

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

WRIT PETITION NO. 12288 OF 2017

1. Manovikas Shikshan Sanstha,
Kandhar, Taluka Kandhar,
District Nanded, through its
in charge President
2. Kanthiram Bhujangrao Lungare,
Age 58 years, Occu. Service as
Headmaster, R/o Manovikas
Vidyalaya, Kandhar, Taluka Kandhar
District Nanded

..Petitioners

Versus

1. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai 32
2. The Deputy Director of Education,
Latur Division, Latur
3. The Education Officer (Secondary),
Zilla Parishad, Nanded
4. Madhav Sambhaji Jadhav,
Age 56 years, Occu. Service as
Assistant Teacher, r/o Manovikas
Vidyalaya, Kandhar, Taluka Kandhar
District Nanded
5. Vidya Vinayakrao Sarnayak,
Age 50 years, Occu. Service as
Assistant Teacher, R/o Manovikas
Vidyalaya, Kandhar, Tq. Kandhar
District Nanded

..Respondents

Mr A.V. Patil (Indrale), Advocate for petitioners
Mrs V.N. Patil Jadhav, A.G.P. for respondents 1 to 3
Mr G.J. Kagne, Advocate for respondent no.4
Mr B.B. Shinde, Advocate for respondent no.5

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVAL, JJ**

DATE : 18th January 2018

PER COURT

1. The petitioners impugn the order rejecting the proposal seeking approval to the appointment of petitioner no.2 as Headmaster. The proposal is basically rejected on the ground that there was break in service of the petitioner no.2. The learned Advocate for petitioners submits that the break in service has been condoned by the authority under order dated 21.12.2017. According to him, the Education Officer could not have gone into the aspect of seniority once the proposal of the petitioner no.2 as a Headmaster was already forwarded to him after appointment of petitioner no.2.

2. The learned Counsel for respondents no.4 and 5 submit that the petitioner no.2 is not senior-most teacher. Respondents no.4 and 5 are appointed at least fifteen days prior to the petitioner no.2. Though the petitioner no.2 was initially appointed in the year 1987, subsequently, he joined junior college and thereafter rejoined the petitioner-school in the year 1989, much later than the respondents no.4 and 5 were appointed. In view of that the petitioner no.2 is not senior. The Education Officer has considered the said aspect and has rightly rejected the proposal of the petitioner no.1 society seeking approval to the promotion of petitioner no.2.

4. Respondent no.4, it appears has retired on 31.12.2017.

5. It also appears that after the order is passed by the Education Officer, the Education Officer, on 21.12.2017 has passed one more order considering the period from 1.7.1989 to 19.7.1989 as a leave period, the effect of that order is also required to be considered.

6. Considering the fact that subsequent development has taken place after the order passed by the Education Officer, it will be appropriate to direct the Education Officer to consider the aspect as raised by the petitioners and respondents.

7. In light of that the impugned order is set aside. The parties may approach before the Education Officer for decision afresh on the proposal of petitioner no.2 seeking approval to the promotion as Head master. The parties may appear before the Education Officer on 30.1.2018. The Education Officer after hearing the parties concerned shall pass orders afresh. The parties are entitled to put forth all their contentions including maintainability of the objections to the seniority and proposal for approval and the documents and orders before the Education Officer, on which they rely. The Education Officer after hearing the parties concerned shall pass orders afresh expeditiously, preferably within one month from the appearance of the parties.

8. The position as existing today shall continue till decision of the Education Officer.

9. Writ Petition stands disposed of. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)