

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7845 OF 2019

Shri Baliram S/o Ghanshyam Ingale,
Age : 52 Years, Occu. Service,
R/o: Gangotri Niwas, Datta Nagar-2,
Rampur Road, Degloor, Tq. Degloor,
Dist. Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Education and Sports Department,
Mantralaya, Mumbai-32
2. The Education Officer (Secondary),
Zilla Parishad, Nanded, District Nanded
3. Shri Sant Gadgebaba Shikshan
Prasarak Mandal,
15, Shahaji Nagar, Degloor,
Tq. Degloor, District Nanded
Through its Secretary
4. Shri Anand Laxmanrao Jadhav,
Age : 56 years, Occ: Service,
R/o : Sadhana Nagar, Degloor,
Tq. Degloor, District Nanded.

...RESPONDENTS

Shri P.D. Bachate, Advocate for Petitioner
Shri V.M. Kangne, Assistant Government Pleader
for Respondent No. 1 and 2
Shri V.D. Gunale, Advocate for Respondent No 3
Shri Ameya Sabnis, Advocate for Respondent No. 4

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

JUDGMENT RESERVED ON :

JUDGMENT DELIVERED ON : 20th March, 2020.

JUDGMENT (PER ANIL S. KILOR, J.) :

1. Rule. Rule is made returnable forthwith. With the consent of the parties, the matter is taken up for final disposal at admission stage.
2. The Education Officer (Secondary), Zilla Parishad, Nanded, vide its order dated 04.06.2019, declared the respondent No.4 as Senior to the petitioner. The said order is under challenge in the present petition.
3. The facts leading to present writ petition are that the petitioner was appointed in graduate scale as 'Assistant Teacher' in the respondent-school in the year 1993 and his appointment was approved by respondent No. 2 vide order dated 27.09.1993.
4. Respondent No. 4 was appointed on 01.09.1999 in D.Ed. scale.
5. The respondent No. 4 had preferred Writ Petition No.1036/1994, challenging the appointment of the petitioner on the ground that on the date of appointment of the petitioner, though the respondent No. 4 was qualified to be appointed as 'Physical Instructor', his claim had not been considered by the Management.
6. The said writ petition came to be dismissed on 3rd July, 2009, on the ground that respondent No. 4 failed to point out any provision either in the statute or in the Rules framed, to the effect

that the petitioner would get right to be considered before the Management could appoint the petitioner.

7. The respondent-Management promoted the respondent No. 4 on 'graduate scale' on 02.04.1996 and it was approved by the Education Officer on 26.06.1996.

8. In the light of the fact that the petitioner was appointed on 11.06.1993, in the 'graduate scale' whereas the respondent No. 4 was promoted to graduate scale on 02.04.1996, the petitioner is claiming seniority over the respondent No. 4.

9. Whereas the respondent No. 4 is claiming seniority over the petitioner on the ground that he was appointed on 01.09.1989, that is much prior to the petitioner's appointment on 11.06.1993.

10. Thus, the issue involved in the present petition is in respect of inter se seniority of petitioner and respondent No. 4.

11. Heard Shri Bachate, the learned Counsel for the petitioner, the learned AGP for the respondent No. No.1 and Shri. Bolkar, the learned Counsel for the respondent No.4.

12. Shri Bachate, the learned Counsel for the petitioner, points out that in Writ Petition No.697 of 2019, challenge was made to letter dated 10.01.2019, issued by the Education Officer, informing the Management that if the respondent No. 4 is not allowed to join as Head Master and if the Management failed to

submit his proposal for approval, the disciplinary action would be taken against the Management.

13. He submits that in the said writ petition this Court on 17.01.2019, granted ad interim order and thereby directed the Education Officer not to take any coercive action against the petitioner in view of his communication dated 10.01.2019.

14. Thereafter, on 26th April, 2019, this Court has passed the following order which reads thus -

In that eventuality, let the petitioner and Respondent No. 4 appear before Respondent No. 2- Education Officer with their respective claims on May 09, 2019. The Education Officer, after hearing the petitioner and Respondent No. 4, shall pass appropriate order finalising seniority of the teaching staff working in Respondent No.3-Society.

Stand over to June 19th, 2019.

Shri Bachate further submits that In view of the said order, the petitioner had submitted his say in detail on 20.05.2019, mentioning all the relevant facts to show seniority over the respondent No. 4. He points out that the petitioner had also mentioned various judgments of this Court in support of his claim relating to the seniority.

15. Shri Bachate points out that the petitioner thereafter filed another writ petition No. 6468 of 2019, alleging that the Education Officer is not considering his seniority. The said Writ Petition was disposed of on 6th June, 2019, granting opportunity to the parties to

point out all the relevant aspects in the matter including the Government Resolution, Circulars and Judgments of this Court, to the Education Officer, during hearing. This Court has further observed in the said order that the Education Officer shall consider the case of the petitioner in accordance with law and policy on its own merits.

16. He points out that on 11.06.2019, accordingly, he submitted a letter pointing out the order passed by this Court on 6th June, 2019 in Writ Petition No. 682 of 2019.

17. According to Shri Bachate, though the hearing was fixed on 19th June, 2019, the Education Officer passed impugned order declaring the respondent No. 4 senior than the petitioner, on 4th Jun, 2019, without giving reasons and without considering relevant rules and various judgments cited by the petitioner.

18. He submits that on 3rd May, 2019, that is prior to issuance of impugned order, the Government had issued a circular, superseding circulars dated 14th November, 2017 and 24th January, 2017 and issued fresh direction for deciding the inter say seniority of the teachers. The said circular dated 3rd May, 2019, says that as per the Judgment passed by this Court in Writ Petition No. 14242 of 2018, the relative seniority of secondary teachers based on the category they belong to and based when they have entered into that category, shall be decided.

19. Shri Bachate submits that this circular has not been considered by the Education Officer and contrary to this circular view has been taken.

20. **Shri Bolkar**, the learned Counsel for the respondent supports the impugned order dated 4th June, 2019, issued by the Education Officer and submits that the Education Officer has rightly declared the respondent No.4 as senior to the petitioner, considering his date of appointment.

21. To consider the rival contentions, we have gone through the record and impugned order dated 4th June, 2019.

22. From the record, it is clear that this Court vide order dated 26th April, 2019 in Writ Petition No. 697 of 2019, directed the Education Officer to pass appropriate order while finalizing the seniority list of teaching staff working in the respondent No. 3-Society, after hearing the petitioner and respondent No. 4. Thus, it was expected that the Education Officer shall consider relevant aspects of the matter including the Government Resolutions, circulars and the Judgments of this Court.

23. Though the Government Circular dated 3rd May, 2019, was in force on the date, the impugned order dated 4th June, 2019, was passed there is no mention about the said Government Circular. Thus, it is clear that while passing the impugned order

dated 4th June, 2019, the Education Officer has not at all taken into consideration the said Government Circular dated 3rd May, 2019.

24. The said Circular dated 3rd May, 2019 is important in view of the fact that it was issued in view of the Judgment of this Court in Writ Petition No. 1424 of 2018 and thereby, it has held that to consider the relative seniority of the secondary teachers based on the category, they belong to and based on when they have entered in that category, needs to be taken into consideration.

25. However, while deciding inter say seniority between the petitioner and respondent No. 4, the respondent No.2 - Education Officer failed to consider relative seniority of the petitioner and respondent No. 4 based on the category they belong to and based when they have entered in that category.

26. It is clear that the relative seniority of the petitioner and respondent No. 4 is decided by the Education Officer on the basis of their date of appointment and not based on the category, they belong to and date when they have entered in the said category.

27. Thus, we are of the considered view that the respondent No. 2 – Education Officer has mechanically decided the relative seniority between the petitioner and respondent No. 4, without considering necessary aspects of the matter and Government Resolutions, Circulars and Judgments in that regard.

28. Under Rule 12 of Rules of 1981, the duty is cast upon the Education Officer to decide the seniority in case of any dispute arises relating to seniority. In the light of said provision, it is necessary to direct the Education Officer (Secondary) to decide the relative seniority of petitioner and respondent No. 4 afresh considering the Government Circulars, Government Resolutions which are in force and relevant judgments as observed by this Court in order dated 6th June, 2019 in Writ Petition No. 6468 of 2019.

29. In view of the observations made above, the writ petition is partly allowed. The impugned order dated 4th June, 2019, is set aside and the respondent No. 2 – Education Officer (Secondary) is directed to decide the relative seniority of petitioner and respondent No. 4 considering the Government Resolutions, Circulars which are in force and the Judgments of this Court, on its own merits within a period of eight weeks from the date of Judgment.

30. Accordingly, the Writ Petition No. 7845 of 2019 is disposed of.

31. Rule is made absolute in above terms with no order as to costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

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