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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6199 OF 2014

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| 1. | Bandu s/o Babruwan Sasane
Age - 35 years, Occ - Service
R/o Bhatangali, Taluka and District - Latur | PETITIONERS |
| 2. | Chandrakant s/o Shrihari Bhojane
Age - 42 years, Occ - Service
R/o Nalegaon, Taluka - Chakur
District - Latur | |
| 3. | Uttam s/o Rangnath Gawande,
Age - 37 years, Occ - Service
R/o Ghotaka, Post - Dongargaon,
Taluka - Loha, District - Nanded | |
| 4. | Premraj s/o Haribhau Dudde,
Age - 29 years, Occ - Service
R/o Pangaon, Taluka - Renapur
District - Latur | |
| 5. | Sanjay s/o Laxman Wadkar,
Age - 38 years, Occ - Service
R/o Ahmedpur, District - Latur | |

VERSUS

- | | | |
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| 1. | The State of Maharashtra
Through its Secretary,
Education Department
Mantralaya, Mumbai - 32 | RESPONDENTS |
| 2. | The Chief Officer,
Zilla Parishad, Latur | |
| 3. | The Education Officer (Primary)
Zilla Parishad, Latur | |

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Mr. Suhas P. Urgunde, Advocate for the petitioners
Mr. S. S. Dande, AGP for respondent - State
Mr. D. S. Mali, Advocate for respondents No. 2 and 3
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**[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]**

DATE : 27th MARCH, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Petitioners are before this court complaining that seniority list published by respondent No.3, annexed to the writ petition as Exhibit-B, is not in accordance with Maharashtra Employees of Private School (Conditions of Service) Regulation Rules, 1981. According to the petitioners fixing of seniority as on the date of entry of employee in service is contrary to the legal position since apart from date of entry, other factors like acquisition of prescribed qualification is also imperative to be considered while fixing seniority. Since this legal position has not been adhered to, fixation of seniority, which affects the petitioners adversely, is bad, not in conformity with the rules as also legal position as would be emerging from various decisions of this court,

particularly the one in writ petition No. 5697 of 2009 and other companion writ petition as well as decision of division bench of this court in the case of *“Vitthal Fakruji Madavi and Others V/s Zila Parishad, Chandrapur and Others”* reported in 2006 (2) Mh.L.J. 124.

3. Learned advocate for Zilla Parishad and learned assistant government pleader purport to refer to that the seniority list has been prepared keeping in view government resolution dated 11th August, 1999. Emerging legal position appears to be that along with date of entry of service, date of acquisition of necessary qualification would also be a relevant factor to be considered for fixation of seniority.

4. Though learned advocate for respondents refer to the government resolution, so far as factual aspects are concerned, those are not countered by filing any affidavit. It appears that while preparing seniority list, respondents No. 2 and 3 have prepared the same for the year 2013-14 for grant of higher pay scale only on the basis of bachelor degrees of concerned employees, ignoring date of acquisition of degree of bachelor of education by them. Petitioners claim higher pay scale with reference to the very same government resolution dated 11th August, 1999 relied upon on behalf of respondents No. 2 and 3.

5. Issue involved in the writ petition appears to be no longer *res integra*. Grievance of the petitioners appears to have been taken care of under observations in paragraph No. 2 of the decision of this court in writ petition No. 5697 of 2009 and companion writ petitions (*supra*), reading, thus-

“ 2. Heard Counsel for the petitioners and respondent Zilla Parishad and District Education Officer (Primary). The primary grievance in both these petitions is that the seniority list prepared by the Zilla Parishad is not in conformity with the statutory rules, as the basis adopted in fixing the seniority is on the date of entry of the concerned employee in the service. That alone cannot be the basis for deciding the issue of seniority. Whereas, besides the date of entry in service even the date on which the prescribed qualification was acquired by the incumbent is also a relevant factor. There is no dispute that the impugned seniority list is prepared by merely following the criteria of date of entry in service. The Zilla Parishad justifies the list by relying on the observations found in the Government Resolution dated 11-08-1999. Indubitably, the Government Resolution cannot supersede the statutory provisions contained in Rules of 1981. The Government Resolution, therefore, will be of no avail to justify the impugned seniority list which is purely on the basis of date of entry in the service. The question raised in these petitions has been squarely answered by another Division Bench judgment of our High Court in the case of Vitthal s/o Fakruji Madavi and Others Vs. Zilla Parishad, Chandrapur and Others reported in 2006 (2) Mh.L.J. 124. ”

6. Writ petition, therefore, deserves to be allowed and the same is allowed in terms of prayer clauses "A" and "B". Rule is made absolute in aforesaid terms. Writ petition accordingly stands disposed of.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE