

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

WRIT PETITION NO. 9283 OF 2013

Raosaheb Mango Patil & others.

Petitioners.

Versus

The State of Maharashtra and others.

Respondents.

Mr. S.P. Brahme, Advocate for the petitioners.

Mr. R.V. Dasalkar, A.G.P. for State/respondent nos.1 and 2.

Mr. G.D. Jain, Advocate holding for

Mr. M.S. Sonawane, Advocate for respondent No.3 and 4.

CORAM : **T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Dated : 26th March, 2018.

ORAL ORDER (PER T.V. NALAWADE, J) :-

1. This petition is filed under Article 226 of the Constitution of India for the relief of giving direction to see that the petitioners are appointed as Cluster Chief (Kendra Pramukh). The relief is also claimed for quashing of the Seniority List published by respondent No.4 for the year 2013 for giving promotion to the post of Cluster Chief. Both the sides are heard.

2. It is the case of the petitioners that they acquired B.Ed. Qualification much prior to the teachers shown in the Seniority List published in the year 2013 for giving promotions to the post of Cluster Chief, but their names are not included in the said list and due to that they will not be getting the post of Cluster Chief. Learned Counsel submitted that the criteria for giving seniority should be the date on which B.Ed. qualification is acquired, as that is the requisite qualification for getting the post of Cluster Chief. On this point learned Counsel for the respondent-Zilla Parishad submitted that criteria is the seniority and continuous officiating service as Primary Teacher for giving seniority. He submitted that even if a senior person acquires B.Ed. Degree, which is necessary for getting the post of Cluster Chief subsequently, the post is available when he gets that degree, he returns back to his original position in Seniority List and he becomes senior to the teacher who has acquired B.Ed. Degree already, but had joined service subsequent to such other person. On this point learned Counsel for the respondent placed reliance on the observations made by the Apex Court in the case reported as **(2014) 13 Supreme Court Cases 219 (Viman Vaman Avale Vs Gangadhar Makhriya Charitable Trust and Others)**

3. The Apex Court had occasion to consider Maharashtra Employees of Private Schools Rules, 1981 (M.E.P.S. Rules) and also similar contentions about the seniority. There was a question

involved as to who can get the post of Head Master and who can be treated as Senior. In that case also the person who had joined service first was treated senior. The decision of this Court was challenged and this Court had held that the person who had obtained B.Ed. Degree first needs to be treated as senior teacher to the person who was appointed first, but who obtained B.Ed. degree subsequently. This proposition is not accepted by the Apex Court and the Apex Court has held that the basic qualification which is required for getting appointment as a Trained Teacher needs to be considered for counting service and for determining the seniority.

4. Learned Counsel for the petitioners submitted that in Rule 3 of the M.E.P.S. Rules 1981 it is mentioned that the senior most Trained Teacher who has put in not less than five years service, can get the post of Head Master and there is no mention of Trained Graduate Teacher in Rule-3. He submitted that in Government Resolution issued in respect of appointment of Cluster Chief, the eligibility condition is of having qualification of B.Ed. and so the seniority needs to be counted on the basis of the date on which the Trained Teacher acquired the B.Ed. Qualification. This Court holds that such preposition cannot be accepted. The teacher who was appointed first will maintain his seniority, if he gets B.Ed. qualification even subsequent to the Junior Teacher. Though in Rule-3 of the M.E.P.S. Rules there is mention of Trained Teacher, for seniority the

same Rule needs to be followed as per the decision given by the Apex Court in the case cited Supra.

5. Learned Counsel for the petitioner placed reliance on the case reported as **2006 (2) Mh.L.J. 124 (Vitthal Fakruji Madavi and others Vs Zilla Parishad, Chandrapur)**. The facts of this reported case were altogether different and there was a question of filling the post of trained graduate teacher. Further, in the present matter there is new decision of the Apex Court cited supra.

6. This Court has carefully seen the seniority list prepared by respondent No. 4 which is in respect of Teachers who came to be appointed between 1984 and 1986. Admittedly two petitioners came to be appointed in the year 1989 and one petitioner came to be appointed in the year 1994. Nobody was appointed prior to 1986 and they were not in consideration zone for giving promotion. This Court sees no error in seniority list maintained by the Respondents by considering the aforesaid criteria. It is not possible to give any direction as claimed or disturb the Seniority List prepared by respondents.

7. In the result petition stands dismissed.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE