

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

WRIT PETITION NO. 1177 OF 2005

Shaikh Saleh Shaikh Mahboob
Age : 56 Years, Occu. : Junior Assistant

Since deceased through his L.Rs.

1. Shaheen Shahnaz Begum widow of
Late Sahikh Saleh,
Age : 45 Years, Occu. : Household,
R/o Bismilla Colony, Aurangabad.
2. Nazneen Shahnaz w/o Mohd. Rafiq,
Age : 30 Years, Occu. : Service,
Resident of Aref Colony, Aurangabad.
3. Afreen Sahnaz W/o Mujahed Ali Khan,
Age : 28 Years, Occu. : Household,
Resident of Sharif Colony, Roshangate,
Aurangabad.
4. Shaikh Khaled S/o Late Shaikh Saleh,
Age ; 26 Years, Occu. : Business,
Resident of Bismilla Colony,
Aurangabad.
5. Ayesha Shahnaz d/o Late Shaikh Saleh,
Age : 19 Years, Occu. : Student,
Resident of Bismilla Colony,
Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary Education Department,
Mantralaya, Mumbai – 400 032.
2. Chief Executive Officer,
Zilla Parishad, Aurangabad. .. Respondents

Mrs. A. N. Ansari, Advocate for the Petitioner.
Ms. Vaishali N. Patil, A.G.P. for the Respondent No. 1.
None present for the respondent No. 2, though served.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.
DATE : 02ND FEBRUARY, 2017.**

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

. We have heard the learned counsel for the petitioner. We had issued notice to the respondent No. 2 of final hearing again on 18th November, 2016, as the counsel appearing for the respondent No. 2 had stated that, now he is no longer on the panel of the respondent No. 2. In spite of service of notice upon the respondent No. 2, none appears for the respondent No. 2.

2. Mrs. Ansari, the learned counsel for the petitioner states that, the petitioner came to be appointed as Junior Assistant on 04.04.1967 by the Chief Executive Officer, Nanded. The petitioner worked on the said post upto 18.10.1982 and thereafter in the inter-district transfer, the petitioner came to be transferred to Zilla Parishad, Aurangabad under order dated 20th August, 1982. The learned counsel submits that, the petitioner

was continued as junior assistant after he was transferred to Zilla Parishad, Aurangabad. On account of inter-district transfer, the petitioner lost his seniority. The learned counsel submits that, Government issued order dated 08.06.1995 to the effect that, the employees who were not having next promotional avenues on completing twelve years of service were entitled for pay scale of the next promotional post. The learned counsel submits that, on 14.03.1993 the petitioner completed 45 years of age, as such was exempted from passing any departmental examination for promotional post. According to the learned counsel the Government Resolution dated 08.06.1995 was given effect from October 1994. The petitioner completed twelve years of service with the respondent/Zilla Parishad on 19th August, 1994. As such, the petitioner was entitled for the promotional pay scale at least from the date of Government resolution coming into force that is 01st October, 1994. The petitioner ought to have been given benefit of promotional pay scale. The petitioner is given the said benefit with effect from 2002. The same is erroneous. The committee has considered the pendency of the departmental enquiry from the year 1997. In fact, the position as on 01st October, 1994 ought to have been considered. Even it is not clear the period for which the confidential reports were considered. The same is erroneous.

3. We have heard the learned Assistant Government Pleader

also.

4. The Government Resolution dated 08.06.1995 gave benefit of promotional pay scale to those employees who did not have avenue of promotion and who otherwise were eligible to be promoted. The said G. R. came into effect from 01st October 1994. It appears that, the petitioner had completed 45 years of age on 14.03.1993, as such became exempted from passing departmental examination. The departmental enquiry in question referred to is stated to have commenced in the year 1997, much after the cut off date to be considered for the time bound promotional pay scale. The affidavit filed by the Zilla Parishad also does not make it clear as to the period for which the confidential reports were considered. Even after issuing notices by this Court, the Zilla Parishad has not appeared.

5. Considering the Government Resolution, the respondent No. 2 was required to consider the case of the petitioner for promotional pay scale with effect from 01st October, 1994 on the basis of the facts and circumstances existing on 01st October, 1994.

6. Considering the above, we pass following order.

7. The respondent No. 2 shall consider the case of the

petitioner for promotional pay scale as per G. R. dated 08.06.1995 for giving its effect from 01st October, 1994 on its own merits, considering the confidential reports as existing on 01st October, 1994 and also considering that in March 1993 the petitioner was exempted from passing departmental examination. The same be done expeditiously and preferably within a period of four (04) months from today.

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

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Feb. 17