

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5939 OF 2013**

Smt. Kalawati Devrao Hange,	]
Aged 56 years, Occu: Service,	]
Residing at-C/o S. A. Jadhavar	]
Ekhatpur Road, New Colony,	]
Sangola, Dist. Solapur	]..Petitioner

Versus

1] State of Maharashtra	]
2] The Education Officer (Secondary),	]
Zilla Parishad, Solapur.	]
3] Nivrutti Seva Sangh,	]
Ekhatpur, Tal. Sangola,	]
Dist. Sholapur 413307.	]
4] The Head Master,	]
Vidya Mandir High School,	]
Ekhatpur, Tal. Sangola,	]
Dist. Sholapur	]..Respondents

WITH
CIVIL APPLICATION STAMP NO.10866 OF 2019
IN
WRIT PETITION NO.5939 OF 2013

The Education Officer (Secondary)	]
Zilla Parishad, Solapur	]..Applicant

IN THE MATTER BETWEEN

Smt. Kalawati Devrao Hange,	]
Residing at-C/o S. A. Jadhavar	]
Ekhatpur Road, New Colony,	]
Sangola, Dist. Solapur	]..Petitioner

Versus

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|--|--------------------------|
| 1] State of Maharashtra |] |
| 2] The Education Officer (Secondary),
Zilla Parishad, Solapur. |]
] |
| 3] Nivrutti Seva Sangh,
Ekhatpur, Tal. Sangola,
Dist. Sholapur 413307. |]
]
]..Respondents |

Mr. N. V. Bandiwadekar, Advocate for the Petitioner.

Mrs. S. D. Vyas, "B" Panel Counsel for Respondent Nos.1 & 2 – State.

Mr. A. B. Tajane, Advocate for Respondent Nos.3 & 4.

**CORAM : B. R. GAVAI &
DAMA SESHADRI NAIDU, JJ.
DATE : 10th APRIL 2019**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2] In response to the order passed by this Court dated 27th March 2019, Mr. Suryakant Balavant Patil, Education Officer (Secondary), Solapur, Respondent No.2 herein is present in the Court.

3] We were required to summon Respondent No.2 – Education officer, since we noticed that though as per the order passed by the Division Bench of this Court dated 22nd January 2019,

the Education officer was required to take a decision after hearing the Petitioner and the Management by 12th March 2019, he had not taken a decision. We had further noticed that though the period expired on 12th March 2019 and the matter was listed on 13th March 2019, learned AGP has taken two weeks time to take instructions. However, when the matter was listed on 27th March 2019, learned AGP was not in a position to inform the Court as to whether the order passed by this Court dated 22nd January 2019 stood complied with or not.

4] Mr. Suryakant Balavant Patil, Education Officer (Secondary), Solapur, Respondent No.2 herein in personally present in the Court. It appears that only after the order was passed by this Court on 27th March 2019, Respondent No.2 woke up from the slumber and passed order on 29th March 2019.

5] Be that as it may, now the order stands complied with. As such, we do not proceed further to take action against said Respondent.

6] We have perused the order passed by Respondent No.2. The Petition arises out of peculiar facts. The Petitioner was

appointed in the year 1980. After completion of twelve years, in accordance with the Government Resolution dated 15th January 1990, she was entitled to senior scale, subject to the two conditions that her work is satisfactory and that she has completed three years internal training.

7] Undisputedly, the Petitioner has completed requisite training, however, the Respondent - Management had not sent proposal to the Respondent – Education Officer for the reasons best known to it.

8] The Petitioner therefore came before this Court with a grievance that though she has been agitating her grievance for long period, she was denied justice. For the first time in the affidavit in reply, the Respondent - Management came with a stand that the Management had not sent proposal for grant of senior scale, since work of the Petitioner was not satisfactory. It appears that taking into consideration this grievance, this Court vide order dated 22nd January 2019 has directed the Education Officer to give hearing and pass an order afresh. Now, the Education Officer has also passed an order stating therein that unless School Committee takes a decision

with regard to the Petitioner's work satisfactory, senior scale cannot be granted.

9] We find that the stand taken by the Respondent – Management is totally untenable in law. If the work of the Petitioner was not satisfactory, we ask question to ourselves as to what the Respondent – Management was doing till the Petitioner has approached this Court. In any case, in view of the settled position of law, in view of the judgment of the Apex Court in the case of Dev Dutt Vs. Union of India and others¹ an adverse CR also cannot be taken into consideration against the candidate, if the same is not communicated to him. As a matter of fact, even 'good' and 'very good' remarks have also been considered to be an adverse remarks, since the candidate is entitled to claim better gradation.

10] In that view of the matter, the spacious stand taken by the Respondent – Management, now for the first time, in the affidavit in reply, that it has not sent proposal for grant of senior scale, since her performance was not satisfactory, does not appeal to us.

¹ (2008) 8 SCC 725.

11] In that view of the matter, the Petition deserves is allowed. The Respondent No.4 is directed to submit the proposal to Respondent No.2 for grant of senior scale to the Petitioner from the date on which the Petitioner completes twelve years of service within 15 days from the date of uploading of this order. In the event, Respondent No.4 fails to do so, he shall be liable for such action as deem appropriate by this Court.

12] On receipt of the proposal, the Respondent No.2 – Education Officer shall approve the same and ensure that the Petitioner would be paid pension from the month of June 2019 on the basis of the last drawn salary that the Petitioner would have drawn as per our aforesaid directions. All the arrears from the date on which the Petitioner is held eligible for pension till the month of May 2019 shall be cleared within a period of three months from today.

13] In view of disposal of Writ Petition, Civil Application does not survive and accordingly stands disposed of.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]