

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

WRIT PETITION NO. 8511 OF 2012

Mr.Sambhaji Sitaram Gaikwad

R/at At & Post Karanje Pool,
Post Someshwaranagar,
Tal.Baramatim, District-Pune.

...Petitioner

V/s.

- 1. Secretary to the Govt.**
Higher Education Dept.,
Mantralaya, Mumbai.
- 2. Education Officer**
(Higher Secondary)
Pune Zilla Prishad, Pune.
- 3. Secretary**
Shri.Someshwar Shikshan Prasarak
Mandal, Someshwarnagar,
Taluka-Baramati, District-Pune.
- 4. Shri.Someshwar Shikshan Prasarak**
Mandal, Someshwarnagar,
Tal.Baramati, District-Pune.
- 5. Mr.Baban Dinkar Masal**
R/at 11 Karamjepul,
Taluka Baramati, District-Pune.
Pin-412 306.
- 6. Mr.Sunil Laxman Jagtap**
R/at At & Post Wanewadi
Taluka-Baramati
District-Pune-412306.

...Respondents

Mr.N.V. Vechalekar i/b M/s. N.V. Vechalekar & Co for the Petitioner.

Mr.S.B. Kalel, AGP for Respondent Nos.1 and 2-State.

Mr.Prathmesh Bhargude i/b Mr.Sugandh B. Deshmukh for Respondent Nos.3 & 4.

Ms.Manisha Jagtap i/b J.Shekhar & Co. for Respondent No.5.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON : 27th NOVEMBER 2018

PRONOUNCED ON : 21st DECEMBER 2018

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1 The petitioner has invoked the Writ jurisdiction of this Hon'ble Court seeking issuance of Writ thereby directing the respondents to maintain the roster and also to modify the existing roster in accordance with the Government Policy contained in Resolution dated 18.10.1997. The petitioner has also sought his promotion to the post of Headmaster w.e.f. 31.05.2010. Consequently, he prays for grant of all service benefits accruing from the said promotion with a retrospective date.

The present writ petition was instituted in this Court on 17.07.2012 and came to be amended in terms of order of the Court dated 13.02.2014 and 28.03.2014, thereby bringing on record the subsequent developments.

2. The facts giving rise to the present petition can be summarized as follows :-

The petitioner belongs to Schedule Caste Category and he has joined the services as Assistant Teacher in the school run by respondent Nos.3 and 4 w.e.f. 15.07.1981 in pursuance to an appointment order issued on 04.11.1981. The appointment of the petitioner was on a vacant post, in the backdrop that he possessed the necessary qualification of B.A. B.Ed. and was effected in the pay-scale of 290-540. The appointment in the school run by the respondent Nos.3 and 4 namely Soneshwar Vidyalaya, Someshwarnagar, District-Pune. According to the petitioner he is continuously working on the said post since the date of his appointment. The grievance raised by the petitioner in the Writ Petition pertains to his promotion to the post of the Headmaster though the petitioner has stated in the petition that petitioner was promoted to the post of superintendent and on the basis of the seniority subsequent to the post of Assistant Headmaster and he is personally working on the said post. The grievance raised by the petitioner flows from the non-observance of the Government Policy contained in resolution dated 18.10.1997 thereby formulating the guidelines to be followed while maintaining the roster point in the backdrop of the judgment of the Hon'ble Apex Court in case of **R.K.**

Sabarwal and Others V/s. State of Punjab.

3. The petitioner proceeds to state that there are four sanctioned post of headmaster in the respondent-school and at the time of filing of petition the position and of the Headmaster who were working was as follows :

Sr. No.	Name of employee	Date of recruitment	Sr. No. In the roster	Category to which the appointment candidate belongs
1	Jagtap S.D.	23.06.78	01	Open
2	Ghatge S.J.	27.08.83	02	Open
3	Sonawane A.E.	12.06.95	03	Schedule Cast
4	Chavan A.B.	12.06.95	04	Nomadic Tribe

4. According to the petitioner one Smt.Sonawane Alka Eknath was appointed as a Headmistress on the basis of her seniority in service and on merit and the management had passed resolution on 15.12.1995 promoting her as Headmistress in the Someshwar Vidyalaya, Ambi. Pursuant to the resolution she came to be appointed as a Headmistress by order dated 31.08.1998. The said appointment was approved by the Education Officer along with the appointment of Shri.Chavan who was appointed as a Headmaster on the post reserved for Nomadic Tribe. The petitioner

has set out a case in the petition that the resolution promoting Smt.Sonawane as Headmistress did not mention that she has been appointed against a Schedule Caste category and therefore the petitioner assumes that one post of Headmistress which was reserved for Schedule Caste was not occupied by Smt.Sonawane. Subsequently, one Mr.Masal B.D. has been appointed as Headmaster from the Nomadic Tribe category by an order dated 23.09.2009 and the petitioner seeks to derive a comparison from the said order by stating that the said order placed on record as Annexure-K to the petition clearly mentions his category as Nomadic Tribe. However, since no such stipulation was found in the order promoting Smt.Sonawane as Headmistress, according to the petitioner she was not promoted against the roster meant for Schedule Caste Category and on the contrary the petitioner who belongs to SC Category ought to have been promoted to fill up the said post of the Headmaster. That is how the petitioner claims that the roster maintained by the respondent is faulty. The petitioner has cited several instances of the past. By the whole narration in the petition his claim is that at no point Roster drawn was faulty and not in accordance with the terms of the Government Resolution dated 18.10.1997. With the said grievance, the petitioner approached the respondent Nos.1 and 2-Authority,

resulting into direction being issued to the respondent Nos.3 and 4 to maintain the roster point. The petitioner further alleges that the respondent Nos.3 and 4 in collusion with the respondent No.2 failed to maintain roster and granted promotion to Smt.Sonawane on the basis of Schedule Caste Category at Serial No.1 point meant for Schedule Caste but it was done by way of afterthought since initially promotion was granted in Open Category, leaving the roster point for the Schedule Caste Category unfilled and this according to the petitioner has become apparent on retirement of Smt.Sonawane.

5. By way of amendment the petitioner has brought the subsequent events on record to point out that after retirement of Smt.Sonawane on 31.05.2010 the petitioner claims that the post held by her on the basis of roster point of SC but at that time the respondent Nos.3 and 4 again in ignorance of the claim of the petitioner filled up the said post by promoting Shri.Jagtap Sunil Laxmanrao belonging to Open Category. In light of the subsequent developments specific assertion of the petitioner is that the post held by Smt.Sonawane was not against the roster point of SC and that is why on the retirement when the said post held vacant it was filled in by an Open Category candidate. The petitioner has attempted to

demonstrate the financial loss caused to him on denial of the said promotion to the post of the Headmaster and he proceeds to state that he is working on the post of the Deputy Headmaster in the pay-scale of 9300-34000 and as on today getting a basic salary of Rs.21,000/- and the pay-scale for the post of Headmaster is 15600-39100 and this is causing a monthly loss of Rs.5,000/- to him. Since, the petitioner claims to have been entitled for the said post of Headmaster from 11.09.2009, he sets out a claim of back wages along with increments due on the post of the Headmaster and seeks the relief of promoting him as Headmaster with effect from 31.05.2010, at least after retirement of Smt.Sonawane and grant him the pay-scale of Headmaster along with the consequential benefits.

6. In the Writ Petition the petitioner has impleaded the Education Department and the Education Officer of Pune Zilla Parishad as respondent Nos.1 and 2 respectively. The Someshwar Shikshan Prasarak Mandal has been impleaded as respondent Nos.3 and 4. By way of amendment, the petitioner also added Shri.Baban Dinkar Masal the person who was promoted for Headmaster and Shri.Sunil Laxmanrao Jagtap as a party respondent. However, though served, barring respondent No.2 others have chosen not to

file their reply. The respondent No.2-Deputy Education Officer has placed an affidavit on record.

The affidavit proceeds to state that the responsibility of maintaining the roster is that of the Management and the roster registers are checked and verified by the Assistant Commissioner, Backward Commission Cell, Pune and accordingly the specific assertion made in the affidavit is to the effect that the roster register maintained by the respondent Nos.3 and 4-Management has been verified by the Assistant Commissioner on 16.06.2005 and 21.02.2011. Copies of the roster point so verified by the Assistant Commissioner are placed on record along with the affidavit. A categorical statement has been made by the Deputy Education Officer (Secondary, Pune Zilla Parishad) that he has perused the said report of the Assistant Commissioner which discloses that there is only one backlog of Schedule Tribe Category in the Hundred Point Roster Scheme for promotion to the post of Headmaster and it is essential to fill up the said post by person belonging to Schedule Tribe Category. It is further stated that the petitioner belongs to Schedule Caste Category and therefore he cannot be promoted to the said post of the Headmaster as claimed by the petitioner.

7. In light of the aforesaid factual scenario involved, we

have heard the learned counsel Shri.Wechlekar for the petitioner and Shri.S.B. Kalel, APP for respondent Nos.1 and 2. Shri.Sugandh Deshmukh representing respondent Nos.3 and 4 whereas Ms.Manisha Jagtap appearing on behalf of the respondent No.5. With the assistance of the learned counsel we have carefully perused the petition and it's annexures and also the documents annexed along with the affidavit filed by the Education Officer.

The petition came to be filed before this Court in the year 2012 with a grievance of not following the roster point in terms of the policy of the State Government following the judgment of the Hon'ble Apex Court. The respondent-Someshwar Shikshan Prasarak Mandal runs four colleges and there are four sanctioned posts of Headmaster in the four Secondary Colleges run by the Managment namely :-

- (i) Someshwar Vidalaya and Junior College, Someshwarnagar,
- (ii) Someshwar Vidalaya-Anjangaon, Taluka-Baramati, District-Pune,
- (iii) Someshwar Vidaylaya Ambi, Taluka-Baramati, District-Pune and
- (iv) Someshwar Vidyalaya, Mundhale, Taluka-Baramati, District-Pune.

8. It is to be noted that Smt.Alka Sonawane came to be

promoted to the post of Headmistress and her appointment was approved with effect from 12.06.1995. Shri.Ashok Chavan was also promoted to the post of Headmaster and as per the petitioner himself these two persons are occupying the said post of Headmaster from 12.06.1995. The petitioner has made a grievance that on retirement of Smt.Sonawane on 31.05.2010 the petitioner ought to have been considered for promotion since the point of reservation as per roster was reserved for Schedule Caste Category. The said contention appears to be totally incorrect, in light of the Roster Point which came to be approved by the Assistant Commissioner Backward Class Cell. According to the Education Officer, two posts of Headmaster which were occupied by Shri.Jagtap and Shri.Ghadge from 01.07.1979 and 22.06.1963 respectively were reserved for Open Category. Smt.Sonawane took up the post of the Headmaster which was reserved against the Schedule Caste Category with effect from 12.06.1995. The fourth post was taken by Shri.Chavan from the same date i.e. 12.06.95 from VJ(B) Category. The roster point was accordingly complied by the respondent-authority by promoting two persons from Open Category and one person from Schedule Caste and VJ(B) Category. After retirement of Smt.Sonawane when the post felt vacant, the next roster point is for Schedule Tribe Category and the petitioner who belongs to

Schedule Caste Category cannot be appointed on the said post. The report of the Assistant Commissioner (Backward Cell), Pune Division, Pune annexed along with the petition which in form of an inspection report and which is submitted in the aftermath of an inspection conducted, so as to verify the reservation roster maintained by Someshwar Shikshan Prasarak Mandal and submitted in the year 2011, asserts the position of roster point. On the date on which the inspection was carried out i.e. on 30.08.2010 against the four sanctioned posts of Headmaster, two posts were filled in whereas two posts were vacant. The Hundred Point Reservation roster point for the purpose of promotion to the post of Headmaster was categorized as follows:-

Sr. No.	Cadre	Sanctioned	Requisite reservation in r/o sanctioned posts		Actual Reservation		Backlog		Remarks
1	2	3	4	5	6	7	8	9	10
1	Head Master	4	SC	01	SC	0	SC	0	
			ST	1	ST	0	ST	1	
			D.T.	0	D.T.	1	D.T.	1	
			N.T.	0	N.T.	0	N.T.	0	
			OBC	0	OBC	0	OBC	0	
			Open	3	Open	1	Open	2	
			Total	4	Total	2	Total	3	

9. The inspection report further discloses that as per the original register the necessary reservation had been entered incorrectly which was corrected by the office and as per annexure (c) though the point for Schedule Tribe has been used, the reservation is for Schedule Caste and though there was no reservation for De-Notified Tribe, the candidate was found to be recruited from the said Category. As a result of this bungling an explanation was called from the Management. The office of the Assistant Commissioner has recorded that the reservation policy has been applied erroneously and it was directed to be rectified since point meant for Schedule Caste has been used alternatively, though the reservation is for Schedule Tribe Category. The direction was also issued to the effect that till the reservation roster is updated the process of promotion should not be initiated. Clear instructions were thereafter issued to follow the roster point at the time of making subsequent recruitments and to fill up the backlog. Similarly the Education Officer on verification of the roster certified by the Backward Class Cell in the year 2011 has also certified that there was a backlog and therefore directions were issued to fill in the post in the following sequence-ST, SC, VJ, NT, OBC-SBC by way of rotation. The said remarks of the Backward Class Commission were made on 16.06.2005 and the first point for roster which

becomes available and to be filled belongs to Schedule Tribe Category. In such circumstances as on 30.08.2010 the roster point is for Schedule Tribe, VJA and Open Category. The immediate next roster point therefore belongs to Schedule Tribe Category and there is one backlog of Open Category which was filled by a candidate belonging to Open Category i.e. Shri.Sunil Laxmanrao Jagtap. In light of the revised roster point certified by the Backward Class Cell at the end of the year 2005 and as on 30.08.2010, since the existing roster point is reserved for Schedule Tribe and the direction is issued to fill in the same by a candidate belonging to the Schedule Tribe, the petitioner cannot be promoted to fill in the said post.

In the backdrop of the aforesaid factual scenario which has been brought on record by the respondent-Education Officer by placing the roster on record which is certified by the Backward Class Cell, we do not see any merit in the contention of the petitioner and the relief sought by him to promote him to the post of Headmaster and that to with a retrospective effect from 31.05.2010, when the roster point felt vacant. We do not find any illegality much less any perversity in promoting the respondent No.6 to the detriment of the petitioner who has been agitating about the wrongful implementation of the roster point. There is no doubt that the roster point was not properly adhered to by the Management

however, it was subsequently rectified by the Backward Class Cell and the directions have been issued to fill up the next roster point by a candidate belonging to the Schedule Tribe Category and these directions have been scrupulously followed by the Management.

In light of the aforesaid observations we are not in a position to entertain the petition and grant any relief in favour of the petitioner as prayed by him. In such circumstances the petition deserves to be dismissed and it is accordingly dismissed, with no order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)