

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

WRIT PETITION NO. 8235 OF 2012

Jagatrao Bhivsan Shinde and another .. Petitioners

Versus

The Jalgaon Municipal Corporation
Through Commissioner and others .. Respondents

WITH

WRIT PETITION NO. 665 OF 2013

Bilkis Khatun Sayyad Zafar Ali
and others .. Petitioners

Versus

The Jalgaon Municipal Corporation
Through Commissioner and others .. Respondents

WITH

WRIT PETITION NO. 4126 OF 2014

Sindhu Santosh Patil and others .. Petitioners

Versus

The Jalgaon Municipal Corporation
Through Commissioner and others .. Respondents

Ms. Sabahat T. Kazi, Advocate for Petitioners in all matters.
Shri Sandip Swami, Advocate h/f Shri V. D. Gunale, Advocate for
Respondent Nos. 1 and 2 in all matters.
Ms. R. P. Gaur, A.G.P. for Respondent Nos. 3 and 4 in all matters.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATE : 12TH APRIL, 2017.**

PER COURT :

. The petitioners seek directions against the respondent Nos. 1 and 2 to grant deemed date of promotion to the head of the schools with effect from 01.01.1999 i. e. the date when the original Municipal teachers were promoted. So also seek revision and fixation of pay of the petitioners.

2. The learned counsel for the petitioners submit that, the petitioners in Writ Petition No. 8235 of 2012 and Writ Petition No. 665 of 2013 had filed representations challenging the seniority list prepared, wherein the assistant teachers who were in service with the Zilla Parishad and subsequently became employees of the Municipal Council on the extension of the area of the Municipal Council were shown lower in the seniority list without considering their initial date of appointments. The writ petition filed by these petitioners bearing Writ Petition No. 5462 of 1998 was allowed by this Court under its order dated 09.08.2010 in terms of prayer clauses A and B thereby granting benefit of seniority from their initial date of appointment. In spite of the order passed, the respondents have not accorded benefits to the petitioners. The petitioner in Writ Petition No. 4126 of 2014 was also signatory to the representation filed and is

similarly situated.

3. The learned counsel for respondent Nos. 1 and 2 states that, the petitioners have voluntarily requested for transfer, as such would not be entitled for the benefits. The learned counsel to substantiate his contentions relies on the judgment and order dated 24th September, 2004 in Writ Petition No. 3993 of 2004 with other connected writ petitions and also the judgment of the Division Bench of this Court in the case of **Shashikala Vasant Baviskar and others Vs. Municipal Corporation for City of Jalgaon and others** reported in *2005 (2) Mh.L.J 1086*.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The present petitioners in Writ Petition No. 8235 of 2012 and Writ Petition No. 665 of 2013 had earlier filed Writ Petition No. 5462 of 1998 claiming following reliefs.

"A. By a writ of certiorari or any other appropriate writ or direction in the like nature, the seniority list published by the respondent no.1 on 27.08.1998 annexed at Exhibit 'G' be quashed and set aside ;

B. By a writ of mandamus or any other appropriate writ or direction in the

like nature, the respondent No. 1 be directed to consider the services of the petitioners and the similarly situated persons who are transferred from Zilla Parishad Schools to the schools under the Municipal Administration from the date of their appointments and continuous officiation on the posts of Assistant Teachers ;

- C. Pending hearing and final disposal of this writ petition, the operation and execution of the impugned seniority list published on 27.8.1998 by the respondent no.1 be stayed ;
- D. Pending hearing and final disposal of this writ petition, the respondent No. 1 be restrained from issuing any orders of promotion on the basis of the erroneous seniority list published on 27.8.1998 annexed at Exhibit 'G' ;
- E. Any other appropriate relief to which the petitioners are found entitled, be granted."

6. This Court under its order dated 09.08.2010 disposed of said writ petition by passing following order.

1. The issue involved in the present petition is no more ' *res integra* ' and

covered by this Court in the case of **Shashikala Vasant Baviskar and oths. V/s Municipal Corporation for city of Jalgaon and others - reported in 2005 (2) Mh. L. J. 1086**, wherein this Court in unequivocal terms hold that the petitioners therein were entitled to have their past service counted for the purpose of seniority, vis-a-vis employees of the Municipal Council. The case of the present petitioner is identical with the case of the petitioner in the said case.

2. Rule is, therefore, made absolute in terms of prayer clauses ' A ' and ' B ' to the extent of the petitioner.

7. In view of the said order passed by this Court, the seniority list published on 27.08.1998 was quashed and set aside and the respondent No. 1 i. e. Municipal Corporation was directed to consider the services of the petitioners and similarly situated persons, who were transferred from Zilla Parishad Schools to the schools under the Municipal Administration from the date of their appointments and continuous officiation on the post of assistant teachers. The said order has become final. It would not be open for the respondents, now to contend otherwise. The respondents are bound by the said decision. The petitioners, it appears have now on attaining age of superannuation retired from service. Actual benefits now cannot be accorded. However, notional benefits can be accorded to the petitioners.

8. In the light of the above, we pass following order.

9. The respondent No. 1/Municipal Corporation is duty bound to implement order dated 09.08.2010 passed in Writ Petition No. 5462 of 1998 thereby granting the benefit to the petitioners. The petitioners' seniority shall be counted from the date that of initial appointment as Assistant teachers to the Zilla Parishad Schools. The deemed date of promotion shall be given to the petitioners treating them at par with the teachers appointed in the Municipal Council Schools on the same date.

10. Said date be considered for notional fixation of pay scales. The petitioners may not be entitled for the actual benefit of the said pay scale, however, said notional benefit of the pay scale shall be given to the petitioners for computing retiral and pensionary benefits. The same shall be done expeditiously and preferably within a period of four (04) months from today. The writ petitions accordingly are disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]