

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7428 OF 2007

1. Khan Kamaruniisa Hamid Khan
Age : 47 years, Occup. Service,
R/o Milat Nagar, Plot No. 4,
Near Mallat High School,
Opp. Nursery Rickshaw Stop,
Jalgaon, Tq. & Dist. Jalgaon .. Petitioner

versus

1. The State of Maharashtra,
through Secretary,
Education Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Jalgaon.
3. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
4. Gulam Dastagir Khan Amir Khan,
Age major, occup. Service,
R/o Badi Mohalla, At post Bhadgaon,
Tq. Bhadgaon, Dist. Jalgaon.
5. Shaikh Babu A. Rahman,
Age major, occup. Service,
R/o Pinjarwada, At post Faizpur,
Dist. Jalgaon .. Respondents

Mr. N. L. Choudhari, Advocate for petitioner
Mr. S. N. Morampalle, Assistant Government
Pleader for respondents no. 1 and 3.
Mrs. J. S. Aute, Advocate h/f Mr. B.S. Mundhe,
Advocate for respondent no. 2
Mr. S. B. Gorde Patil, Advocate for respondent no. 4
Mr. C. V. Bhadane, Advocate for respondent no. 5

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 21-11-2017

ORAL JUDGMENT (PER: SUNIL P. DESHMUKH, J.)

1. Heard learned counsel for the parties.
2. Petitioner had been before this court initially seeking mandate to respondents no.2 and 3 for inclusion of his name in the list of promoted candidates for the post of Urdu Chief Central Officer Officer (*Urdu Kendra Pramukh*). During pendency of writ petition, it appears, respondents no. 4 and 5 had been promoted to the post of *Urdu Kendra Pramukh* which, according to petitioner, is an act of supersession.
3. After hearing learned counsel for parties, it appears, in the seniority list of teachers as maintained by Zilla Parishad, Jalgaon, petitioner stands at serial no. 327 whereas, respondents no. 4 and 5 figure at serial no. 348 and 357 respectively.

4. Learned counsel for petitioner submits that respondents no. 4 and 5 have been appointed, after petitioner had been appointed and accordingly seniority is maintained.

5. He further points out, *Kendra Pramukh's* post is a promotional post and promotions are also to take place in accordance with seniority. For said purpose, he refers to Government Resolution dated 14-11-1994 (Exhibit D).

6. In support of his submissions, learned counsel for petitioner further refers to and relies on decision of Division Bench of this court delivered at Nagpur in a clutch of writ petitions (writ petition no. 2280 of 1997 and companion writ petitions) on 28-07-2016 wherein, it has been considered in paragraph no. 25, thus;

" 25. In view of this discussion, we find that contention of petitioners that the seniority list of primary teachers in Zilla Parishad must be drawn on the basis of date of obtaining the B. Ed. Qualification, is erroneous and misconceived. The seniority list needs to be prepared on the basis of date of joining the service only. Those with B.Ed. Therein shall be eligible for consideration when the post of Center In charge or Kendra Pramukh is sought to be filled in. "

7. Learned counsel further points out that in paragraph no. 26 of aforesaid decision, in the similar circumstances, there is a direction to draw seniority of primary teachers on the basis of date of their joining service and selection process as per appendix 'B' to Government Resolution dated 14-11-1994.

8. Opposing aforesaid submissions, learned counsel Mrs. Aute holding for Mr. B.S. Mundhe counsel appearing on behalf of respondent no. 3 - Zilla Parishad, purports to contend that since respondents no. 4 and 5 have acquired B.Ed. qualification earlier than petitioner, their claims for promotions as *Kendra Pramukh* was considered and they were given promotion to said post.

9. However, appendix B to Government Resolution dated 14-11-1994 refers to that appointment by promotion to the post of *Kendra Pramukh* is to be made on the basis of seniority cum merit from trained graduate primary teachers. It further refers to that while considering merits, the confidential reports should be of 'B' grade.

10. It does not appear to be the case of any of the respondents that applying aforesaid criteria petitioner's claim ought not to have been considered ahead of two respondents, namely, respondents no. 4 and 5 who had been promoted in December, 2008.

11. Further, learned counsel Mr. N. L. Chaudhari appearing for petitioner has adverted to that during pendency of writ petition, the petitioner has been promoted as *Kendra Pramukh* in 2015.

12. Applying the criteria referred to in appendix B Government Resolution dated 14-11-1994, it is not the case at all that petitioner could not have been considered for promotion to the post of *Kendra Pramukh*. The only reason that appears to have weighed with concerned respondents is the date of acquisition of B. Ed. qualification. Said reason does not appear to be compatible with criteria for promotion to be *Kendra Pramukh*.

13. Having regard to aforesaid, it would be expedient to allow writ petition with requisite directions to respondents.

14. Writ petition, as such, is allowed. Respondents are directed to give deemed promotion to the petitioner with effect from the date on which respondent no. 4 had been promoted, along with consequential, incidental and ancillary benefits therefrom , including monetary benefits.

15. Rule is made absolute in aforesaid terms.

16. In view of aforesaid, other reliefs as prayed for in writ petition are not being considered.

17. Writ petition is accordingly disposed of.

18. It is expected that respondents will give benefits consequent upon this order to the petitioner at the earliest preferably within a period of three months from the date of receipt of writ of this order.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd