

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3406 OF 2018

SAYAJI SHAMRAO GHARTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Palodkar Devdatt P.
AGP for Respondents No. 1 & 3 : Mr. K. B. Jadhavar
Respondent No. 2 – served
Advocate for Respondent No. 4 : Mr. Y. B. Bolkar
Advocate for Respondent No. 5 : Mr. N. N. Desale

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CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

DATE: 07th JUNE, 2019

PER COURT:

1. Mr. Palodkar, learned counsel for the petitioner submits that the order passed by the Education Officer (Secondary), Zilla Parishad, Dhule determining respondent no. 5 as senior is against the record and the rules. The petitioner and respondent no. 5 are appointed on the same date i.e. on 14.06.2004. The Headmaster of the school is the seniormost and is appointed on 01.06.2004. The order of approval of respondent

no. 5 also shows his date of appointment as 14.06.2004. However, when the school started receiving 20% grants, the management and respondent no. 5 in collusion with each other have produced a false and fabricated appointment order of respondent no. 5 showing his date of appointment as 14.06.2003. The same is illegal. If the appointment of respondent no. 5 would have been on 14.06.2003, then certainly respondent no. 5 would have been the Headmaster. Respondent no. 5 did not challenge the appointment of the Headmaster namely Mr. Nitin Bhimrao, his initial date of appointment is 01.06.2004. All these facts leads to an irresistible conclusion that the appointment of respondent no. 5 is on 14.06.2004, so also, of the petitioner is 14.06.2004. The petitioner is senior in age, and as such the petitioner ought to have been granted seniority over respondent no. 5.

2. Mr. Bolkar, learned counsel for the management submits that respondent no. 5 was

appointed on 14.06.2004. The appointment order is also placed on record and since day one respondent no. 5 was senior. The mistake is committed in the order of approval of respondent no. 5 and wrong date has been shown. The same has been subsequently corrected by the Education Officer granting approval to the appointment of the petitioner from 14.06.2003.

3. Mr. Desale, learned counsel for respondent no. 5 adopts the arguments of Mr. Bolkar, learned counsel for the management.

4. In the writ jurisdiction we may not enter into the dispute as to the date of appointment of respondent no. 5 as 14.06.2003 / 14.06.2004. There are some muster rolls placed on record to suggest that respondent no. 5 was appointed on 14.06.2003. However, it also appears that the order of approval of the year - 2008 shows the date of appointment of respondent no. 5 as 14.06.2004. If respondent no. 5 is appointed on 14.06.2003, he

would have been senior to Headmaster whose date of appointment is 01.06.2004. The said date of appointment is shown in the seniority list also.

5. The fact remains that since day one respondent no. 5 is shown senior to the petitioner. The petitioner has also acquiesced the seniority list and for the first time the petitioner raised objection to the seniority of respondent no. 5 in the year - 2017. The seniority list is published every time. In the year - 2013, the seniority list was published. The petitioner did not protest to the said seniority list. For almost thirteen years respondent no. 5 is shown senior to the petitioner consistently. No objection was raised by the petitioner to the seniority of respondent no. 5. The petitioner acquiesced of the fact that respondent no. 5 is shown senior to the petitioner. After long slumber it would not be open for the petitioner to disturb the said seniority list, as further rights accrued pursuant to the seniority list.

6. In the view of above, we are not inclined to consider the cause of the petitioner.

7. The writ petition is accordingly disposed of.
No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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