

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1817 OF 2018

Adarsha Bahuuddeshiya Mandal, Ambedkar Ward, Bhandara, Thr. Its President and anr.

-vs-

Education Officer (Secondary), Zilla Parishad, Bhandara and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms Ritu P. Jog, Advocate for petitioners.

Shri M. A. Kadu, Assistant Government Pleader for respondent No.1.

Shri J. K. Matale, Advocate for respondent No.2.

Shri P. R. Parsodkar, Advocate for respondent No.3. .

CORAM : A. S. CHANDURKAR AND VINAY JOSHI, JJ.

DATE : FEBRUARY 14, 2020

Rule. Heard finally considering the short issue involved.

The petitioner No.2 seeks entitlement to the post that is admissible to benefits under the 25% graduate quota for the purposes of receiving Pay-Scale of a trained teacher. The Education Officer on 23/01/2018 has adjudicated by the impugned order that the respondent No.2 being senior in service than the petitioner No.2 he is entitled to grant of such higher Pay-Scale and entitlement to the post under the 25% quota. Being aggrieved the petitioner has challenged the said order in this writ petition.

2. Ms R. P. Jog, learned counsel for the petitioners submits that while passing the impugned order on 23/01/2018 the Education Officer placed reliance on Government Resolution dated 24/01/2017. Referring to the judgment of Division Bench in *Gaur Pratibha and ors.*

vs. The State of Maharashtra and ors. 2019(3) ABR 481 it is submitted that this Court has held that the Government Resolution dated 24/01/2017 would not apply to secondary teachers while determining their seniority from the initial date of appointment. It is thus submitted that since the entire premise on which the impugned order has been passed is bad in law the said order is liable to be set aside.

3. The Education Officer in his affidavit in reply has also referred to the aforesaid Government Resolution dated 24/01/2017 and he seeks to support the impugned order on that count. Similarly learned counsel for the respondent No.2 by relying upon the judgment of the Honourable Supreme Court in *Viman Vaman Awale vs. Gangadhar Makhriya Charitable Trust and ors. (2014) 13 SCC 219* submits that the impugned order does not call for any interference.

4. After perusing the relevant material on record it can be seen that the Education Officer has referred to Government Resolution dated 24/01/2017 while adjudicating the rival claims of the petitioner No.2 and the respondent No.2. This Government Resolution has been expressly held not to apply to the cases of secondary teachers by the Division Bench in *Gaur Pratibha and ors.* (supra). Since it is found that the impugned order has been passed placing reliance on this very Government Resolution, a fresh consideration of the entire matter by

the Education Officer is found necessary. In that view of the matter the order dated 23/01/2018 is set aside. The Education Officer shall grant a fresh opportunity of hearing to the petitioner No.2 and respondent No.2 and pass orders. To enable such adjudication the said parties shall appear before the Education Officer on 03/03/2020. All contentions raised by the respective parties are kept open for being adjudicated by the Education Officer. The decision be taken within period of six weeks from the first date of appearance.

Rule stands disposed of in aforesaid terms with no order as to costs.

JUDGE

JUDGE