

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7584 OF 2013

Shivaji s/o Hullaba Apte
Age- 51 years, Occ- Service
R/o. Rohina, Tq. Chakur,
District- Latur.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through the Assistant Commissioner
Divisional Commissionerate,
Aurangabad.
2. The Education Officer (Secondary)
Secondary Zilla Parishad, Latur,
District- Latur.
3. The Secretary
Shamlal Smarak Shikshan Sanstha,
Udgir, District- Latur.
4. Sangram Mallikarjun Biradar
Age- 58 years, Occ- Pensioner,
R/o. Yeshwant Society, infront of
Milk Dairy, Udgir, District- Latur.

...RESPONDENTS

Mr. B.R. Kedar, Advocate for the Petitioner.
Mr. S.W. Munde, AGP for Respondent-State.
Mr. Y.R. Shinde h/f. Mr. R.R. Karpe, Advocate for Respondent No.
3.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd AUGUST, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard with
the consent of learned advocates for the parties.

2. This petition filed under Article 226 and 227 of Constitution of India, seeks following prayers:

"A. The writ petition may kindly be allowed.

B. Record and proceedings may kindly be called for.

C. By issuing writ of certiorari or any other appropriate writ or order, the impugned judgment and order passed by the learned Presiding Officer, School Tribunal, Latur in Appeal No. 35/2012 dated 08.08.2013 may kindly be quashed and set aside and by allowing the appeal, the respondent no. 3 may kindly be directed to appoint the petitioner on the post of Headmaster in any of the school run by it, with due date effect and consequential benefits and the respondent no. 2 may kindly be directed to give approval to the same.

D. It may kindly be declared that the petitioner being from NT-C category entitled for promotion to the post of Headmaster in the schools run by the respondent no. 3 on the basis of 100 point roster."

3. Heard the learned advocate for the petitioner and learned advocate for respondent No. 3 and learned Assistant Government Pleader for State. Perused the documents placed on record.

4. The petitioner filed appeal No. 35/2012, before School Tribunal, Latur, as he was superseded, while making appointment on the post of headmaster, though, according to him, as per the roster of reservation he was entitled to be appointed on said post from NT-C category, as he was senior most. The School Tribunal after hearing the parties dismissed the appeal on the ground that the petitioner failed to establish his supersession at the hands of respondent No. 3/management.

5. During the course of hearing of this petition, this Court on 07.01.2022 passed following order:

"1. Heard the learned Counsel for the petitioner, the learned AGP for respondent Nos. 1 and 2 and the learned Counsel for respondent Nos. 3 and 4.

Perusal of the affidavit filed by the Education Officer reveal that there is a clear cut admission that the roster point was wrongly implemented since the point for Scheduled Caste was already filed in and there was no backlog for scheduled Caste. As such, the roster point ought to have commenced from the point for Scheduled Tribe but no Scheduled Tribe candidate was made available. The Education Officer, in his affidavit dated 06/03/2017, however, do not

clarify whether a VJA candidate was available or not.

2. Let the learned AGP ascertain the said position and also seek instructions about the responsibility to be borne by the Education Department if it is found that the petitioner is wrongfully deprived of his promotion to the post of Headmaster from the category of NTC, since according to the Counsel for the petitioner, in the year 2000, the roster point, in absence of availability of candidate from Scheduled Castes, Scheduled Tribes and VJA would have been allotted to NTC and he was the only candidate to fill up the said post.

3. Treating this petition as part heard, list for further hearing on next Friday i.e. on 14/01/2022."

6. Pursuant to the said direction, the Education Officer has filed affidavit. Relevant statements in the said affidavit are as follows:-

"7. I say and submit that, the post of SC category was fallen vacant due to retirement of Head Master. I say that, the said post is for SC category however, if the employees of SC category is not available then the said post should be filled in from VJ-A and then if

the VJ-A category is not available then the said post goes to NT-C category.

8. I say and submit that, in the said school on 01/03/2015 the candidate from ST category was not available and the candidate from VJ-A whose caste validity is not done therefore the candidate of VJ-A is not eligible to be promoted as Head Master, thereafter the reservation goes to NT-C category candidate/employees.

9. I say and submit that, the present Petitioner is senior most teacher and he belong from NT-C category, therefore the present Petitioner can be promoted as Head Master from 01/03/2015, as in the school namely Shivaji Vidyalaya, Rohina, Tq. Chakur Dist. Latur, is one post of Head Master is vacant from 01/04/2012."

7. In the light of above it is clear that the petitioner was the senior most teacher and he belongs to NT-C category and he ought to have been promoted as headmaster from 01.03.2015, however, the petitioner is wrongly deprived of promotion to the post of headmaster, without there being any valid reason. The averments in the affidavit filed by the Education Officer support the case of the petitioner. The Education Officer has categorically stated that the petitioner can be promoted as headmaster from

01.03.2015 in the school Shivaji Vidyalaya, Rohina, Taluka-Chakur, District- Latur, as one post of headmaster is vacant from 01/04/2022.

The petitioner has placed on record caste validity certificate that he belongs to NT-C category, dated 24.01.2015. Admittedly, the petitioner has reached age of superannuation in the month of June, 2021.

8. The decisions relied upon by the petitioner in *Hariddas Vikramjit Meshram Vs. State of Maharashtra and others* (2018 (2) Mh.L.J. 144) and *Arjun Gopl Rathod Vs. Vasant Shivramji Shinde & Ors* (2015 (6) ALL MR 129), support the case of the petitioner.

9. The Tribunal while rejecting the appeal filed by the petitioner appears to have misread and misconstrued the documents placed on record and has failed to appreciate the contentions raised by the petitioner in proper perspective. The Tribunal has recorded perverse finding to the effect that the appellant has failed to establish his supersession, at the hands of respondent/management. The impugned decision of the Tribunal therefore, appears to be based on irrelevant facts and relevant facts and record has been ignored by the Tribunal while passing

the impugned order.

10. In the light of above, following order:-

ORDER

- I) The impugned order dated 08.08.2013 passed by School Tribunal, Latur in Appeal No. 35/2012 is hereby quashed and set aside.
- II) The petitioner is granted notional promotion on the post of headmaster w.e.f. 01.03.2015. He shall be given all consequential benefits of the said post w.e.f. 01.03.2015 onwards including pensionary benefits.
- III) The respondent/management shall forward a proposal to respondent No. 2 for giving consequential and pensionary benefits to the petitioner, within a period of four weeks from the date of receipt of this writ.
- IV) Respondent No. 2 shall take decision on the said proposal within a period of four weeks from the date of receipt of the same and benefits shall be given to the petitioner within four weeks thereafter.

Rule is made absolute to the above extent.

[NITIN B. SURYAWANSHI, J.]