

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 1289 OF 2014

Nitin s/o. Raghunath Amkar
Age 41 years, Occu. Service,
R/o. Laxmiwadi, Tq. Rahata,
Dist. Ahmednagar.

....Petitioner.

Versus

The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai & Ors.

....Respondents.

Mr. P.S. Dighe h/f. Mr. V.R. Dhorde, Advocate for petitioner.

Mr. A.V. Deshmukh, AGP for respondent Nos. 1 to 3.

Mr. V.D. Hon, Senior Counsel for respondent Nos. 4 and 5.

Mr. A.C. Darandale, Advocate for respondent No. 13.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 04/02/2019

ORDER :

1. The petition is filed to challenge the seniority list prepared by respondent No. 4 – Sommaiya Vidya Mandir, the employer of petitioner with regard to the teaching staff. Both the sides are heard.

2. The submissions made and the record show that initially the petitioner was working with respondent No. 4 school as part time

Assistant Teacher and that was for 1996-97. He had completed M.A. in 1995 and B.Ed. in 1996. On 12.8.1999 the petitioner was given the post of full time Assistant Teacher on probation period of two years, but on D.Ed. scale. It is the grievance of the petitioner that he ought to have been given B.Ed. scale as he had completed B.Ed. It is his contention that the workload of B.Ed. scale was given to him and he was teaching classes of 8th standard and above. It appears that on 1.6.2007 B.Ed. scale was given to the petitioner. According to the petitioner, first time in the year 2011 when seniority list for 2010-11 was published by respondent No. 4, he realized that many teachers who were junior to him were shown senior to him in the seniority list. He made representation before Education Officer, but the Education Officer ultimately rejected representation on 16.12.2013 and cause of action took place for him.

3. Some teachers who are made party respondents have filed their reply and they have given particulars of their appointments and the reasons for showing them senior to the petitioner. The seniority list shows that the petitioner has grievance in respect of the candidates at Sr. No. 7 to 14. The submissions made and the record show that as it is secondary school, the posts of teachers were available as per the subjects. The letter of appointment in respect of the petitioner dated 12.8.1999 shows that

with effect from 13.8.1999 he was given the post of full time Teacher on probation basis in the scale of 4500-125-7000, D.Ed. scale. He was expected to give undertaking that he would not claim scale of trained graduate teacher in future and admittedly, such undertaking was given by the petitioner. The submissions made show that the post of the subject of the petitioner of such scale was available and he was given that post as he was already working as part time Assistant Teacher. Thus, he came to be appointed in the year 1999 in the scale of D.Ed. Teacher. At that time, the employees at Sr. Nos. 11 to 14 were already working in D.Ed. scale. It can be said that in the seniority list which must have been prepared in the past, these teachers were shown senior to the petitioner on the basis of their date of appointment and continuous officiation in service. The record shows that the employees at Sr. Nos. 11 to 13 subsequently completed B.Ed. and they came to be appointed in B.Ed. scale on 1.7.2006 and employee at Sr. No. 14 came to be appointed in B.Ed. scale on 25.5.2007. As the posts are required to be filled on the basis of subject and their appointments made in the year 2006-07 were not challenged, it needs to be presumed that the petitioner had no grievance in respect of their appointments in B.Ed. scale which were made prior to his appointment even when he had completed B.Ed. in 1996. He came to be appointed on 1.6.2007 in B.Ed. scale which was after making the last appointment of teacher at Sr. No.

14. In view of these circumstances, it can be said that there are no merits in the grievance made against the teachers at Sr. Nos. 11 to 14 shown in the seniority list.

4. There is grievance in respect of other teachers like teachers at Sr. No. 7 to 10. They were initially appointed on the post of Shikshan Sevak and after completion of requisite period of three years, they were given the scale of trained graduate teachers. They were appointed on post of Shikshan Sevak between 2000 and 2002 and they got the scale of B.Ed. from the year 2003 to 2005, before giving the scale of B.Ed. to the petitioner. As already observed the posts are available as per the subjects and the petitioner never raised grievance in respect of appointments given to other teachers on B.Ed. scale even when those appointments were made when he was available as a candidate who had completed B.Ed. Thus, on the ground of laches and absence of challenge to appointments, this contention cannot be considered and in view of the dates of appointments and their qualifications, it can be said that they are rightly shown as seniors to the petitioner.

5. The learned counsel for petitioner placed reliance on the observations made by this Court, Full Bench in the case reported as **2006 (6) ALL MR 823 [Shri. Vaijanath s/o. Tatyrao Shinde Vs.**

The Secretary, Marathwada Shikshan Prasarak Mandal, Aurangabad & Ors.]. In this case, the Full Bench was considering the promotions to the post of Headmaster of the Primary School and for that, the seniority of teachers was considered. This Court held that the seniority needs to be counted from the date of acquisition of educational qualification and training qualification as prescribed in Schedule B and for that, seniority cannot be counted from the date of initial appointment and continuous officiation devoid of requisite qualification as prescribed in Schedule B. On this point, there is one more case of this Court like decision in **Writ Petition No. 2280/1997 (Sunil s/o. Gopalrao Punde and Ors. Vs. The Amravati Zilla Parishad, Amravati and Ors.)** decided with other matters on 28.7.2017. For deciding this case, the Division Bench of this Court considered the ratio of the case reported as **(2014) 13 SCC 219 (Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust and Ors.)**. This Court referred the case of **Vaijnath Shinde** cited supra also and distinguished it from the case of Apex Court and laid down that when person gets the post, qualification for the post is material and in the same category for determining the seniority the date of joining will be relevant. The ratio of the Apex Court that possessing higher qualification was not determinative in fixing seniority was considered and it was held that such higher qualification may be essential for getting next higher

post, but higher qualification cannot affect the determination of the seniority as Assistant Teacher (in primary school). The expression 'cadre' means 'unit' was discussed by this Court and it is laid down that seniority list ordinarily needs to be prepared on the basis of date of joining the service. On the date when higher post becomes available, the higher educational qualification which is requirement of higher post can be considered. There cannot be dispute over this proposition as it is in accordance with the case of **Viman** decided by the Apex Court cited supra. In the matter decided by Apex Court, the party appellant had joined service as Assistant Teacher on 24.8.1979, but she was not B.A. at that time. Respondent who was appointed on the post of Headmaster had joined on 1.9.1980 and on that day, she had completed B.A. Appellant completed D.Ed. in 1984, B.Ed. in 1986 and M.A. in 1997. The post of Headmaster became available subsequently. As for the post of primary teacher, the qualification was only S.S.C. and Primary Teacher's Certificate Examination or Diploma in Education, it was held that in 1979 when the appellant had joined service, she was eligible to get the post of trained teacher for primary school and so, other qualifications like B.Ed. degree which was not essential qualification was not determinative factor for fixing the seniority. Thus, the appellant continued to remain senior on the basis of her date of joining. In the present matter also, for the aforesaid reasons, it can be said that the

petitioner came in the scale of B.Ed. only on 1.6.2007 and so, on that basis his name needs to be placed in seniority list and that is done by the employer. In the result, the petition stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/