugned order has been passed. Right and interest of the petitioner was being affected. It was incumbent upon the Education Officer to hear the petitioner before passing any order that would be detrimental to the interest of the petitioner. It would be appropriate for the Deputy Director of the Education to hear all the parties to take decision with regard to the seniority.

7. In light of the above the impugned order is quashed and set aside. Parties are relegated before the Deputy Director of Education. The Deputy Director of Education shall consider the contentions of the respective parties and take the decision about the seniority as contended by the parties on its own merits afresh within a period of six months from today.

8. The parties shall appear before the Deputy Director of Education on 23.11.2017. The writ petition accordingly stands disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]