

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

WRIT PETITION NO.4789 OF 2007

Satish S/o Sopanrao Salve
Age: 47 years, Occu.: Service,
R/o. Khalgangri, Tq. Renapur,
Dist. Latur.

... Petitioner.

Versus

1. The State of Maharashtra
through its Secretary,
Secondary School Education
Department, Mantralaya,
Mumbai-32.
2. Deputy Director of Education,
Latur Division, Latur.
3. Education Officer (Secondary)
Zilla Parishad, Latur.
4. Pheonix Bahu-uddeshiya Gramin
Yuvak Viksas Mandal, Khalangri,
Through its Secretary.
5. Antaram S/o. Tukaram Mane,
Age: 34 years, Occu.: Service
as Assistant Teacher in Sarvodaya
Vidyalaya, Khalangri, Tq. : Renapur
Dist. Latur.

... Respondents.

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Mr. R.J. Godbole, Advocate for the Petitioner.
Ms. D.S. Jape, A.G.P. for State.
Mr. P.M. Shinde for Respondent No.5.

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

DATED : 26th FEBRUARY, 2018

ORAL JUDGMENT: (PER T.V. NALAWADE, J.)

1. The petition is filed to challenge the decision of authority, Education Officer (Secondary), Zilla Parishad, Latur by which the approval to the appointment of the petitioner as an Assistant Teacher w.e.f. 22.06.1998 is cancelled. Both the sides are heard.

2. It appears that respondent-Management had submitted a proposal for approval to the appointments of both petitioner and respondent no.5 on the post of Assistant Teacher for the year 1998-99. Permission was granted for that year to the school and for that year one division of 8th standard was sanctioned. As per the availability of teaching staff for one division, only one Assistant Teacher could have been appointed. However, a proposal was made in respect of two Assistant Teachers. Respondent No.5 was M.A. B.Ed. and the present petitioner was B.A. B.P.Ed. As per the eligibility condition, the petitioner was appointed as Assistant Teacher in that year. There was no work load for a Physical Instructor as there was only one division of 8th

standard sanctioned in that year, but due to mistake the Education Officer gave approval to both the appointments.

3. The dispute started when the time came for the appointment of Incharge Headmaster. Initially, the petitioner was appointed as Incharge Headmaster and when it was objected by the respondent no.5, the objection of the respondent no.5 was upheld. Then the matter was taken to this Court. It was referred to Education Officer to decide the seniority between the petitioner and respondent no.5. After giving hearing to both, the Education Officer has held that as the post of Physical Instructor, for a teacher having educational qualification B.P. Ed. was not available in the year 1998-99, there was no question of appointment of petitioner on any post and for giving approval to that post by the Education Officer. By giving this reason, the Education Officer has held that the other Assistant Teacher-respondent no.5 was entitled to get the post of Incharge Headmaster. However, the Education Officer was observed that the post for the petitioner became available in the year 2000-01 as in that year due to natural growth the divisions of 9th and 10th standards became available.

4. The aforesaid circumstances and the other circumstances like the petitioner will be retiring due to superannuation in the month of March, 2018 show that the only question for consideration is of two years service rendered by the petitioner in the said school for the year 1998-99 and 1999-2000. Learned counsel for the petitioner took this Court through Government Resolution dated 14.05.1987. It shows that even Physical Instructor can be given the work of teaching in view of the procedure which is given for creation of post of Physical Instructor. Admittedly, the petitioner did work with respondent-management and work must have been taken from him. It can be said that there was illegality committed in the appointment of the petitioner but he could have been appointed in the year 2000-01. The illegality was continued for two years and it happens only due to mistake committed by the authority-Education Officer. If it is held that the petitioners appointment could have been approved in the academic year 2000-01, then the service rendered by him for the previous two years will not be available for the pension purpose and the petitioner will be looser in respect of that period.

5. Only due to the aforesaid circumstances and the fault of the authority, this Court holds that the directions needs to be given to see that service rendered by the petitioner in the year 1998-99 and 1999-2000 also needs to be considered for the pension purpose. Other reliefs cannot be given, so petition is partly allowed.

6. The respondents are hereby directed to see that the service rendered by the petitioner from the date of appointment i.e. 22.06.1998 is counted for the pension purpose and the proposal is made for fixing the pension accordingly. To that extent the order of the authority is hereby set aside.

7. Rule is made absolute in the aforesaid terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE