

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8045 OF 2015

Shailendra Sadashiv Kadam

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

**Mr. Mihir Desai, Senior Advocate i/by Mr. Prashant Bhavake,
Advocate for the Petitioner.**

Mr. S. B. Kalel, AGP for the Respondent – State.

Mr. Vishal Kanade i/by Mr. S. S. Raut, Advocate for Respondent No.6.

CORAM : B. R. GAVAI &

B. P. COLABAWALLA, JJ.

DATE : 30th JANUARY, 2018

PC.

1] The Petition challenges the order passed by the Respondent No.3 dated 24th July 2015, holding the Respondent No.6 to be senior to the Petitioner in services of the Respondent No.5 school under the management of Respondent No.4.

2] It appears that there have been several rounds in so far as determination of seniority interse between the Petitioner and the Respondent No.6 are concerned. Ultimately, the matter had come up before this Court by way of Writ Petition No.8945 of 2014. This Court vide order dated 9th June 2015 had remanded the matter back to the Respondent No.3 with a direction to decide the matter afresh by giving an opportunity of hearing to the concerned parties.

3] Undisputedly, both the Petitioner as well as Respondent No.6 were duly appointed as Assistant Teacher on 13th June 1994. Undisputedly, the Respondent No.6 is elder in age to the Petitioner and as such, claimed to be senior to the Petitioner.

4] Even according to the Petitioner, the Petitioner would have no objection to the seniority of Respondent No.6, on account of being elder in age, had certain events not taken place. The Respondent No.6 while in service of the Respondent No.5 came to be terminated vide orders dated 29th March 1994, 29th March 1995 and 29th April 1995. The Respondent No.6 challenged the said orders before the learned School Tribunal. The learned School Tribunal vide judgment and order dated 1st August 2003 allowed the Appeal and quashed and set aside the termination orders and granted reinstatement with continuity in service. The same was challenged before the learned Single Judge of this Court by way of Writ Petition No.2376 of 2003. The Petition came to be dismissed.

5] Mr. Mihir Desai, learned senior counsel in view of clause (3) of Annexure-45 of the Secondary School Code submits that since the Respondent No.6 was out of employment of the Respondent No.5 between 1994 to 2003, the said period will have to be excluded for

calculating number of days of continuous service. He submits that if that is done, then the Petitioner has put in much longer continuous service in Respondent No.5 and therefore, he would be senior than Respondent No.6.

6] It is not in dispute that the Respondent No.6 is elder to the Petitioner and as per the rules governing Service Conditions, if two persons are appointed on the same date, a person who is elder in age will be shown as senior. The only question falls for consideration is, as to whether the period during which Respondent No.6 was out of employment can be excluded from the continuous service or not. It is settled principle of Service Jurisprudence that once the termination has been quashed and set aside and reinstatement is granted with continuity of service, the effect would be that the termination is non-existent and that the period when such a person is out of employment on account of illegal termination, will be deemed to be a period of employment.

7] We find no error with the well reasoned order passed by the Respondent No.3 considering all these aspects. In that view of the matter, the Petition is found to be without merit. The Petition is dismissed.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]