

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1237 OF 2020

PETITIONER: Dr. Vijay Laxmanrao Avhane,
Aged 51 years, Occupation Service,
R/o Near L.I.C. Office, Civil Colony,
Deulgaon Raja, District Buldhana

...VERSUS...

RESPONDENTS: 1] Sanjay Kisanrao Deshmukh,
aged about 50 years, Occ. Service,
C/o. Municipal Shri Shivaji High School,
Deulgaon Raja, District Buldhana.

2] Head Master, Municipal Shri Shivaji
High School, C/o. Municipal Shri Shivaji High
School, Deulgaon Raja, District Buldhana.

3] Chief Officer, Nagar Parishad, Deulgaon
Raja, District Buldhana.

4] Education Officer (Secondary), Zilla
Parishad, Education Department, Zilla
Parishad, Buldhana.

Mr. U.P.Deopujari, Advocate for petitioner.
Mr. K.S.Narwade, Advocate for respondent Nos.1 and 2.
Mr. D.M.Kale, Advocate for Respondent No.3
Mr. A.A.Madiwale, AGP for Respondent No. 4

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/10/2021.

1] Heard Mr. Deopujari, learned counsel for petitioner,
Mr. Narwade, learned counsel for Respondent Nos.1 & 2, Mr. Kale,

learned counsel for Respondent No.3 and Mr. Madiwale, learned AGP for respondent No. 4.

2] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3] The short question raised here is whether the employees of the schools run by Respondent No. 3 are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, or the Secondary School Code, which is no longer *res integra* as in **Kondiba Dattarao Mirashe vrs. State of Maharashtra and ors, 2003 (2) Mh.L.J. 432**, the learned Division Bench of this Court has categorically held, that the M.E.P.S. Act is not applicable to the schools run by the local authorities.

4] It is not disputed that Nagar Parishad falls within the definition of local authority, in view of which the M.E.P.S. Act would not be applicable for determining the seniority of the employees of the Nagar Parishad, Deulgaon Raja. The impugned orders dated 20.12.2019 and 17.4.2018 both indicate that the seniority has been determined by applying Scheduled-F of the M.E.P.S Rules, which in

the light of what has been said in **Kondiba** (supra) cannot be sustained. The impugned orders dated 17.4.2018 and 20.12.2019 are therefore, quashed and set aside and the petition is accordingly allowed in above terms. No order as to costs.

5] Needless to mention that the petitioner shall be entitled to approach the Appropriate Authority under the Secondary School Code for determining the *inter se* seniority between the petitioner and respondent No.1. It is also made clear that in case such authorities are approached, the application shall be entertained without going into the issue of delay, considering that the matter is being pursued by the petitioner before a wrong forum.

JUDGE

Rvjalit