

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11013 OF 2016

Mr.Rizwan Rafiulla Attar. ... Petitioner
Vs.
The State of Maharashtra and others. ... Respondents

Ms.Archana P. Gaikwad with Mr.Suraj A. Shetye for Petitioner.
Mr.M.M.Pabale, AGP for Respondent No.1.

**CORAM : PRADEEP NANDRAJOG, C.J.
AND N.M.JAMDAR, J.**

DATE : 17 July 2019.

P.C. :

The Petitioner is aggrieved by the decision of Respondent No.3 institute to appoint Respondent No.5 on the B.Ed. scale. According to the Petitioner, she is senior to Respondent No.5 and Respondent No.6 in the school and she should have been given the said appointment.

2. The Respondent No.3- educational institute runs a school named as S.M.Shankarrao Mohite Patil Vidyalaya at Rajewadi Taluka Atpadi in District- Sangli. This school has 5th to 10th standards. The standards 8th to 10th are fully aided and 5th to 7th

standards are unaided. According to the Petitioner, the Petitioner who was appointed on 11 June 2008 had B.A. B.Ed. qualification while Respondent No.5 was appointed on 30 January 2009 having H.Sc., D.Ed. qualification. Respondent No.6 was B.A., B.Ed. and was appointed on 1 August 2009. The foundation of the dispute raised by the Petitioner is *inter se* seniority between the Petitioner, Respondent No.5 and Respondent No.6. What is challenged in this writ petition is the decision of Respondent No.3- educational institute to give B.Ed. Scale to Respondent No.5 with effect from 22 June 2015. The Petitioner has pleaded that Respondent No.2- Education Officer (Secondary), Zilla Parishad, Sangli, initially, had approved the proposal of appointment of Respondent No.3 in B.Ed. scale but had cancelled the same on 29 February 2016. We are informed that a petition is filed by Respondent No.5 and the same is pending.

3. As stated earlier, the dispute centers around *inter se* seniority and it will require adjudication of factual matrix. It is, therefore, appropriate that the said exercise is carried out by the Education Officer. Even otherwise, the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 empowers the Education Officer to determine the *inter se* seniority amongst teachers. It would be, thus, appropriate that the Education Officer considers the issue as to the *inter se* seniority between Respondent No.5, Respondent No.6 and the Petitioner and take a decision as to

who would be entitled to the appointment to the B.Ed. scale. If the Education Officer comes to the conclusion that as per law, none is entitled to the post in question, he may take a decision accordingly. Needless to state that if there is any specific order passed in favour of Respondent No.5 and Respondent No.6 by this Court, unless it is modified, set aside or varied, the same will have to be given deference.

4. The Education Officer will fix a suitable date by informing the Petitioner, Respondent No.5 and Respondent No.6 calling upon them to submit their representation and say within a period of six weeks from today and after the parties have submitted their representation/say, decide the issue within a period of eight weeks thereafter. Petition is disposed of.

5. The office of the Government Pleader will furnish a copy of this order to the Education Officer (Secondary), Zilla Parishad, Sangli for necessary action.

N.M.JAMDAR, J.

CHIEF JUSTICE