

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

WRIT PETITION NO. 4507/2017

Hemraj Watuji Humne Vs. State of Maharashtra & ors.

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

Court's or Judge's Orders.

Shri B. M. Kharkate, Advocate for petitioner.
Shri J.Y. Ghurde, Assistant Government Pleader for respondent Nos. 1 to 3.
Shri A. R. Patil, Advocate for respondent No.5.

CORAM : A.S.CHANDURKAR AND VINAY JOSHI, JJ.
DATED : JANUARY 27, 2020.

The challenge raised in this petition is to the order dated 02.05.2017 that has been passed by the Deputy Director of Education recording the finding that the respondent No. 5 was senior in service to the petitioner. The subsequent order granting administrative powers to the respondent No. 5 for a period of six months on account of that adjudication is also under challenge.

2. The respondent No. 5 came to be appointed as an Assistant Teacher on 01.06.1991. When he was appointed, he had acquired qualification in B.A. B.Ed. The petitioner was appointed thereafter on 25.06.1992. He acquired B.P.Ed. qualification in the year 1992. On 28.02.2017, the seniority list as published was sought to be challenged by the petitioner on the ground that for the period of 5 days from 21.07.1992 to 25.07.1992, there was break in service with regard to the respondent No. 5. By virtue of such break in service, the petitioner claimed to be senior in service to the respondent No. 5. The Deputy Director of Education in the impugned order found

that for the aforesaid period of 5 days, the respondent No. 5 had discharged his duties at the same school in question where he was engaged. His signature was also found in the muster roll and he had also drawn his salary from said school. Similarly, he was also granted annual increment during that period. On this count, it was observed that there was no break in service as alleged. Since the respondent No. 5 was appointed prior in time to the petitioner and as he was duly qualified when he was so appointed, it was held that the respondent No. 5 was senior in service to the petitioner. Consequently, the respondent 5 was also granted administrative powers for a period of 6 months which arrangement was continued thereafter.

3. The learned counsel for the petitioner submits that during the relevant period of 5 days, the respondent No. 5 had issued various certificates to indicate that he was serving in an Ashram School. Since there was break of service for a period of 5 days, the respondent No. 5 could not be treated to be senior to the petitioner. On the other hand, according to the learned counsel for the respondent No. 5, he was continuously discharging his duties at the original establishment and he had also drawn salary from the same establishment during that period.

4. Perusal of the impugned order indicates that the Deputy Director of Education has after considering the records, noticed that the signatures of respondent No. 5 were available in the muster roll and he was also present during the relevant period. It has been held that there was no break in service. Since these findings are based on the material placed on record which has been considered by the Deputy Director of Education, we do not find any reason to interfere with that order. Consequently order of granting administrative powers also does not deserve to

be interfered.

5. Presently, there is no order of promotion issued in favour of the respondent No. 5. It is clarified that in case, the respondent No. 5 is promoted to the post of Headmaster, it would be open for the petitioner to challenge the same in accordance with law. With these observations, writ petition is dismissed. No order as to costs.

JUDGE

JUDGE

Gohane.