

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

21 WRIT PETITION NO. 173 OF 2017

KAVITA NARSINGRAO GITTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THRO SECRETARY DEPT OF SOCIAL
JUSTICE VJNT AND OTHERS

...

Advocate for Petitioners : Mr. Deshmukh Sachin S.
AGP for Respondent nos 1 to 4 : Mr. A.V. Deshmukh
Advocate for respondent no. 5 : Mr. R.R. Suryawanshi
Advocate for Respondent No. 6 : Mr. P B Jadhav
Advocate for Respondent Nos 7 & 8 : Mr. Bhavthankar
Vivek Vasantryao

CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : JULY 11, 2018

O R D E R :

1. Affidavit is filed by petitioner no. 3 requesting to delete his name from the array of the petitioners. In view of the affidavit filed, Mr. Deshmukh, learned counsel for the petitioners submits that he would delete the name of petitioner No.3. Name of petitioner no. 3 accordingly stands deleted from the array of petitioners.

2. The petitioners have filed the instant petition assailing the order passed by the Regional Assistant Commissioner, Social Justice and Special Assistance, Aurangabad thereby determining the seniority.

3. Mr. Deshmukh, learned counsel submits that the petitioner No. 1 Mrs. Kavita d/o Narsingrao Gitte is working as Headmistress and is appointed on 22.6.1997 and from the date of appointment she is possessing qualification of B.Com. B.Ed. The learned counsel submits that respondents nos. 6 to 8 are appointed after the petitioner. By no stretch, they can be senior to the petitioner. In the schools from 1st to 7th standard 25% teachers can be appointed possessing B.Ed qualification. From the date of initial officiation the seniority would be considered.

4. The learned counsel further submits that as far as the petitioner no. 2 is concerned, the appointment of the petitioner no. 2 has been approved under order dated 9.12.2009 and under order dated 25.9.2012. The petitioner No. 2 is appointed on 26.6.1997 and as such is senior to

respondent nos. 6 to 8. The impugned order is erroneous and does not stand to any reason. The petitioner No. 2 cannot be considered as junior to respondent nos. 6 and 8 who are appointed subsequent to the petitioner.

5. Mr. Bhavthankar, learned counsel for the respondent nos. 7 and 8 submits that the date of officiation would not be the only criteria for considering the seniority. The petitioner no. 2 is untrained. In view of that the petitioner no. 2 cannot be considered as senior to respondent nos. 6 to 8. The school is primary school. The petitioner no.1 who possesses B.Ed. qualification cannot be equated for considering seniority of teachers possessing D Ed. qualification. Petitioner No. 1 cannot be considered as trained teacher.

6. Mr. Deshmukh, learned AGP supports the impugned order. Mr. Suryawanshi, learned counsel accepts the arguments canvassed by the learned counsel for the petitioner.

7. It is not disputed that the school is run from

1st to 7th standard. Petitioner No. 1 possesses qualification of B.Com, B.Ed. and is appointed on 22.6.1997 and the appointment of the petitioner no. 1 is already approved. In a school having 1st to 7th standard, 25% teachers can be appointed possessing B.Ed qualification. Reference can be had to the judgment of the Apex Court in the case of **State of Maharashtra vs Tukaram Tryambak Chaudhari (2007) 9 SCC 201.**

8. As far as the petitioner no. 2 is concerned, the petitioner no. 2 does not possess either D.Ed. or B.Ed. qualification, but possesses B.A. CTC qualification. Schedule F Note 1 reads thus :

" SCHEDULE F

1. Guidelines for fixation of seniority of teachers in the primary schools :-

Note 1 : For the purpose of categories C, D and E teachers with S.T.C., T.D., Jr.P.T.C. Dip.T., Dip.Ed. (post-S.S.C. One year course) qualifications appointed on or after 1st October 1970 shall be considered as untrained and their seniority shall be fixed in the 'F' and 'G' category of untrained teachers, as the case may be.

..... " "

9. Considering the above, the seniority of petitioner no.2 can be fixed in either Schedule F or G and not in the category of respondent nos. 6 to 8 or petitioner no.1.

10. In the light of above, the impugned order to the extent of the petitioner no. 1 is set aside. The petitioner no. 1 is held to be senior to respondent nos. 6 to 8 and her seniority will be counted from the date of her initial appointment. The impugned order to the extent of petitioner no. 2 does not require any interference.

11. Writ petition is accordingly disposed of. No costs.

[**SUNIL K.KOTWAL, J.**] [**S.V.GANGAPURWALA, J.**]

mahajansb/