

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5408 OF 2017

Mrs. Sonali R. Bane

....Petitioner

V/s.

State of Maharashtra and Ors.

....Respondents

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Mr. S.C. Naidu I/by. Ms. Vijaya S. Ingule, Advocate for the petitioner.

Mr. S.B. Kalel, AGP for the State.

Ms. Pooja Joshi i/by. Mr. Ram Kutwal, Advocate for respondent no.5.

Mr. C.K. Bhangoji, Advocate for respondent no.8.

Mrs. Sangita T. Shirke, Assistant Counsellor, Assitant Comm, Social Welfare Offices, Mumbai Suburb present.

CORAM : B.R. GAVAI, &

SANDEEP K. SHINDE, JJ.

Thursday, 25th April, 2019.

ORAL JUDGMENT (PER : B.R. GAVAI, J) :

1. Rule. Rule is made returnable forthwith. Heard

finally by consent of the parties.

2. The petitioner has approached this Court being aggrieved by the promotion of respondents no.6 and 7 to the post of Principal (Jr. Grade).

2. It is the contention of the petitioner that, the seniority list which is approved by respondent no.3 is not in accordance with the law laid down by the decision of the Full Bench of this Court in the case of **Jayashree Sunil Chavan vs. State of Maharashtra and Others, reported in 2000(3) Mh.L.J. 605.**

3. In the affidavit-in-reply filed by respondent no.3, it is stated that respondents no.6 and 7 are senior to the petitioner, in as much as, they are possessing B.Ed. qualification. The issue is no more res-integra. The Full Bench of this Court in the case of *Jayashree Chavan* (supra) has held that, insofar as, primary schools are concerned, the requisite qualification would be D.Ed. and not B.Ed. Undisputedly, the School in which the petitioner is claiming promotion is only imparting education from I to IV

Standard. The Full Bench of this Court in the case of *Jayashree Chavan* (supra) has held that, in so far as, Schools which are imparting education to I to IV Standard is concerned, the requisite qualification is D.Ed. and not B.Ed. It has been held that, such teachers who are possessing the B.Ed. qualification, are not qualified to teach I to IV Standard. Such teachers can be treated as qualified only from the date when they would acquire the D.Ed. qualification.

4. In that view of the matter, the stand taken by the respondent is totally unsustainable in law. The petition is allowed in the following terms :

(i) The Seniority list and consequent promotion made by treating D.Ed. Teachers as qualified, is quashed and set aside.

(ii) Respondent no.3 is directed to re-fix seniority after giving hearing to all the concerned parties after following the law laid by the Full Bench of this Court in the case of *Jayashree Chavan*

(supra). The same shall be done within six weeks from today.

(iii) Needless to state that, upon seniority list being re-fixed in accordance with the directions, fresh promotion orders be issued to the concerned persons.

5. Rule is made absolute in the aforesaid terms with no orders as to costs.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)