

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

**WRIT PETITION NO. 4750 OF 2016
WITH
CIVIL APPLICATION NO. 2569 OF 2017**

Lalit Yashwant Bahale .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.A.G. Talhar, Advocate for the petitioner.

Mr.P.S. Patil, A.G.P. for respondent Nos. 1 to 3.

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

DATED : 15.11.2017

P.C. :-

1. Mr. Talhar, learned Counsel submits that the prayer made challenging the declaration of the petitioner being surplus does not survive as the said order has been recalled by the Education Officer.

2. Learned Counsel submits that the Education Officer on totally erroneous ground has rejected the objection of the petitioner to the seniority list. The

Education Officer in the impugned order has observed that the petitioner has not raised objection to the seniority list on many occasions. According to the learned Counsel the seniority list placed on record clearly shows that the petitioner has raised objection to each and every seniority list. The order of the Education Officer is perverse, against the record and deserves to be set aside. According to the learned Counsel, the order of the Education Officer does not depict any application of mind inasmuch as the Education Officer has not considered that the respondent No.4 was not a trained teacher. The respondent No.4 could not have been treated senior to the petitioner. According to the learned Counsel, mere delay in filing application under Rule 12 of the MEPS Rules would not affect the right of the present petitioner. It is only when the petitioner could lay hand on the documents, the petitioner moved the Education Officer. The order of the Education Officer deserves to be set aside.

3. Learned Counsel for respondent No.4 submits that even earlier the Education Officer had directed the Inquiry Officer to submit his report on 03.11.2015 giving details of the appointment of the petitioner. According to the learned Counsel, respondent No.4 had approached the School Tribunal against reversion of respondent No.4. The School Tribunal had considered the date of appointment of the respondent No.4 and allowed the appeal filed by respondent No.4 directing the management to reinstate her to the original post of Head Mistress. Respondent No.4 is working as Head Mistress since the year 2003.

4. Learned counsel for respondent No.4 further submits that three members' committee was appointed to verify the documents of degree of respondent No.4. The report was submitted on 26.06.2014, certifying genuineness of the same.

5. Learned A.G.P. states that after considering the

report, order has been passed by the Education Officer. Respondent No.4 is in class "A" being Head Mistress; whereas the petitioner would be in class "C" being an Assistant Teacher.

6. We have considered the submissions. It is not disputed by either parties that respondent No.4 is working as Head Mistress since the year 2003. No objection is raised by the petitioner to the appointment of respondent No.4 as Head Mistress for all these years. If the petitioner feels that it is case of supercession, the petitioner has remedy before the School Tribunal. However, the petitioner never assailed appointment of respondent No.4 as Head Mistress till date. Since the year 2002-2003, seniority list is placed on record. It shows that the petitioner has signed said seniority lists reserving his right. However, every year the seniority list is published. The petitioner had not challenged the said seniority lists before the Education Officer and for the first time in the year 2015 has assailed the said

seniority list before the Education Officer. The petitioner was in know of seniority list and that petitioner being placed well below respondent No.4. However, the same was never assailed by the petitioner for all these years.

7. It would appear that before deciding the application of the petitioner raising challenge to the seniority list, the Education Officer had called for report from the Dy. Education Officer. The Dy. Education Officer after making inquiry on the basis of objection of one Nitu Patil, had submitted his report clearly laying down that respondent No.4 is appointed on 13.06.1995. He has also verified attendance register of the year 1995-96 and he found that there were six teachers including respondent No.4 and respondent No.4 was working as a trained teacher from 13.06.1996. At that time in the year 1995, said post was on non-grant-in-aid basis and respondent No.4 was untrained. It is also stated that B.Ed. qualification obtained is valid. It would be too

late in the day now to consider the case of the petitioner regarding challenge to the seniority list. The petitioner has allowed the position to subsist all these years. Inquiry has been conducted by Dy. Education Officer on complaint of another person. Report is also submitted to the Education Officer.

8. It would appear that even the dispute between respondent No.4 and the management has reached the School Tribunal, wherein the petitioner was reverted from the post of Head Mistress. The School Tribunal on 31.07.2006 allowed the appeal filed by the respondent No.4 and directed the management to reinstate respondent No.4 as Head Mistress. Said order of the year 2006 of the School Tribunal has become final.

9. Considering all these aforesaid facts, it would not be possible to entertain the claim of the petitioner after such a long slumber.

10. Learned Counsel for the petitioner submits that order of surplus has been recalled by the Education Officer on 21.01.2017. The petitioner was declared surplus on 15.09.2016. The petitioner has given representation to the Education Officer for considering the period from 15.09.2016 to 20.01.2017 as duty period. The Education Officer shall take decision upon it expeditiously, preferably within three months.

11. In the light of above, the writ petition is disposed of. No costs.

12. In view of disposal of Writ Petition, Civil Application does not survive and stands disposed of.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]