

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

1046 WRIT PETITION NO.8827 OF 2018

**ANJUMAN ISHAATE TALEEM TRUST THROUGH SECRETARY GULAM
MEHMOOD AKHTAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr. Kazi S.S.
AGP for Respondent: Mr. S.B. Yawalkar

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**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 16/08/2019

PER COURT :

1. Mr. Kazi, the learned counsel submits that the petitioner Nos. 2 and 3 are working as Senior Clerk since the year 2011 with the petitioner No.1 – Trust. The learned counsel submits that the vacancy existed for the post of Senior Clerk in the year 2011 and since the date of vacancy, i.e. since 2011 the petitioner Nos. 2 and 3 are officiating as Senior Clerks. The Management passed the resolution on 12.12.2017 according the benefit to the petitioner Nos. 2 and 3 of the post of Senior Clerk from 01.07.2011. Under the resolution dated 26.09.2017 and the order of promotion dated 12.12.2017, the petitioners are given the benefit from 01.07.2011. The petitioners have actually worked as

Senior Clerks from 01.07.2011. The vacancy also existed as per the staffing pattern. The petitioner Nos. 2 and 3 would not claim any financial benefits for the period of 01.07.2011 to 12.12.2017. However, the said period be considered for the purpose of seniority and for further benefits.

2. We have heard the learned A.G.P. also.

3. The order of promotion could not have taken place retrospectively. The order of promotion is dated 12.12.2017 and the resolution is said to be dated 26.09.2017. It would not be possible to accept the contention that though the order of promotion is issued on 12.12.2017, the petitioners are required to be considered as Senior Clerks with retrospective effect from 01.07.2011. In fact, one post became vacant in the year 2009 and another post became vacant in October 2010. The actual orders of promotion are issued to the petitioners on 12.12.2017. The Management on 26.09.2017 considered the petitioners for promotion and resolved to give promotion to petitioner Nos. 2 and 3 as Senior Clerks. Prior to that they never considered petitioner Nos. 2 and 3 for promotion. As far as the seniority is concerned there is only one post of Senior Clerk in the school, where, the petitioner Nos. 2 and 3 are promoted as Senior Clerks. In view of that in the cadre of Senior Clerk, no other person

would be senior to the petitioner Nos. 2 and 3. Even otherwise for the purpose of pension, the services rendered by the petitioner Nos. 2 and 3 on such substantive post is required to be considered. So if the petitioners have rendered the service as junior clerks on a substantive post, the said period also is required to be considered for the length of service for further pensionary purposes.

4. With the aforesaid observation the writ petition stands disposed of. No costs.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

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