

vai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7135 OF 2019

1. Sou. Chaya Pandurang Tathe
Age: 50 Years, Occ: - Service
Add: - PMC School No. 172 B,
Katraj, Pune-411014
2. Sou. Pratibha Mahendra Jagtap
Age: - 46 Years, Occ: - Service
Add: - PMC School No. 172 B,
Katraj, Pune-411014
3. Sou. Sunada Vijay Pawar
Age: - 48 Years, Occ : Service
Add: - PMC School No. 39 B,
Bibvewadi, Pune-411037
4. Sou. Vina Baburao Acharya
Age: - 47 Years, Occ - Service
Add: - PMC School No. 68G,
Bibvewadi, Pune-411037
5. Sou. Nita Vinay Dastane
Age: - 52 Years, Occ: - Service
Add: - PMC School No. 39B,
Bibvewadi, Pune-411037
6. Sou. Shobha Sharad Yadav
Age: - 50 Years, Occ: - Service
Add: - PMC School No. 99B,
Indiranagar, Pune-411037
7. Sou. Vijaya Suhas Gaykwad
Age: - 44 Years, Occ: - Service
Add: - PMC School No. 21G,
Katraj, Pune-411046

8. Sou. Madhuri Pradip Bansod
Age: 55 Years, Occ: - Service
Add: - PMC School No. 138B,
Indiranagar, Pune-411037
9. Sou. Lata Prabhakar Shelar
Age: - 52 Years, Occ: - Service
Add: -PMC School No. 21G,
Katraj, Pune-411046
10. Sou. Jayshri Mansing Borkar
Age: - 56 Years, Occ: - Service
Add: - PMC School No. 172 B,
Katraj, Pune-411046
11. Sou. Rajshri Arun Belsar
Age: - 48 Years, Occ: - Service
Add: - PMC School No. 172B,
Katraj, Pune-411046
12. Sou. Rani Jayant Kulkarni
Age: - 45 ears, Occ: - Service
Add: - PMC School No. 162 B,
Chandrabhaganagar, Pune
13. Sou. Sunita Raghvir Vawal
Age: 48 Years, Occ: - Service
Add: - Akaah Heights,
Salunke Vihar Road, Pune
14. Sou. Jaya Rajendra Kute
Age: - 44 Years, Occ: - Service
Add: - Praj, Sadahiv Dangat Nagar,
Abegaon BK, Pune-411046
15. Sou. Savita Viresh Mahajan
Age: - 50 Years, Occ: - Service
Add: - B-12, Manmohan Society
Karve Nagar, Pune-411052

16. Sou. Gaurvi Govind Thakur
Age: - 46 Years, Occ: - Service
Add: - Sarvesh Prasad Gaasrden City,
Pune-411058
17. Sou. Sangita Balasaheb Barve
Age: - 46 Years, Occ: - Service
Add: - S. No. 77, Plot No. 22,
Kothrud, Pune-411038
18. Sou. Vidya Gajanan Parkhe,
Age: - 57 Years, Occ: - Service
Add: - Lokmanya Colony,
Paud Road, Kothrud,
Pune-411 038
19. Sou. Seema Sunil Mahajan
Age: - 50 Years, Occ: - Service
Add: - 160 b, Dattanagar, Pune 46.
20. Sou. Vina Arun Kamthe
Age: - 46 Years, Occ: - Service
Add: - 160 b, Dattanagar, Pune 46.
21. Sou. Ranjana Rajrarn Kadam
Age: - 52 Years, Occ: - Service
Add: - Windsar County, Ambegaon Bk.
Pune-411 046.
22. Sou. Sulbha Sanjay Memane
Age: - 51 Years, Occ: - Service
Add: - Akshay nagar Society,
Pimple Nilkh, Pune.
23. Sou. Varsha Madhukar Karanjgavkar
Age: - 49 Years, Occ: - Service
Add: - Sahyadri Nagar, Dhankavadi, Pune 46.
24. Sou. Suerekha Anil Wabhale
Age: - 50 Years, Occ: - Service
Add: -Pooja Park, Kothrud, Pune 38.

25. Sou. Manik Prabhakar Gore
Age: - 50 Years, Occ: - Service
Add: - Usha Moreshwar Society,
Warje, Jakatnaka, Pune 48.
26. Sou. Savita Sanjay Shende
Age: - 50 Years, Occ: - Service
Add: - Ganraj ap,
Vadgaon Bk Pune 41.
27. Sou. Ashvini Dhanajay Navale
Age: -, 50 Years, Occ: - Service
Add: - Nandbrahm Society,
Warje Pune
28. Sou. Suvarna Shrinivas Mahamuni
Age: - 59 Years, Occ: - Service
Add: - Sadguru Prasad, Ekta Society,
Warje Pune 58.
29. Sou. Rajshshri Mahadev Thorat
Age: - 52 Years, Occ: - Service
Add: - Guruprasad, Ambegaon Bk
Pune 46.
30. Sou. Kalpna Prakash Jadhav
Age: - 49 Ye. ars, Occ: - Service
Add: - Avdhl Arcade, Ambegaon Bk
Pune 46.
31. Sou. Surekha Sudhir Rajmane
Age: - 53 Years, Occ: - Service
Add: - Sidhtek Height Bk
Ambegaon Bk Pune 46.
32. Sou. Savita Shantaram Pawar
Age: - 44 Years, Occ: - Service
Add: Vadgaon. Bk, Pune-411041
33. Sou. Jayshri. Sunil Anarse

Age: - 50 Years, Occ: - Service
Add: - Vadgaon Bk, Pune-411041

34. Sou. Savita Bhimana Mali
Age: - 50 Years, Occ: - Service
Add: - Vadgaon Kh, Pune-411041

35. Sou. Jayshri Vijay Salunke
Age: - 50 Years, Occ: - Service
Add: - Navi Sangvi, Pune

36. Shri. Manjushri Suresh Shinde
Age: - 52 Years, Occ: - Service
Add: - PMC School No. 102 B,
Chandannagar, Pune-4110 14

37. Sou. Kavita Jayant Utari
Age: - 47 Years, Occ: - Service
Add: - PMC School No. 202 B,
Vadgaon Sheri, Pune-4110 14

38. Sou. Kalpna Ramesh Dube
Age: - 50 Years, Occ: - Service
Add: - PMC School No. 158 B,
Chandannagar, Pune-4110 14

39. Sou. Khurshida Basir Inamdar,
Age: - 47 Years, Occ: - Service
Add: - PMC School No. 19 G,
Kharadi, Pune-4110 14

40. Sou. Shailja Suryakant Huljute
Age: - 48 Years, Occ: - Service
Add: - PMC School No. 202 B,
Vadgaon Sheri, Pune-4110 14

41. Sou. Manda Atamaram Huljute
Age: - 54 Years, Occ: - Service
Add: - PMC School No. 49 B,
Ramvadi, Pune-4110 14

42. Sou. Bharti Anil Salunke
Age: - 48 Years, Occ: - Service
Add: - PMC School No. 17 G,
Chandangar, Pune-4110 14
43. Sou. Shashikala Radheshyam Mokashi
Age: - 45 Years, Occ: - Service
Add: - PMC School No. 32 B,
Hadpsar, Pune-4110 28
44. Sou. Sonali Sunil Palav
Age: - 48 Years, Occ: - Service
Add: - PMC School No. 23 B,
Momhamadvadi, Pune-4110 60.
45. Sou. Sushma Dattatrya Bannde
Age: - 46 Years, Occ: - Service
Add: - PMC School No. 99 G,
Vadgaon Sheri, Pune-4110 14
46. Sou. Vaishali Rangnath Shirke
Age: - 47 Years, Occ: - Service
Add: - PMC School No. 158 B,
Chandangar, Pune-4110 14
47. Sou. Suman Dasharth Borude
Age: - 53 Years, Occ: - Service
Add: - PMC School No.1B,
Ramwadi, Pune-4110 71
48. Sou. Vaishali Prash.int Ghodke
Age: - 46 Years, Occ: rvice
Add: - PMC School No. 90G,
Chandannagar, Pune-4110 14
49. Sou. Manisha Vijay Wadekar
Age: - 49 Years, Occ: - Service
Add: - PMC School No. 181B,
Kharadi, Pune-4110 14
50. Sou. Vijaya Ashok Kunjir

Age: - 50 Years, Occ: - Service
Add: - PMC School No. 50 B,
Phule Nagar, Pune-411006

51. Sou. Surekha Sambhaji Phadtare
Age: - 47 Years, Occ: - Service
Add: - PMC School No. 1568,
Bhairav nagar, Pune-4110 15
52. Sou. Urmila Sanjay Kand
Age: - 47 Years, Occ: - Service
Add: - PMC School No. 101G,
Varjar, Karvenagar, Pune-411058.
53. Sou. Anuradha Baban Jadhav
Age: - 55 Years, Occ: - Service
Add: - PMC School No. 90 G,
Chandannagar, Pune-4110 14
54. Sou. Sunita Vijay Sasane
Age: - 50 Years, Occ: - Service
Add: - PMC School No. 27 G,
Hadpsar, Pune-411015
55. Mrs. Shubhangi Kanchan Nayak
Age : 49 years. Occupation : Service
Address: PMC SCHOOL NO 55 G
Erandwane, Pune 411005.
56. Mrs. Aruna Vilas Sutar.
Age : 53years. Occupation : Service
Address: PMC SCHOOL NO 150 B
Chandan Nagar, Pune
57. Mrs. Swati Rajesh Mardhekar
Age : 43 Years. Occupation : Service
Address: PMC SCHOOL NO 205 B
Pune
58. Mrs. Nilima Prakash Girme

Age : 49 years. Occupation : Service
Address: PMC SCHOOL NO 205 B
Pune

59. Mrs. Sangita Shrihari Jamdade
Age : 42 years. Occupation : Service
Address: PMC SCHOOL NO 124B
Pune
60. Mrs. Rohini Prakash Gayakwad
Age : 49 years. Occupation : Service
Address: PMC SCHOOL NO 87 B Aundh
Pune
61. Mrs. Jayashri Jaysing Hande
Age : 49 years. Occupation :
Service Address: PMC SCHOOL
NO V. N 20. Aundh, Pune
62. Mrs. Nirmala Gajanan Sapkal
Age : 45 years. Occupation : Service
Address: PMC SCHOOL NO 55 B
Pashan, Pune.
63. Mrs. Lalita Vasant Bangar
Age : 45 years. Occupation : Service
Address: PMC SCHOOL NO 152B
Baner, Pune 411005
64. Mrs. Sadhana Sunil Galande
Age : 54years. Occupation : Service
Address: PMC SCHOOL NO 148 B Pune
65. Mrs. Vijaya Dattatray Mahadik
Age : 49 years. Occupation : Service
Address: PMC SCHOOL NO 2 B
Shivajinagar, Pune -411004
66. Mrs. Mahananda Sampat Lavand
Age : 49 years. Occupation : Service
Address: PMC SCHOOL

NO 87 B Aundh, Pune

67. Mrs. Anandibai Dattatray Vanve
Age : 49 years. Occupation : Service
Address: PMC SCHOOL NO 64 G
Pashan ,Pune.
68. Mrs. Jayashri Vijay Salunke
Age : 49 years. Occupation : Service
Address: PMC SCHOOL
NO 151 B Bane, Pune.
69. Mrs. Pushplata Limbahari Shimpankar
Age : 49 years. Occupation : Service
Address: PMC SCHOOL NO 92 B
Chavannagar, Pune.
70. Mrs. Mrudula Chandrakant Kunjir
Age : 56 years. Occupation : Service
Address: PMC SCHOOL
NO 38 B Fatimanagar ,Pune.
71. Mrs. Ayesha Fazalmahmood Shaikh
Age : 51 years. Occupation : Service
Address: PMC SCHOOL NO 2G
Kondhava, Pune
72. Mrs. Sandhya Chaudhari
Age : 48 years. Occupation : Service
Address: PMC SCHOOL NO 5\158B
Pune
73. Mrs. Suvarna Surash Shivankar
Age : 45 years. Occupation : Service
Address: PMC SCHOOL
No. 117 B, Pune.
74. Mrs. Kalpana Mayaji Kumbhar
Age : 43 years. Occupation : Service
Address: PMC SCHOOL NO 19G
Pune

75. Mrs. Nita Vinay Dastane
Age : 52 years. Occupation : Service
Address: PMC SCHOOL NO 33 G
Bibvevadi Pune.

... Petitioners

Versus

1. Pune Municipal Corporation
Through Education Department,
Shivaji Nagar, Pune-411 004.
2. The State of Maharashtra
Urban Development Department,
Mantraya, Mumbai-32.
3. Maharashtra Rajya Padvidhar
Pratamik Shikshak Va
Kendra Pramukh Sabha
[A Society registered under the
provisions of The Societies
Registration Act, 1860 bearing
Regn. No. F-214-72,
Kolhapur, BOM-318-72
Kolhapur, dated 25.09.2972.
Having its registered office :
Survey no. 82, Sankalp
Saraswati Nagar, Navi Sangvi,
Pune 411027.Through Chairman/
Secretary, Manohar Jagannath Babar.
4. Pune Zillha Parishad, Pune,
Through its Chief Officer,
New Administrative Building,
1, Welsli Road, Camp, Pune,
Pune – 411 001.
5. Rural Development Department
State of Maharashtra,
Through its Secretary

... Respondents

Mr.A.V. Anturkar, Senior Counsel with Mr.Sugandh B. Deshmukh for the Petitioners.

Mr.R.S. Khadapkar for the Respondent No.1.

Mr.N.C. Walimbe, AGP for the State – Respondent No.2.

Ms.Manjiri Parasnis for the Respondent No.3.

Mr.Yuvraj Patil i/b Mr.Pankaj Deokar for the Respondent No.4.

**CORAM : R. D. DHANUKA AND
R. I. CHAGLA, JJ.**

**RESERVE DATE : 10th AUGUST, 2021
PRONOUNCE DATE : 1st OCTOBER, 2021**

JUDGMENT (*Per R.D. Dhanuka, J.*) :-

. Rule. Learned counsel appearing for the respondents waive service. By consent of the parties, the petition is heard finally. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of certiorari for quashing and setting aside the seniority list dated 20th February, 2018 published by the respondent no.1 - Pune Municipal Corporation. The petitioners are the primary teachers. Prior to 9th January, 1999, the petitioners were working with the Pune Zilla Parishad in 23 erstwhile villages which were later on merged in Pune Zilla Parishad. On 1st January, 1999, the services of the petitioners were absorbed in respondent no.1 after inclusion of the erstwhile 23 villages within the municipal limits of respondent no.1. It is the case of the petitioners

that after absorption of the petitioners on 1st November, 1999 with the respondent no.1 Corporation, their services were considered as per their initial date of appointment and were given the benefit of the seniority. On 1st May, 2012, the respondent no.1 prepared the seniority list in which the petitioners were shown senior and their seniority were shown from the date of initial date of appointment with Pune Zilla Parishad. One of the teachers already working with the respondent no.1 Corporation challenged the said seniority list published on 1st May, 2012.

3. It is the case of the petitioners that since 2016, the respondent no.1 started preparing the seniority list under the pressure of the Association / Organization of the primary teachers who were in service with the respondent no.1 corporation. On 20th September, 2016, the petitioners raised objection to the said seniority list prepared by the respondent no.1 in the year 2016. On 7th October, 2016, the legal department of the respondent no.1 gave legal opinion that the seniority of the primary teachers was to be taken into consideration from the initial date of appointment with the Pune Zilla Parishad in the light of the judgment delivered by this Court in case of **Shashikala Baviskar vs. Municipal Council, Jalgaon (2005) Vol-II, Mh.L.J. 1086**. In the said legal opinion, the legal department also referred to section 493 of the Maharashtra Municipal Corporation Act and Government Resolution dated 13th August, 1990. On 29th September, 2017, the petitioners again raised the objections with the respondent no.1.

4. On 18th October, 2017, the Additional Commissioner of the respondent no.1 corporation held that the date of absorption with the respondent no.1 was required to be taken into consideration. On 20th Feb, 2018, the respondent no.1 published a seniority list of primary teachers. In the said seniority list, the names of the petitioners were shown from the date of absorption with the respondent no.1 corporation and not from the date of joining with the Pune Municipal Corporation. On 20th February, 2021, the petitioners filed their objection to the said seniority list dated 20th February, 2018. The petitioners filed this petition on 26th February, 2018 impugning the said seniority list dated 20th February, 2018.

5. On 28th February, 2018, this Court passed an interim order directing that the promotion made if any shall be subject to the result of this writ petition and promotion order, if any would mention this aspect. On 6th March, 2019, a Division Bench of this Court observed that the issue raised in the writ petition must be resolved by this Court and it may not be possible for the Municipal Commissioner to go into the intricacies and minute details particularly in relation to the interpretation of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 based on which the petitioners have approached this Court. Pursuant to the order dated 14th March, 2019 passed by this Court, the respondent no.3 was impleaded in this writ petition. Pursuant to the order dated 2nd April, 2019, the respondent nos.4 and 5 were impleaded in this writ petition.

6. Mr.Anturkar, learned senior counsel for the petitioners

submits that the petitioners had initially joined as primary teachers on their respective joining dates with Pune Zilla Parishad prior to 1st November, 1999. The State Government issued a Government Resolution dated 13th August, 1990 declaring that in view of the extension of the Municipal Corporation limit, primary teachers will have to accept the services of the concerned Municipal Corporation. Learned senior counsel invited our attention to the said Government Resolution dated 13th August, 1990 and various documents annexed to the writ petition including the seniority list prepared by the respondent no.1 from time to time.

7. It is submitted that in view of the said Government Resolution dated 13th August, 1990, issued in view of the extension of the Municipal Corporation limit, the petitioners had no option but to accept absorption in the employment of the respondent no.1 Corporation. In the seniority list prepared by the respondent no.1 on 1st March, 2012, the petitioners were shown as senior by considering the initial date of appointment of the petitioners with Zilla Parishad. No objection was raised by the other primary teachers in respect of absorption of the petitioners and considering the date of initial appointment of the petitioners with the Zilla Parishad. It is submitted that in the year 2016, the respondent no.1 however prepared another seniority list of the primary teachers at the instance of some of the Association / Organization of the primary teachers serving with the respondent no.1 and started showing the petitioners below the existing primary teachers of the respondent no.1.

8. It is submitted that though the petitioners raised various objections to the said seniority list prepared by the respondent no.1, the respondent no.1 did not give effect to the date of initial appointment of the petitioners with the Zilla Parishad. Learned senior counsel for the petitioners submits that the petitioners are entitled to be placed in the seniority list from the date of their appointment with Zilla Parishad since the transfer of the petitioners was the administrative transfer and not due to any consent or request transfer from the petitioners or the Zilla Parishad to the respondent no.1 Corporation. The petitioners had never given any consent for treating the petitioners as junior to the primary teachers appointed directly by the respondent no.1. The petitioners are thus entitled to be considered from the date of initial appointment with the Zilla Parishad for the purpose of pay scale, seniority and retirement benefits.

9. Learned senior counsel for the petitioners submits that till 2016, the seniority of the petitioners on the basis of their initial appointment with the Zilla Parishad was protected by the respondent no.1 Corporation. Learned senior counsel placed reliance on section 493 of the Maharashtra Municipal Corporation Act, 1949 (for short the said “MMC Act”) and would submit that Appendix IV thereof would apply to the petitioners. All salaries, allowances of the petitioners are governed by the said provision. He also relied upon the proviso to the said section and would submit that since the petitioners were in the employment of the Zilla Parishad, the services of the petitioners shall be deemed to be in service with the respondent no.1 Corporation from the date of initial appointment with the Zilla Parishad.

10. Learned senior counsel for the petitioners invited our attention to the Government Resolution dated 13th August, 1990 and would submit that only if the petitioners would have been transferred from the Zilla Parishad to the respondent no.1 Corporation, the petitioners would have lost their seniority while in the employment with the Zilla Parishad while being absorbed by the respondent no.1. Learned senior counsel placed reliance on the judgment of this Court in case of **Shashikala Baviskar & Others vs. Municipal Council for City of Jalgaon & Ors. (2005) (2) Mh.L.J. 1087** and in particular paragraphs 6, 11, 12 and 16 and would submit that since the petitioners were absorbed in the employment of the respondent no.1 in view of the extension of the area of the respondent no.1 Corporation, all these petitioners would stand at par with the employees of the respondent no.1 Corporation and cannot be given a different treatment.

11. It is submitted that this Court in the said judgment dealt with the Government Resolution dated 15th December, 1984 stating that if the transfer of the employees is a request transfer from the Zilla Parishad to the Municipal Council, then and then alone, such an employee would be deprived of his past service, to be counted for the purpose of seniority in the employment of the Municipal Council / Corporation. Exercising of an option, can in no case, constitute a request to transfer. He submits that the said judgment squarely applies to the facts of this Case and is binding on this Court.

12. Learned senior counsel for the petitioners distinguished the judgment of this Court in case of **Bhalchandra Tilak Juikar vs. State of Maharashtra & Ors. 2000(4) Mh.L.J. 422** which is relied upon by the respondent no.3 in their affidavit in reply. He submits that in the said judgment, this Court had considered the Government Resolution dated 9th September, 1986 stating that at the time of fixing the seniority, the previous services of those employees in the Zilla Parishad who have joined the services of the Municipal Council willingly and voluntarily with prior consent, cannot be counted. No such prior consent was given by the petitioners in this case. This Court in the said judgment in the case of **Bhalchandra Tilak Juikar** (supra) had considered the case of request transfer which is not a situation in this case. The respondent no.1 Corporation having protected the seniority of the petitioners for about 20 years cannot be allowed to reverse the benefits of seniority based on the date of initial appointment with the Zilla Parishad.

13. Learned senior counsel for the petitioners submits that when the entire school run by the Zilla Parishad is transferred in view of extension of the area of the Municipal Council to such Municipal Corporation, there is no question of exercising any option for transfer to make any request of any of the teachers to the respondent no.1 Corporation. The Division Bench of this Court has carved out the distinction between the option transfer and the request transfer.

14. Mr.R.S. Khadapkar, learned counsel for the respondent no.1 on the other hand submits that in the year 1997, the limit of the

respondent no.1 was extended by inclusion of 38 villages. 15 villages out of 38 villages were completely excluded from the limits of the respondent no.1 and 5 and the remaining villages were partly excluded from the limits of the respondent no.1. The petitioners were holding the post of the teachers with the school run by the Pune Zilla Parishad in the area formed within those villages which were included within the limits of the respondent no.1 in the year 1997.

15. It is submitted by the learned counsel that the Zilla Parishad had given an option to those teachers in view of the said extension of the limit of the respondent no.1 to get their services transferred to the school board run by the respondent no.1. He submits that the petitioners had exercised such option of getting their services transferred to the respondent no.1. He submits that 694 primary teachers were accordingly absorbed with the school board by the respondent no.1 on 1st November, 1999. Learned counsel submits that section 493 of the said MMC Act is not applicable to the petitioners.

16. Learned counsel for the respondent no.1 invited our attention to the letter dated 11th October, 1999 from the Chief Executive Officer, Pune Zilla Parishad and more particularly paragraph 4 thereof and would submit that by the said letter it was made clear that only those teachers who have exercised the option in favour of getting their services transferred to the school board were transferred. He also strongly placed reliance on the resolution passed by the respondent no.1 on 8th November, 1999 stating that in view of the extension of area of the respondent no.1 by inclusion of 38

villages, 694 teachers, 38094 students and 78 schools had been transferred to the respondent no.1. Learned counsel for the respondent no.1 invited our attention to the order dated 14th June, 2017 and would submit that the Additional Municipal Corporation had passed an order after hearing all the parties and has also considered the issue of voluntary transfer of the petitioners to the school run by the respondent no.1 Corporation.

17. Learned counsel for the respondent no.1 invited our attention to the resolution dated 7th November, 1999 passed by the respondent no.1 and would submit that 78 schools with 694 teachers and 38090 students were transferred from the Zilla Parishad Primary Schools to the respondent no.1. The Deputy Municipal Commissioner of the respondent no.1 had directed and requested the Addl. Municipal Commissioner to hear all the parties and to pass an order on the issue of seniority raised by the petitioners and the respondent no.3. It is submitted that the petitioners had clearly stated before the Addl. Municipal Commissioner in the meeting that they would not have consented for transfer, if they would have been made aware that they will not get benefit of earlier service while absorbed in the employment of respondent no.1 or that they have had option of continuing with the respondent no.4-Zilla Parishad. The Additional Municipal Commissioner thus was right in holding that this was a case of voluntary transfer and accordingly for the purpose of seniority, the date of the absorption of the petitioners' service with the respondent no.1 should be taken into consideration for the purpose of finalization of seniority list. The said decision of the Additional Municipal

Commissioner has not been impugned in this petition.

18. It is submitted that only those teachers who had given consent for such absorption were sent to the respondent no.1-Corporation. The petitioners had option to stay with the Zilla Parishad. The seniority list prepared by the respondent no.1 has not been challenged in the writ petition by the petitioners. He submits that since the petitioners had given consent and option for such transfer from Zilla Parishad school to the respondent no.1, the said transfer was treated as 'request transfer'. In such an eventuality, the junior most employee ought to be sent to the new establishment. This would not only save senior employees from being subject to transfer but also save the seniority issue of the employees of the establishment to which such transfer is made. He submits that even if those 23 villages had merged with the respondent no.1-Corporation, Zilla Parishad will not stand dissolved. The schools run by Zilla Parishad would not be closed. Learned counsel made an attempt to distinguish the judgment of this Court in case of ***Shashikala Vasant Baviskar and Ors.*** (supra) on the ground that the facts before this Court in the said judgment were different.

19. Ms. Manjiri S. Parsanis, learned counsel for the respondent no.3 submits that there was an option available to the petitioners either to continue under the employment of the Zilla Parishad and work at the post available in the other areas governed by the Zilla Parishad or to accept transfer in the employment of the respondent no.1 upon limit of the respondent no.1 having been extended to the 28 villages. The

option was also made available to them to voluntarily accept the employment of Pune Municipal Corporation in the concerned departments. The date of absorption with the respondent should be considered as date of appointment of the petitioner and seniority list of these employees would be considered accordingly. She submits that insofar as primary teachers of Zilla Parishad are concerned, 694 primary teachers were absorbed in the schools of Shikshan Mandal of the respondent no.1-Corporation.

20. It is submitted that in the event of the employees of the Zilla Parishad being absorbed, such employees ought to have been transferred as per the Last Come First Go theory by preparing seniority list. The petitioners in this case are disregarded by the Zilla Parishad for the purpose of transfer and thus a voluntary option was given to the petitioners to join the services of the respondent no.1-Corporation. The senior teachers have no right to get absorbed in the Corporation and disturb the seniority of the employees of the Corporation.

21. It is submitted by the learned counsel that the option forms are self-explanatory and would show that the purpose of option was only because the Zilla Parishad teachers were not being absorbed by the method of Last Come First Go. The Chief Executive Officer of the Pune Zilla Parishad, Pune had addressed a letter dated 11th October, 1999 to the Commissioner of Pune Municipal Commissioner stating that the primary teachers who had voluntarily agreed to get absorbed in the schools of the respondent no.1-Corporation were separately

classified and made a request to the Corporation to absorb them in the school of the respondent no.1-Corporation. She submits that the appointment of the petitioners thus should be considered from the date of their absorption with the respondent no.1-Corporation and not from the date of their initial appointment in the schools of Zilla Parishad for the purposes of seniority.

22. Learned counsel for the respondent no.3 placed reliance on the letter dated 2nd July, 2011 addressed by the Administrative Officer, Shikshan Mandal, Pune Municipal Corporation to the Head Master of the Schools of the Municipal Corporation stating that the Assistant Teachers who are absorbed in the schools of Shikshan Mandal of the Pune Municipal Corporation their seniority should be considered from the date of their absorption/appointment in the corporation school and their salary should be considered as per their last pay in the Zilla Parishad.

23. Learned counsel placed reliance on Rule 6(8) of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 and would submit that if there is inter-transfers of the employees of Zilla Parishad, the same is not permissible unless that employee accepts that for the purpose of seniority, the said person's transfer should rank the junior most in the cadre of the post to which he has been transferred as it stands from the date of such transfer. Learned counsel for the respondent no.3 invited our attention to the letter dated 19th October, 1999 addressed by the Chief Executive Officer of Pune Zilla Parishad to the Municipal Commissioner, Pune Municipal

Corporation stating that only those teachers who had given their consent having been employed with the respondent no.1 and had requested the Municipal Corporation to accept those employees in the employment of the Pune Municipal Corporation were employed.

24. It is submitted by the learned counsel that if the petitioners would not have given consent for their absorption in the schools run by the respondent no.1-Corporation, the petitioners would have remained in the employment of the Zilla Parishad and would have been absorbed in the other schools run by the Zilla Parishad. She submits that if it was the case of compulsion upon the petitioners to accept the transfer/absorption in the schools run by the respondent no.1, the question of their being an option which was exercised by the petitioners would not have arisen.

25. It is submitted by the learned counsel that the primary teachers of the respondent no.1-Corporation were and are working for years together in the schools run by the respondent no.1-Corporation after following due procedure and with the minimum expectation of seniority and promotions. The existing seniority of the employees of the respondent no.1-Corporation could not be affected because of the absorption of the petitioners in the schools run by the respondent no.1-Corporation. The existing teachers of the respondent no.1 cannot be denied with their right of promotions and seniority benefits.

26. Learned counsel for the respondent no.3 made an attempt to distinguish the judgment of this Court in case of ***Shashikala Vasant***

Baviskar and Ors. (supra) on the ground that in this case the petitioners have given their consent for their transfer/absorption in the schools run by the respondent no.1-Corporation. She submits that during the period between the absorption of the petitioners and 2016, no seniority list was prepared by the respondent no.1-Corporation. The respondent no.3 raised an objection to the draft seniority list prepared by the respondent no.1-Corporation.

27. Learned counsel for the respondent no.4-Pune Zilla Parishad invited our attention to the averments made by his client in the affidavit-in-reply dated 10th April, 2021 and would submit that on 1st February, 2012, the respondent no.1 had published the seniority list in which the teachers who had been absorbed with the respondent no.1 due to the extension of the limit of the respondent no.1 had been shown as senior by considering the date of appointment of the petitioners with Zilla Parishad, Pune. On 20th February, 2018, the respondent no.1 published the seniority list in which the seniority of the petitioners had been disregarded. He submits that boundary of the respondent no.1-Corporation was extended and 23 villages were included in the respondent no.1-Corporation. The petitioners were absorbed by the respondent no.1-Corporation. At the time of their absorption, the petitioners had submitted written consent letter to Pune Zilla Parishad stating that they were ready to serve the Pune Municipal Corporation by their own consent and were ready to follow rules and regulations of Pune Municipal Corporation. He submits that the petitioners having been already absorbed by the respondent no.1, they are bound to follow the rules and regulations of the respondent no.1.

Pune Zilla Parishad is nowhere concerned with the decision taken by the respondent no.1. He submits that the judgment of this Court in case of **Bhalchandra Tilak Juikar v/s. State of Maharashtra, (2000) 4 Mah LJ 422** would support his submissions.

28. Mr. Anturkar, learned senior counsel for the petitioners in his rejoinder argument submits that the case of the petitioners is covered by the judgment of this Court in case of **Shashikala Vasant Baviskar and Ors.** (supra). He submits that the consent was given by the petitioners as per the affidavit filed even by the Zilla Parishad as per the rules and regulations of Pune Municipal Corporation. The Pune Municipal Corporation did not point out any other provision to the effect that the earlier seniority of all these petitioners already earned is lost in view of the extension of the area of respondent no.1-Corporation. At the time of such transfer/absorption of the petitioners from the schools run by the Zilla Parishad to the schools run by the respondent no.1-Corporation, the petitioners were not informed that their seniority already earned would be lost under any of the statutory provision or otherwise. None of the respondents have pointed out any provision of law in support of their rival contentions. He submits that insofar as the judgment of this Court in case of **Bhalchandra Tilak Juikar** (supra) relied upon by the respondent no.3 is concerned, the said judgment has been already considered by a Division Bench of this Court in the judgment in case of **Shashikala Vasant Baviskar and Ors.** (supra). It is submitted that the provision of the MEPS Act and the Rules would not apply to the schools run by the Zilla Parishad or by the respondent no.1-Corporation including the Rules 25 and 25A of

the MEPS Rules which applies to a private schools.

29. Question that arises for consideration of this Court is (i) whether the petitioners who were working as primary teachers in the Schools run by Pune Zilla Parishad in 23 villages were absorbed by the respondent no.1 Corporation due to extension of its limit of the respondent no.1 on 1st January 1999, their seniority was protected under Section 493 of the Maharashtra Municipal Corporation Act, 1949 read with appendix IV and (ii) whether the absorption of these services of the petitioners with the respondent no.1 Corporation was voluntary or was a request transfer or was an administrative transfer ?

30. It is not in dispute that prior to 1st January 1999, the petitioners were working as primary teachers with Pune Zilla Parishad and were working in 23 erstwhile villages which were later on merged with Pune Municipal Corporation on 1st January 1999 due to extension of limit of the respondent no.1. The services of the petitioners were absorbed with the respondent no.1 Corporation after the inclusion of the erstwhile 23 villages within the limit of the Pune Municipal Corporation. It is the case of the petitioners that on 1st May 2012, the respondent no.1 prepared seniority list in which the petitioners were shown seniors and their seniority was shown from the date of their initial date of appointment with the Zilla Parishad Pune. The seniority list published by the respondent no.1 was not challenged by the respondent no.3.

31. It is the case of the petitioners that in the year 2016, the respondent no.1 started preparing seniority list under the pressure of the respondent no.3 who were in service with the respondent no.1 Corporation and were shown junior to the petitioners. The petitioners raised objection to the said seniority list on 20th September 2016. The Additional Commissioner of the respondent no.1 however, rejected the objection raised by the petitioners and published seniority list of primary teachers thereby showing the petitioners in the said seniority list from the date of absorption with the respondent no.1 Corporation and not from the date of their joining with Pune Zilla Parishad.

32. A perusal of the affidavit-in-reply filed by the Pune Zilla Parishad notarised on 10th April 2021 indicates that the case of the Pune Zilla Parishad that the date of joining the services of the petitioners with the respondent no.1 from 1st November 1999 since the limit of Pune Municipal Corporation had been extended and 23 villages had been merged in Pune Municipal Corporation. It is stated in affidavit filed by the respondent no.4 that on 1st February 2012, the respondent no.1 had published the seniority list in which the petitioners who had been absorbed with the respondent no.1 due to extension of limit of the respondent no.1 had been shown as senior, by considering the date of appointment of the petitioners with Zilla Parishad Pune. However, on 20th February 2018, the respondent no.1 published seniority list in which seniority of the petitioners had been disregarded.

33. In the said affidavit, it is further stated that at the time of absorption, all the petitioners had submitted written consent letter to Pune Zilla Parishad stating that they were ready to serve with the Pune Municipal Corporation by their own consent and they were ready to follow rules and regulations of Pune Municipal Corporation. It is contended in the said affidavit that since the petitioners had been absorbed by the respondent no.1, they are bound to follow the rules and regulations of the respondent no.1 and Pune Zilla Parishad is no way concerned with the decision taken by the respondent no.1. It is not stated in the said affidavit that if the petitioners would not have given their such alleged consent, the petitioners could have been absorbed by the Pune Zilla Parishad in their any other Schools run by the Zilla Parishad or in some other department of the Zilla Parishad. The respondent no.4 also did not dispute that the boundary of the respondent no.1 Corporation was extended and 23 villages were included in the respondent no.1 Corporation and all the schools in those 23 villages run by the said Zilla Parishads were transferred to the respondent no.1.

34. Learned counsel for the respondent no.3 Association could not point out any provision of law or the Government Resolution providing that there was any other option available to these primary teachers of respective Zilla Parishads not to agree for absorption with the respondent no.1 Corporation or providing for protection of their service with the Zilla Parishads in case of their refusal to give option or consent. It is not in dispute that 694 primary

teachers were absorbed in the schools of Shikshan Mandal of the Pune Municipal Corporation.

35. The respondent no.1 Corporation in its affidavit-in-reply admitted that in the year 1997, the limit of the Pune Municipal Corporation was extended by inclusion of 38 villages. Out of these 38 villages, 15 villages were completely excluded from the limits of Pune Municipal Corporation and 5 villages were partly excluded from the limits of Pune Municipal Corporation. The petitioners at the relevant time were holding the post of teachers with the school run by the Zilla Parishad in the area falling within the said villages which are included within limits of Pune Municipal Corporation. It is the case of the respondent no.1 that the petitioners exercised the option of getting their service transferred to the School Board of the Pune Municipal Corporation. Accordingly only in view of the petitioners having exercised their option in favour of getting their service transferred to the School Board of the Pune Municipal Corporation, their services were transferred.

36. The respondent no.1 placed reliance on the Government Notification dated 11th September 1997 showing the names of the villages from Pune Zilla Parishad transferred to the respondent no.1 Corporation. The respondent no.1 also placed reliance on the letter dated 11th October 1999 stating that the Pune Municipal Corporation would pay Rs.2,91,81,000/- for cost of open property whereas the Pimpri Chinchwad Municipal Corporation would pay Rs.57,00,000/- to the Pune Zilla Parishad. In the said letter, it was

further stated that primary teachers who had given their consent, they shall be accommodated by the respondent no.1 Corporation.

37. Division Bench of this Court in the case of ***Shashikala Vasant Baviskar & Ors. Vs. Municipal Corporation for city of Jalgaon & Ors., 2005 (2) Mh.L.J. 1087*** has considered the facts where all the petitioners who were working as primary teachers and were admittedly the employees of Zilla Parishad, Jalgaon. As a result of extension of the area of operation of Municipal Corporation, Jalgaon, the Government of Maharashtra declared that the local areas comprising of the revenue villages of Khedi, Mehrun and Pimprale were ceased to be villages and formed part of the area of the Municipal Council/Corporation. In that case also, there was no dispute that seniority of the petitioners while being in the employment of the Zilla Parishad, was fixed on the basis of their respective dates of appointments. This Court considered the issue as to how their seniority would be reckoned on their transfer from the Zilla Parishad Schools to the schools administered by the Municipal Council/Corporation.

38. In paragraph 11 of the said judgment, this Court considered the Government Resolution dated 15th December 1984 and held that the thrust of the Government Resolution is that if the transfer of the employee is a request transfer from the Zilla Parishad to Municipal Council, then and then alone, such an employee would be deprived of his past service, to be counted for the purpose of seniority in the employment of the Municipal Council/Corporation.

Exercise of an option, can in no case, constitute a request to transfer. If the employer given an option to an employee and if the employee opts for a particular thing, it cannot be equated with a request made by the employee, seeking transfer.

39. This Court held that it is wholly irrelevant as to how and by what method, the employees/petitioners happen to come in the area, which at a latter point of time, came to be included in the extended area of the Council/Corporation. Even if an employee, while being in service of the Zilla Parishad, came to be transferred at his request, in one of the schools in the erstwhile area of operation of the Zilla Parishad, which later on, formed part of the extended area of the Municipal Council, the same will be totally irrelevant factor, to determine as to whether such an employee would be entitled to have his past service under the Zilla Parishad, counted for the purpose of seniority, on his transfer to Municipal Council/Corporation.

40. This Court accordingly held that the compliance of the Government Resolution to transfer an employee by the Zilla Parishad and such a transfer cannot constitute a request transfer and deprive the employee of his past service. This Court considered the fact that it was an admitted position that from none of the petitioners who were employees of the Zilla Parishad, an undertaking was obtained that the petitioners were ready and willing to forego the past service, as is contemplated to be obtained, from an employee, who seeks voluntary or request transfer. This Court accordingly held that the Court has no doubt that the request made by the employee, for

seeking transfer from Zilla Parishad to the Municipal Council, could alone be a factor that could disentitle such an employee from claiming the benefit of the past service. Any request made by an employee, prior in point of time to the Zilla Parishad, to post him in one of the school in the area, which thereafter formed part of the extended area of operation of the Municipal Council, will be wholly irrelevant consideration to determine his seniority in the service of Municipal Council/Corporation.

41. Division Bench of this Court in the said judgment has dealt with the judgment of another Division Bench of this Court in the case of ***Bhalchandra Tilak Juikar Vs. State of Maharashtra, 2000 (4) Mh.L.J. 422***. Division Bench in the said judgment held that once the petitioners are absorbed in the employment of the Municipal Council/Corporation, they would stand at par with the employees of the Municipal Council/Corporation and cannot be given a differential treatment. This Court has accordingly held that the petitioners therein are entitled to have the past service counted for the purpose of determination of seniority in the employment of the Municipal Council/Corporation and in view of that matter, the petitioners cannot be picked up as a class and consequently subjected to a further transfer.

42. It is not the case of the respondents that some of the documents brought on record by the respondent no.3 or by the Pune Municipal Corporation would show their no objections to transfer the services with the respondent no.1 were obtained before inclusion of

those 23 villages from the territory of the Zilla Parishad to the respondent no.1 Corporation. In view of the obtaining signatures of the petitioners on those option letters after inclusion of those 23 villages of the Zilla Parishad to the respondent no.1 completely to Pune Municipal Corporation, such option letters would not amount to or cannot be construed as a request or voluntary transfer. In our view, judgment of the Division Bench of this Court in case of ***Bhalchandra Tilak Juikar (supra)*** is clearly distinguishable in the facts of this case.

43. On 6th September, 2021, this writ petition was placed on board for directions for certain clarifications. Mr. Anturkar, learned senior counsel for the petitioner made a statement that the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 are neither applicable to the facts of this case nor are invoked by the petitioners. He agreed to produce a sample copy of the letter of appointment issued by the respondent no.1-Corporation to the petitioners at the time of their absorption with the respondent no.1-Corporation on the next date. This Court accordingly passed an order that the parties will clarify on the issue whether the provisions of Zilla Parishad Act relating to the issue of seniority would apply to the facts of this case or not, on the next date and directed the office to place the matter on board for direction on 16th September, 2021.

44. On 16th September, 2021, the learned counsel for the petitioner tendered an affidavit dated 12th September, 2021 and would submit that the submissions made there in and the documents annexed to the said affidavit be considered by this Court. The learned counsel

for the respondent nos.1 and 3 stated that they do not propose to file any additional affidavit and reiterate the stand that the petitioners had given their consent for their appointment with the respondent no.1-Corporation and thus could not claim their seniority on the basis of their initial date of appointment with the Zilla Parishad schools.

45. In the affidavit filed by the petitioners on 12th September, 2021, it is stated by the petitioners that there was no formal letter of the appointment issued by the respondent no.1-Corporation because the entire school along with the teachers, assets, non-teaching employee en bloc were transferred to the respondent no.1-Corporation. It is stated that at the time of absorption only a list was prepared and only their signatures were taken. A copy of the said list is annexed to the said affidavit. It is submitted that in the said table, only the name, education qualification, professional qualification and the birth date were mentioned in addition to the date of continuous service. The signatures were taken only for the purpose of certifying the said information as correct or not. It is further contended that if the benefit of the past service was not to be given then it was wholly unnecessary to write the date of the continuous appointment. The said table would clearly show that the date of continuous appointment was taken into consideration at the time of en bloc absorption.

46. Our attention is invited to page 2 of Exhibit 'C' and it is contended that the last sentence does not refer to Pune Municipal Corporation Rules. It refers to the rule that are framed by the Government of Maharashtra. It is contended that the Government

Resolution dated 13th August, 1990 annexed at page 30 of the writ petition and the rules framed by the Government of Maharashtra would clearly show that the past services will be taken into consideration. The petitioners placed reliance on the Resolution dated 8th November, 1999 passed by the Education Board of the Municipal Corporation in support of the submission that the said resolution would clearly show that all the schools i.e. 78 schools with 694 teachers and with 38090 students en-block had been transferred to the respondent no.1.

47. The petitioners also annexed the Rules of Zilla Parishad relating to the seniority. It is contended that these rules are silent as to when the schools and teachers are en bloc transferred from Zilla Parishad to the Municipal Corporation whether such employees would lose their seniority. It is finally clarified that the provision of Section 493 of the Maharashtra Municipal Corporation Act, 1949 are attracted to the fact situation in this case which expressly protect the seniority which has been earned. There is no reply to these clarifications made in the said additional affidavit dated 12th September, 2021 filed by the respondents.

48. A perusal of the documents annexed to the affidavit dated 12th September, 2021 clearly indicates that signatures of various petitioners were taken below the list. In the table the name, educational qualification, professional qualification and birth date was mentioned. It is important to note that the date of continuous service was also mentioned in the said table. We are inclined to accept the

submissions of the learned senior counsel for the petitioners that the signatures were taken only for the purpose of certifying the said information as correct or not and not for any other purpose. Page 2 of the said document does not refer to any condition that the appointments of the petitioners were subject to any rules framed by the Municipal Corporation of Pune. The Government Resolution dated 13th August, 1990 also clearly shows that the past services would be taken into consideration.

49. A perusal of the Resolution dated 8th November, 1999 passed by the Education Board of the respondent no.1 also indicates that all the schools en bloc i.e. 78 schools with 694 teachers and with 38090 students had been transferred from the Zilla Parishad schools to the respondent no.1-Corporation. It is thus clear that the said en bloc transfer of large number of schools, teachers and students was by virtue of the extension of area of the Pune Municipal Corporation and was a statutory transfer. There is thus no question of any consent or any request to be made or made by the petitioners for transfer of their service from Zilla Parishad to respondent no.1-Corporation.

50. A perusal of the provisions of the Maharashtra Zilla Parishads District Services Rules indicates that the said provisions do not provide that in case of en bloc transfer of the schools with students and teachers from Zilla Parishad to Municipal Corporation, the employees would loose their earned seniority and their seniority would be reckoned from the date of their appointment with the transferee school. In our view, since there is no question of any request or a

consent warranted in case of en bloc and statutory transfer, the date of appointment of the petitioners of Zilla Parishad with the respondent no.1-Corporation cannot amount to a fresh appointment for the purpose of seniority or otherwise. It is not the case of the respondent no.1 or the respondent no.3 that for all proposes including the service benefits, the date of transfer of the petitioners in the schools run by the respondent no.1 would be considered as a fresh appointment and all service benefits would be computed accordingly.

51. Section 493 of the Maharashtra Municipal Corporations Act, 1949 read with Clause 5 of the Appendix IV reads thus :-

493. *Transitory provisions.*

The provisions of Appendix IV shall apply to the constitution of the Corporation and other matters specified therein.

Clause 5 of Appendix IV reads thus :-

5. *Continuation of appointments, taxes, budget estimates, assessments, etc.*

Save as expressly provided by the provisions of this Appendix or by a notification issued under paragraph 22 or order made under paragraph 23

- (a)
- (b)
- (c) *all officers and servants in the employ of the said municipality or local authority immediately before the appointed day*

shall be officers and servants employed by the Corporation under this Act and shall, until other provision is made in accordance with the provisions of this Act, receive salaries and allowances and be subject to the conditions of service to which they were entitled to subject on such date:

Provided *that service rendered by such officers and servants before the appointed day shall be deemed to be service rendered in the service of the Corporation:*

Provided further *that it shall be competent to the Corporation to discontinue the services of any officer or servant who, in its opinion, is not necessary or suitable to the requirements of the municipal service, after giving such officer or servant, such notice as is required to be given by the terms of his employment and every officer or servant whose services are so discontinued, shall be entitled to take or receive on being invalided out of service if this Act had not been passed.*

52. A conjoint reading of Section 493 which provides for transitory provisions read with Clause 5 of Appendix IV clearly indicates that the service rendered by the officers and servants before in the employment of the Municipality or the local authority immediately before the appended date shall be the officers and servants employed by the Corporation under the said Act and the services rendered by such officers and servants before the appointed date shall be deemed to be service rendered in the service of the

Corporation. The second proviso to Clause 5 of Appendix IV empowers the Corporation to discontinue the service of any officer or servant who in its opinion is not necessary or suitable to the requirements of the municipal service, after giving such officer or servant, such notice as is required to be given by the terms of his employment. Such discontinued employee shall be entitled to such leave, pension or gratuity as he would have been entitled to take or receive on being invalided out of service if this Act had not been passed.

53. It is not the case of the respondent no.1 or respondent no.3 that service of any of these petitioners were discontinued by the respondent no.1 under second proviso to Clause 5 of Appendix IV on the ground of not being suitable to the requirements of the municipal service or on the ground that their services were not necessary for the respondent no.1-Corporation.

54. In our view, the said provision under Section 493 of the Maharashtra Municipal Corporations Act read with Clause 5(c) of the Appendix IV would also apply in case of en bloc transfer of the property forming part of such village which were transferred to the Municipal Corporation along with the schools, employees and the students. In our view, the seniority of each of these petitioners thus will have to be counted from their initial date of appointment in the schools run by Zilla Parishad and not from the date of their transfer in the schools run by the respondent no.1-Corporation. The impugned order showing the petitioners below the then existing employees of the respondent no.1 by considering the date of their transfer in the schools run by the respondent no.1 as the date of appointment is totally illegal

and contrary to Section 493 read with Clause 5(c) of Appendix IV thereto.

55. We accordingly pass the following order :-

- (a) Impugned seniority list dated 20th February, 2018 published by the respondent no.1 is quashed and set aside.
- (b) The respondent no.1 is directed to prepare a fresh seniority list of the employees and shall consider the date of appointment of the petitioners in their respective Zilla Parishad Schools as the initial date of appointment while computing the seniority list of the employees in the respondent no.1-School for the purpose of computing their *inter-se* seniority and not from the date of their transfer to the schools run by the respondent no.1. The fresh seniority list shall be prepared within eight weeks from the date of this order.
- (c) Writ Petition is disposed of in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]

56. Ms. Parasnis, learned counsel for the respondent no.3 seeks stay of this order for some time to enable her client to decide whether to challenge this order before the Hon'ble Supreme Court or not. We accordingly direct the respondent no.1 not to promote any of the employees on the basis of the view taken by this Court today for a period of four weeks from today. Interim protection granted by this Court to continue for a period of four weeks from today.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]