

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

WRIT PETITION NO.4736 OF 2014

Sanjay s/o. Madhukar Kulkarni,
Age : 48 years, Occ. Teacher,
r/o. Durgaprasad Purohit Colony,
Bhutkarwadi, Savedi Road,
Ahmednagar

..Petitioner

Vs.

The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32
and ors.

..Respondents

--

Mr.P.M.Nagargoje, Advocate for petitioner
Mr.A.R.Kale, AGP for respondent nos.1 to 3
Mr.L.V.Sangit, Advocate for respondent no.4
Mrs.C.S.Deshmukh, Advocate for respondent no.6
Mr.S.R.Barlinge, Advocate for respondent no.7

--

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : FEBRUARY 28, 2017

ORDER :

This petition is filed for challenging
the order passed by the Education Officer
(Secondary), Zilla Parishad on 31.10.2013, by
which the Education Officer has observed that it

is not possible to reconsider the case of the petitioner and present respondent nos.6 and 7 are considered as seniors to the petitioner in service of respondent nos.4 and 5 – Institutions.

2. Heard both sides.

3. It appears that the petitioner was appointed as untrained teacher with respondent nos.4 and 5 – Institutions in the year 1990. He became B.Ed. on 05.05.1993. Respondent nos.6 and 7 came to be appointed as untrained teachers in the same Institution on 14.06.1993. Their appointments were approved by the Education Officer in the month of July, 1993. It appears that in the seniority list published on yearly basis, the petitioner was shown as senior to respondent nos.6 and 7 till year 2012. Then, the matter was referred to the Education Officer as there was dispute about seniority and then the decision was given that in view of the date of approval, the

petitioner cannot be treated as senior to respondent nos.6 and 7. Under the aforesaid order, the Education Officer has refused to review the same issue.

4. The submissions made would show that subsequent to the afore-said decision of the Education Officer, respondent no.6 was promoted to the post of Supervisor on 06.09.2013. The present petition came to be filed on 03.03.2014.

5. The learned Counsel for respondent no.7 relies on the observations of the Full Bench of this Court in the case of **St. Ulai High School and anr. Vs. Devendraprasad Jagannath Singh and anr., 2007(1)Mh.L.J.597**, wherein this Court has observed that the grievance regarding the seniority can be considered by the School Tribunal, if any order which is consequential to the fixing of the seniority, is made by the employer. It appears that when respondent no.6 was promoted to the post

of Supervisor, respondent no.7 challenged that order by filing proceedings before the School Tribunal and that proceedings is still pending. In view of the afore-said observations, it would be open for the School Tribunal to decide the issue of seniority.

6. The learned Counsel for the petitioner places reliance on the decision of the Hon'ble Supreme Court in the case of **Shiba Shankar Mohapatra and ors. Vs. State of Orissa and ors., AIR 2010 SC 706**. In that case, the circumstance like delay and latches in challenging the seniority fixed, was considered by the Hon'ble Supreme Court. In the present case also, the School Tribunal can consider this circumstance as one of the circumstances.

7. With these observations and for giving opportunity to the petitioner to approach the School Tribunal, present Writ Petition is disposed of.

8. The fact that the present petition was pending in this Court from 03.03.2014 till the date of this order, needs to be considered by the School Tribunal, if point of delay and latches is raised in the proceeding if filed by the present petitioner before the School Tribunal. The School Tribunal shall decide the proceedings which may be filed by the present petitioner, within a period of six months from the date of its filing.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

kbp