

IN THE HIGH COURT OF JUDICATURE AT BOMBAYBENCH AT AURANGABAD**WRIT PETITION NO. 8468 OF 2017**

Smt. Jayshree W/o Mahadev Thavle
 Age : 48 Years, Occ. Service working
 as a Assistant Teacher,
 R/o Shambhunagar, Latur,
 Tq. & Dist. Latur

: PETITIONER

...VERSUS...

1. The Deputy Director of Education,
Latur Region, Latur,
2. Mahatma Basweshwar Sanstha,
Latur, through its Secretary,
Shri Manmatappa Lokhandde,
R/o Latur, Tq. & Dist. Latur,
3. The Education Officer,
Secondary Zilla Parishad,
Latur, Dist. Latur
4. The Assistant Commissioner,
(B.C.Cell) Divisional Commissioner,
Office at Aurangabad
5. Smt. Meena M. Agraharkar,
Age 57 Years, Occ. Service,
Acting as Head Mister in
Desh Kendra Vidhyalaya Latur,
R/o Latur, Ta. Dist. Latur
6. Pandharinath S/o Prabhanna Aspatwar
Age : 56 Years, Occ. Assistant Teacher
In Shri Nilkantheshwar Vidyalay
Barshi Road, Latur
R/o Shilph Saphalya Apartment
Flat No.1, Near Mankari Petrol Pump
Sujan Gir Nagar, Latur, Dist. Latur

: RESPONDENTS

 Shri. V.D.Salunkhe, Advocate for the petitioner

Shri S.R. Sangale, AGP for the respondent no.1, 3, 4
Shri T.R. Gaikwad, Advocate for the respondent no.2.
Shri R.J. Godbole, Advocate for the respondent no.6.

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CORAM : PRASANNA B. VARALE

AND

ANIL S. KILOR, JJ.

DATED : 7th JANUARY, 2020

JUDGMENT (Per ANIL S. KILOR, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

2. By way of present petition, the petitioner who belongs to 'Scheduled Caste' is raising a dispute about the appointment of respondent no.5 as Head Master w.e.f. 30.06.2017 and thereby denying the appointment to the petitioner on the post of Head Mistress.

3. Heard Shri V.D.Salunkhe, learned counsel for the petitioner, Shri T.R. Gaikwad, learned counsel for respondent no.2-Education Society, Shri R.J. Godbole, learned counsel for respondent no.6 and Shri S.R. Sangale, learned Assistant Government Pleader for respondent nos. 1, 3 and 4.

4. Shri Salunkhe, learned counsel for petitioner submits that the petitioner is belonging to 'Mahar' caste

which is recognized as 'Scheduled Caste' and petitioner is having Educational qualification B.A.

5. He points out that after following due process, the petitioner was selected and appointed as Assistant Teacher on 21st June, 1999 and being senior most qualified teacher belonging to 'Scheduled Caste' category, as per existing roster she is eligible and entitled for promotion as 'Head Mistress' in any of the three school run by the respondent no.2 Management.

6. He further pointed out that the State Government has issued Government Resolutions dated 5th May, 2009 and 6th February, 2012 prescribing 33% reservation on the post of Head Master.

7. Shri Salunkhe, learned counsel for the petitioner further pointed out that the petitioner is presently working in Shri Deshikendra Vidhyalay, Latur and is due for promotion since long. However, to deny her claim the Management initially appointed one Shri Raghu B.N. on 1st November, 2009 and on his retirement appointed one Shri Mangle on the post of Head Master.

8. He submits that thereafter Shri Karpe got superannuated on 30th January, 2017 and during the

pendency of present petition again by denying the claim of petitioner for promotion, the management appointed respondent no.5 as Head Master w.e.f. 30.06.2017.

9. On the other hand, in the first affidavit on behalf of Education Officer, it is stated that respondent-Management is running three school and all three schools are receiving 100% grant in aid and therefore it is binding upon the respondent management to follow reservation policy of the State by getting 33% post reserved for backward class category candidates. It states that that 100 point roster is admitted vide Government Resolution dated 29th May, 2017 as per which the first point goes to 'Schedule Caste', second to 'Schedule Tribe' and third to 'VJ-A' and fourth to 'NTC'.

10. Affidavit further states that out of three post of Head Masters in three schools run by respondent no.2, two posts are to be filled in by promoting eligible candidates from open category on the basis of seniorty and one post by appointing candidate from the reserved category as per roster. The third post of head master shall therefore be filled in by candidate belonging to 'Schedule Caste'.

11. Thus, first affidavit on behalf of Education Officer supports the case of the petitioner.

12. However, on 23rd November, 2019 another affidavit has been filed by the Superintendent Class-II in the office of Education, stating in it that after perusal of seniority list for the year 2000-01 one Shri Gawali who was appointed as a Head Master, was at Serial Number 1 in seniority and was belonging to 'Schedule Caste' category. Therefore, Roster Point No.1 for 'Scheduled Caste' category has been exhausted in the year 1992 itself and therefore now the post of Head Master needs to go to 'Schedule Tribe' Category.

13. In the subsequent affidavit a request is also made to withdraw the statement made in the earlier affidavit i.e "Now as per the roster the post would go to Scheduled Caste category".

14. Shri Gaikwad, learned counsel for the respondent no.2 submits that the respondent no.5 was rightly appointed as a 'Head Master' and the petitioner is not entitled for appointment.

15. Shri Godbole, learned counsel for the respondent no.6 intervenor, argues that one Shri Gawali belongs to

Scheduled Caste was appointed to the post of Head Master and he retired on 10th June, 2010 and therefore, the Management ought to have appointed respondent no.6 being a candidate belonging to 'Scheduled Tribe' Category as per the Roster point, as the reservation for 'Scheduled Caste' has already been exhausted after appointment of Shri Gawali.

16. To support his contention he refers to Roster Register maintained by the School and signed by the Incharge Head Master and the Secretary of the school, to point out that Shri Gawali was appointed in 'Scheduled Caste' category.

17. To consider the rival contentions of the parties, we have gone through the record.

18. There is no dispute that 100 point roster has been issued by the State of Maharashtra vide G.R. dated 29th May, 2017. As per the said 100 point Roster, first point goes to 'Schedule Caste', second to 'Schedule Tribe' third to 'VJ-A' fourth to 'NTC' and fifth to 'Open'. There is also no dispute that the petitioner is senior most Assistant Teacher from the category of 'Scheduled Caste' candidates in all three school run by respondent no.2.

19. Education Officer as well as Respondent No.6 are relying upon the Roster Register, to demonstrate that one Shri S.S.Gawali was appointed as Head Master from the 'Scheduled Caste' candidate and therefore the roster point for 'Scheduled Tribe' has been exhausted.

20. We have perused the Roster Register. Said Roster Register shows that Shri S.S.Gawali was appointed on 1st August, 1991. In the column of Roster point against the name of Shri Gawali, the post was shown for 'Open Category' and in the column of 'actual appointment from the category', "MAHAR" is mentioned and remark is made by the Secretary against the said entry that roster point no.1 exhausted.

21. The said entry of Shri Gawali, clearly shows that the appointment of Shri Gawali was made in 'open category' though he belongs to caste of 'Mahar' Scheduled Caste Category. Moreover, the endorsement that 'the point no.1 of the Roster is exhausted', was not certified by any competent authority and the said entry was made by Secretary of the society.

22. To verify the correctness of the said endorsement made by Secretary, we have also gone through the copy of

appeal memo filed by Shri Gawali before School Tribunal, on his suspension on 12th August, 2004 as Head Master. In the said appeal memo Shri Gawali nowhere stated that he was appointed in a 'Scheduled Caste' category on the post of Head Master. On the other hand in appeal memo he states that because he belongs to 'Scheduled Caste' Category the Management with malafied intention has suspended him.

23. In the judgment of the Tribunal, in the said appeal there is no mention that Shri Gawali was appointed on a post reserved for 'Scheduled Caste' Category.

24. The Management is not coming up with any document like resolution or any other documents to show that Shri Gawali was appointed on a post of Head Master reserved for 'Scheduled Caste' category.

25. Thus, in absence of any documentary, evidence produced by Management or by the respondent no.6, we reject the submission of respondent Education Officer and respondent no.6 that Shri Gawali was appointed in 'Scheduled Caste' category and as such point no.1 of roster has been exhausted on appointment of Shri Gawali.

26. In the light of above observations made, we have

no hesitation to hold that from the record produced before this Court the respondents failed to show that as per Roster, reservation of 'Scheduled Caste' has been exhausted. Thus, we hold that the petitioner who belongs to 'Scheduled Caste' category and as per seniority, is eligible for appointment on the post of Head Master in 33% reservation for backward class, as per 100 point Roster.

27. We accordingly partly allow the present writ petition by setting aside the order dated 29th June, 2017, appointing the respondent no.5 as Headmistress w.e.f. 30.06.2017.

28. We also set aside order of approval dated 6th July, 2017, issued by the Education officer, Zilla Parishad, Latur.

29. We further direct the respondent no.2 to appoint the petitioner as 'Head Mistress' under 'Scheduled Caste' category within one month from the date of receipt of this order.

30. It is further directed to the Management to submit the proposal for grant of approval to the appointment of petitioner as Head Mistress, within a period of two months from the date of appointment of petitioner.

31. We direct the Education Officer to consider the

said proposal and take decision on same within three months from the date of submission of such proposal.

32. The Rule is made absolute in aforesaid terms.

33. Accordingly, we dispose of the petition.

34. No order as to costs.

JUDGE

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