

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

WRIT PETITION NO. 6929 OF 2016

Rustum s/o Bapurao Pawar,
Age : 40 years, Occupation : Service
as Graduate Teacher, Central Primary
School, Sona, Taluka Himayatnagar,
R/o Teachers Colony,
Gadgebaba Nagar, Loha,
Taluka Loha, District Nanded.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2 The Additional Commissioner,
Aurangabad.
- 3 The Zilla Parishad, Nanded.
Through its Chief Executive Officer.
- 4 The Education Officer (Primary),
Zilla Parishad, Nanded.
- 5 Shivdhan s/o Shankar Rathod,
Age : 52 years, Occupation : Headmaster,
Zilla Parishad, Berli, Taluka Loha,
District Nanded.

...RESPONDENTS

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Advocate for Petitioner : Shri Sapkal V.D.
AGP for Respondents 1 and 2 : Shri S.P.Tiwari.
Advocate for Respondents 3 and 4 : Smt.Y.M.Kshirsagar.
Advocate for Respondent 5 : Shri V.P.Golewar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st January, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 On 09.01.2017, I had heard the learned Advocates for the respective sides after service of notice and in the light of their submissions,

I had passed the following order:-

- "1. I have heard the learned Advocates for the respective sides.
2. There is no dispute that the petitioner has obtained his Caste Validity Certificate with reference to "Lamani (Vimukta Jati)". Record also reveals that respondent No.5 Shivdhan Rathod has not been promoted in place of the petitioner. As such, prima facie the impugned order dated 05/09/2014, by which the promotion granted to the petitioner was taken away, was not in connection with respondent No.5 Shivdhan Rathod.
3. Mr.Golewar, learned Advocate for respondent No.5 confirms that he has not been promoted and as such, he is not the cause for the cancellation of the petitioner's promotion.
4. Record further reveals that the CEO, Zilla Parishad / respondent No.3 had informed respondent No.1 that respondent No.5 was not eligible to be promoted as Extension Officer (Education) Class-3. It is also not disputed that the reply filed by respondent No.3 before respondent No.2 in the proceedings initiated by the

petitioner indicates that respondent No.3 had taken a stand that since Mr.Shivdhan Rathod / respondent No.5 is entitled for promotion, the petitioner's promotion has been cancelled and Mr.Rathod has been promoted in his place.

5. *Mr.Sapkal, learned Advocate for the petitioner submits on the basis of information received under the R.T.I.Act that one position of Extension Officer (Education) Class- 3 is kept vacant under the orders of this Court concerning the dispute raised by the petitioner.*
6. *Prima facie, it appears that the concerned respondent No.3, who has filed the reply at page No.44 of the petition paper book, has not presented the facts before respondent No.2, in as much as, respondent No.5 has already been held to be not eligible for promotion by communication dated 26/11/2014 which is at page No.47. It also appears that because of such incorrect information supplied, the promotion already granted to the petitioner has been taken away.*
7. *In the light of the above, respondent No.3 / CEO shall file his personal affidavit explaining the reasons for setting forth incorrect information before respondent No.2 owing to which the appeal filed by the petitioner has been dismissed by the impugned order dated 09/06/2016. He shall file his affidavit on or before 27/01/2017.*
8. *Stand over to 31/01/2017 in the supplementary board.”*

3 The in-charge Chief Executive Officer of Respondent No.3/
Zilla Parishad has filed an affidavit in reply dated 31.01.2017 pursuant to
the above order.

4 The learned Advocate on behalf of Respondent Nos.3 and 4

has pointed out from the said affidavit that the Petitioner was temporarily promoted considering the Minutes of Meeting (MoM) dated 25.10.2013 by which the conditional promotional order was issued in favour of the Petitioner. It is further pointed out that the Petitioner is at Sr.No.19 in the seniority list of the candidates from the reserved category Vimukt Jati-A (VJ-A).

5 It is then submitted that Mr.Shivdhan Rathod, who is Respondent No.5 herein, was not promoted in place of the Petitioner. Inadvertently, it is mentioned in the records that Mr.Rathod was promoted in place of the Petitioner. It is further stated that Respondent No.5 is not entitled for the promotion and hence, it is communicated to him that he will not be entitled for promotion to the position of the Extension Officer (Education), Class-III. His promotion is also cancelled.

6 It is then pointed out that Respondent No.3 relies upon the Government Resolution dated 16.06.2008 which permits temporary promotion of a candidate until the eligible candidate submits his caste/tribe validity certificate which would entitle him to the promotion depending on the category for which the post has been reserved.

7 With the assistance of the learned Advocates, I have gone

through the Government Resolution dated 16.06.2008. Clause-1 mandates that the caste/tribe validity certificate would be necessary for a person who has occupied the post reserved for a particular caste or tribe. Clause-2 indicates that temporary promotion would be permissible so as to ensure that the work will not suffer subject to the senior eligible candidate submitting his validity certificate which would entitle him to the promotion. Clause-3 indicates that temporary promotion would be for 11 months or till the eligible senior candidate is available after submitting his validity certificate. It is further provided that until a senior eligible candidate files his validity certificate, the person who has been temporarily promoted, would be given a break of one day after completion of 11 months of temporary promotion and then would be continued again by way of temporary promotion till the senior eligible candidate submits the validity certificate.

8 It is, therefore, apparent from the provisions of the Government Resolution that the person, who may be junior in the seniority, would be eligible for temporary promotion subject to the above conditions. It is not disputed that the Petitioner herein is the only candidate amongst the eligible persons from VJ-A category for being promoted as an Extension Officer (Education) Class-III, since he is equipped with his caste validity certificate. If at all any person is held to

be eligible for temporary promotion, it would be the Petitioner alone since his caste validity certificate is already submitted.

9 The notification dated 10.06.2014 issued by the State Government in relation to the Maharashtra Zilla Parishads and Panchayat Samitis Rules, 1961 is placed on record and it is pointed out that henceforth the positions of Extension Officer (Education), Assistant Education Officer and Senior Assistant Education Sub Inspector, shall all be converted into a single nomenclature and which would be known as Extension Officer (Education). The said notification is taken on record and marked as Exhibit X for identification.

10 It is equally evident that the dispute raised by the Petitioner is in no way connected with Respondent No.5. Consequentially, the contention of the Zilla Parishad that since Respondent No.5 was eligible for temporary promotion, the Petitioner had to make way, is nullified. So also, Respondent No.3 has stated in the affidavit in reply that Respondent No.5 is not eligible for temporary promotion.

11 In the light of the above, this Writ Petition is partly allowed. The order passed by Respondent No.3 dated 05.09.2014 which is on the presumption that the Petitioner will have to make way to accommodate

Respondent No.5, is quashed and set aside. So also, the impugned order dated 09.06.2016 delivered by Respondent No.2, which is wholly based on the contention of Respondent No.3 that Respondent No.5 needs to be appointed in place of the Petitioner, also stands quashed and set aside.

12 Respondent Nos.3 and 4 are directed to comply with Clauses 1, 2 and 3 of the Government Resolution dated 16.06.2008 and accordingly, deal with the claim of the Petitioner, within a period of SIX WEEKS from today, keeping in view that he is the only candidate, who has been temporarily promoted as Extension Officer (Education), Class-III on the strength of the caste validity certificate that he possesses.

13 Rule is made partly absolute in the above terms.