

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO.474 OF 2018
IN
WRIT PETITION NO.13981 OF 2017**

Subhash s/o. Ratansingh Chavan,
Age : 42 years, Occ. Service,
r/o. B-15, Fatima Niwas,
Sagar Seth, Vasai (East),
Tq. Vasai, Dist. Palghar ..Petitioner

Vs.

1. The State of Maharashtra,
Through Principal Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 32
2. The State of Maharashtra,
Through Principal Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 32
3. Divisional Caste Certificate
Scrutiny Committee No.2,
Dhule, Dist. Dhule
4. Divisional Caste Certificate
Scrutiny Committee,
Aurangabad, Dist. Aurangabad
5. Rajesh Kankal,
The Education Officer (Secondary),
Zilla Parishad Palghar,
Palghar No.2,
Dhule, Dist. Dhule

6. Narayan s/o. Ganesh Mhatre,
Secretary Agashi Virar Arnala
Shikshan Sanstha, Agashi,
Tq. Vasai, Dist. Palghar
7. Head Master, Bapuji Babaji Jadhav
Smarak Vidya Mandir, Chandip,
Tq. Vasai, Dist. Palghar
8. Ramesh s/o. Kunjilal Pardeshi,
Age : Major, Occ. Service,
r/o. 104, Padamnagar Co-op.
Housing Society, Agashi,
Tq. Vasai, Dist. Palghar ..Respondents

Mr. Sandeep Sontakke, Advocate for petitioner
Mrs.G.L.Deshpande, AGP for respondent nos.1 to 4
Mr. S.R.Ronghe, Advocate for respondent nos.6 and 7
Mr. P.B.Patil, Advocate for respondent no.8

CORAM : PRASANNA B. VARALE
AND
R.G. AVACHAT, JJ.
DATE : JUNE 18, 2019

ORAL ORDER :-

Heard.

2. With the consent of learned Counsel for the parties, the petition is taken up for disposal.

3. The petitioner is before this Court with the grievance that the order passed by this Court dated 10.04.2018 in Writ Petition No.13981 of 2017 is not complied with and there is willful disobedience of the order.

4. Perused the order dated 10.04.2018 passed by this Court. The order records a statement made on behalf of the petitioner, that the petitioner had approached the Education Officer under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service), Rules, ("M.E.P.S. Rules", for short), raising objection to the seniority. The order further records a statement of learned Counsel for respondent no.8 that respondent no.8 waives his claim of seniority as against the petitioner. Considering these facts, this Court had directed the Education Officer to take a decision on the objection raised by the petitioner, on its own merits, within a period of four months from the date of order. The order also records a statement of learned Counsel appearing for respondent nos.6 and 7 that a proposal would be forwarded to the Education Officer in accordance with law within

four weeks.

5. Mr.Sontakke, learned Counsel for the petitioner, vehemently submits that the respondent no.6 – Institution, though has submitted a proposal dated 05.05.2018, the Education Officer, in turn, by communication dated 16.05.2018, informed the President/Secretary of the Institution (respondent no.6) that the proposal submitted is not as per the prescribed procedure. Learned Counsel for the petitioner, in support of his submissions, has placed on record a copy the order passed by the Education Officer dated 20.06.2018.

6. Learned Counsel for respondent no.6, in his detailed submissions, invited our attention to the material placed on record along with the affidavit-in-reply filed on behalf of respondent no.6. Learned Counsel submits that in the order dated 10.04.2018, this Court had directed the Education Officer to take a decision on merits on the objections raised by the petitioner. He submits that as per the statement made

before this Court on behalf of respondent nos.6 and 7, they had submitted a proposal to the Education Officer. In the proposal, attention of the Education Officer was invited to the fact that roster is already verified by the Education Officer on 24.11.2017 and as per the roster, there is no post available for a candidate belonging to NT-A category. Attention of the Education Officer was also invited to the Government Resolution and factual position that for the approved post of Headmaster, one candidate belonging to S.T. Category is already discharging his duties. As per the roster, the post would be available to N.T. Category candidate after the retirement of the officiating Headmaster that too, as per its turn. It was also brought to the notice of the Education Officer that various notices were issued to the petitioner for his conduct and his indiscipline.

7. Learned Counsel for respondent no.6, by

inviting our attention to the order passed by the Education Officer, further submits that though the Education Officer passed the order, it was only to the effect of providing a copy of the roster to the petitioner, to prepare seniority list and on the assumption that as the tribe claim of respondent no.8 – Ramesh Pardeshi is invalidated, the petitioner would be senior to respondent no.8 and it is further stated in the order that the duly approved copy of the roster be provided to one Smt.Save, Assistant Teacher. Learned Counsel submits that the petitioner by taking benefit of the order passed by this Court, whereby this Court had directed the Education Officer to take a decision on the objection of the petitioner on merits, approached the authorities concerned and submitted a representation as if the claim of the petitioner being a senior-most teacher in the institution, is allowed by this Court.

8. On perusal of the relevant provisions and

more particularly, Rule 12 of the M.E.P.S. Rules, it reveals that the duty is cast upon every Management to prepare and maintain a seniority list of the teaching staff and non-teaching staff in the school in accordance with the guidelines laid down in Schedule "F" and circulate the same amongst the members of the staff and to obtain their signatures for having received the same. Rule 12 the provides for opportunity of submitting objections to the seniority list. Now, there is provision for safeguarding interest of the teachers, to put their claim for seniority. Ultimately, a decision is to be taken by the competent authority namely, the Education Officer. The Education Officer is expected to take a decision on merits of the objection and by providing opportunity to the relevant parties including management.

9. In the present case, on perusal of the material, we find merit in the submission of learned Counsel appearing for respondent no.6. When this

Court directed the Education Officer to take decision, this Court had specified that the decision be taken on merits, within the stipulated period. The order of Education Officer shows that the Education Officer heard two proceedings at the same time. One proceedings was in respect of hearing under the Right to Information Act and another was in respect of objection raised by the petitioner. The order of Education Officer would show that without considering the seniority list, the Education Officer directed to provide a copy of roster to the petitioner and to prepare the seniority list treating the petitioner senior to one Shri Pardeshi. It was further directed to provide a copy to Smt.Save, Assistant Teacher. The order of Education Officer further shows that respondent no.6 had submitted the proposal to the Education Officer inviting his attention to various facts, such as, one post of Headmaster already is already filled-in and the other post will have to be filled-in by appointing a

candidate from NT-A category only, after retirement of the earlier Headmaster. The attention of the Education Officer was also invited to the notices issued to the petitioner for his misconduct.

10. As stated above, the Education Officer is expected to take a decision on merits of the objection and by hearing the necessary and relevant parties. The order passed by the Education Officer would only show that the Education Officer hurriedly passed the order without considering the objection raised by respondent no.6 in the proposal dated 05.05.2018. It would not out of place to state that within the stipulated period of four weeks, as stated before this Court on behalf of respondent no.6, the proposal was submitted to the Education Officer.

11. On going through Writ Petition No.13981 of 2017 filed on behalf of the petitioner, it reveals that a seniority list was prepared sometime in the year 2015. Now, the Education Officer failed to

refer the list, which was prepared in the year 2015 so as to consider the claim of the petitioner for seniority. Our attention is invited to the communication dated 16.04.2018 sent by the petitioner to the Education Officer, which is placed on record along with the affidavit-in-reply. Perusal of this communication would show that the petitioner submitted before the Education Officer his claim being senior-most teacher in the school is as per the order dated 10.04.2018 of this Court. Learned Counsel for respondent no.6 is justified in making submission before this Court that this Court had directed the Education Officer to take a decision on merit only. Whereas, the petitioner has created an impression before the Education Officer that his claim is already approved by this Court and the Education Officer upon misrepresentation of facts, passed the order dated 20.06.2018 hurriedly.

12. Thus, the submissions of learned Counsel for respondent no.6 that there is no willful disobedience of the order of this Court and respondent no.6 has complied with the order of this Court by submitting the proposal within the stipulated period, whereas, the Education Officer failed to take the decision on merits of the objections raised by the petitioner, are justified.

13. As we are of the opinion that respondent no.6 has not committed any willful disobedience of the order of this Court and followed order of this Court in proper spirit, notice issued to respondent no.6 is recalled. Respondent no.6 is discharged from the notice.

14. The Education Officer is directed to decide the objection filed by the petitioner on its own merits, considering the proposal dated 05.05.2018 and the points raised in the proposal by the Management. The Education Officer shall take a decision within a

period of eight weeks from today.

15. The Contempt Petition is accordingly disposed of.

16. Authenticated copy of this order be provided to the learned Assistant Government Pleader to act upon.

[**R.G. AVACHAT, J.**]

[**PRASANNA B. VARALE, J.**]

kbp