



Judgment

113 wp3067.22

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

WRIT PETITION NO.3067 OF 2022

Shekhanath s/o Sudam Nyayamurti,
aged about 52 years,
occupation service,
c/o M.R.Madavi, Chamorshi Naka,
in front of Government Science College,
Gokul Nagar, ward No.23, taluka and district
Gadchiroli. **Petitioner.**

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1. State of Maharashtra, through its
Secretary, Education Department,
Mantralaya, Mumbai-32.

2. The Education Officer,
(Secondary), Zilla Parishad, Gadchiroli.

3. Pragati Mahila Mandal,
through its Secretary, Gadchiroli,
taluka and district Gadchiroli.

4. The Headmistress,
Smt.Shindhutai Poreddiwar,
High School Gogaon, taluka and district Gadchiroli.

5. Ku.Bhavna Anandsingh Bais,
aged major, Assistant Teacher,
Sindhutai Poreddiwar High School,
Gogaon, tahsil and district Gadchiroli. **Respondents.**

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Shri R.L.Khapre, Senior Counsel Assisted by Shri V.Lohiya,
Adv. for the Petitioner.

Mrs.K.R.Deshpande, Assistant Government Pleader for
Respondent Nos.1 & 2.

Shri P.D.Meghe, Counsel for Respondent Nos.3 & 4.

Shri P.S.Kshirsagar, Counsel for Respondent No.5.

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CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.

DATE : 14/09/2023

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JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for respective parties.

2. By this petition, the petitioner is seeking direction against respondents to pay him graduate pay-scale and grant benefits of pay-scale of 25% of graduate quota w.e.f.1.7.2003 with interest @ 12% per annum on arrears.

3. The petitioner was appointed as "Graduate Trained Teacher" in Middle School Section in 'Kailaswasi Mahesh Sawkar Poreddiwar Highschool' by appointment order dated 13.8.1997.

4. Respondent No.5 Ku.Bhavna Anandsingh Bais, was appointed as "Untrained Teacher" on 24.6.1996 and during her service tenure, she had completed her B.Ed. on 19.9.1997. An approval was granted to the services of respondent No.5 on 6.5.1998 for the period of two years as probationer. Respondent No.5 was shown to be senior to the petitioner and was given seniority and promotion in 25% Trained Graduate Quota in middle school section. A Resolution dated 1.6.2003 passed by the Management granting

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promotion in middle school section from 25% quota was under challenge in an appeal by the petitioner under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rules, 1981 (the MEPS Rules). The said appeal was dismissed by the Education Officer (Secondary), Gadchiroli by order dated 15.6.2002. During the pendency of the appeal, the Education Officer (Secondary), Gadchiroli granted approval to the appointment of respondent No.5 and also granted graduate pay-scale in 25% quota.

5. The petitioner had challenged the said order dated 15.6.2002 by preferring Writ Petition No.2443/2002 which was decided on 31.1.2003 by which both the orders granting approval and promotion from 25% graduate quota were set aside and the matter was remanded back to the Education Officer (Secondary), Gadchiroli. The Education Officer (Secondary), Gadchiroli reconsidered the aspect and held that the petitioner is senior to respondent No.5 by order dated 31.1.2003. The said order was challenged by respondent No.5 by preferring Writ Petition No.2367/2003. During the pendency of the said writ petition, the Education

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Officer(Secondary), Gadchiroli granted approval to the appointment of respondent No.5 by order dated 4.7.2006 w.e.f.1.7.2006. Subsequently, respondent No.5 withdrawn the writ petition filed by her.

6. The issue of considering the petitioner for grant of promotion against 25% graduate quota was considered by the Education Officer (Secondary), Gadchiroli. The said order was again challenged by respondent No.5 by preferring a writ and the said writ petition was dismissed. Against the said dismissal, respondent No.5 approached the Honourable Apex Court in an appeal bearing Civil Appeal No.11934/2018 which was also dismissed. Respondent No.5 preferred review application before the Honourable Apex Court and the same was also not considered and it came to be rejected.

7. The petitioner, thereafter, filed a representation before the Deputy Director of Education, Nagpur Division, Nagpur to consider his claim for promotion against 25% quota. The Deputy Director of Education, Nagpur Division, Nagpur directed the Education Officer (Secondary), Gadchiroli to take further decision in the background of dismissal of the petition by the Honourable Apex Court. The Education Officer

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(Secondary), Gadchiroli directed respondent Nos.3 and 4 to give effect to the order of the Deputy Director of Education, Nagpur Division, Nagpur by which the petitioner was held to be senior. However, respondent No.3 and 4 have not taken any cognizance and gave deaf ear to the directions and taken stand that respondent No.5 was not granted promotion on the basis of seniority, but as no teacher was available to teach subject Biology, she was promoted.

8. As per contention of the petitioner, seniority was the only criterion to grant gratuity pay-scale to which she was entitled. The petitioner was qualified being promoted against 25% quota which was not considered by the Management.

9. On the contrary, as per contention of the respondent Nos.3 and 4, no teacher was available to teach subject Biology and, therefore, respondent No.5 was promoted. Respondent Nos.3 and 4 admitted that respondent No.5 was appointed on 24.6.1996 and she acquired B.Ed. qualification 19.9.1997. It is further admitted that the petitioner preferred the appeal and raised the issue of seniority by preferring the appeal. However, the same was dismissed. The Education Officer (Secondary), Gadchiroli

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itself has granted approval to respondent No.2 for the post of graduate teacher in 25% graduate quota. Respondent No.5 has challenged the order holding the petitioner as senior to her by filing a writ petition and the said writ petition was decided after 11 years. The district Gadchiroli is a tribal area and no Science Graduate Teacher is available and, therefore, respondent No.5 was considered to teach students of Std.VIII to X which was approved by the Education Officer (Secondary), Gadchiroli and, therefore, the present writ petition deserves to be dismissed.

10. Whereas, as per contentions of respondent No.5, issue of salary escalation and issue of promotion of graduate teacher were not the subject matter of earlier proceeding and, therefore, only the issue of seniority has been decided by the High Court and the Honourable Apex Court confirmed the order of the Education Officer (Secondary), Gadchiroli. Respondent No.5's promotion was never challenged by the petitioner and, therefore, the writ petition deserves to be dismissed.

11. Heard learned Senior Counsel Shri R.L.Khapre for the petitioner, learned counsel Shri P.D.Meghe for respondent

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Nos.3 and 4, learned counsel Shri P.S.Kshirsagar for respondent No.5, and learned Assistant Government Pleader Mrs.K.R.Deshpande for respondent Nos.1 and 2.

12. Learned Senior Counsel for the petitioner reiterated the contentions and submitted that Rule 12 of the MEPS Rules and Guidelines for fixation of seniority under Schedule-F shows that the only criterion is the seniority to consider eligible persons for promotion in the trained graduate teachers scale in 25% quota. The respondent Nos.4 and 5 have not acted upon though there are specific directions by the Education Officer to consider the petitioner as senior in the background of decision of this court which was confirmed by the Honourable Apex Court by upholding the order of the Education Officer treating the petitioner as senior. The respondent Nos.3 and 4 contravened Rule 12 of the MEPS Rules and also ignored the order of this court and directions of the Education Officer. In view of the decision of this court and the directions of the Education Officer, respondent Nos.3 and 4 ought to have promoted the petitioner in trained teachers in 25% quota and prays for directions.

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13. Learned counsel for respondent Nos.3 and 4 supported the submissions of learned counsel for respondent No.5.

14. Learned counsel for respondent No.5 submitted that as no science teacher was available, respondent No.5 was promoted and the petitioner never challenged the order of promotion of respondent No.5. As such, the petition deserves to be dismissed.

15. Learned Assistant Government Pleader Mrs.K.R.Deshpande for respondent Nos.1 and 2, supported the order of the Education Officer.

16. Having heard learned counsel appearing for parties and perused the record, there is no dispute as far as the factual aspect is concerned that the petitioner was appointed as Graduate Trained Teacher in Middle School Section in 'Kailaswasi Mahesh Sawkar Poreddiwar Highschool' by appointment order dated 13.8.1997. Thus, at the time of entry in the service, he was Trained Teacher. Whereas, respondent No.5 acquired qualification as a Trained Teacher on 19.9.1997 after entering into the service and later to the petitioner. There is no dispute as regards the fact that

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approval was granted to the services of respondent No.5 on 6.1.1998 initially for a period of two years as probationer. The respondent No.5 was shown to be senior to the petitioner which was challenged by the petitioner by preferring Writ Petition No.2443/2002 which was decided in favour of the petitioner and the matter was sent back to the Education Officer (Secondary), Gadchiroli with a direction that the Education Officer shall reconsider the aspect and shall decide the matter within two months. In view of the directions of this court, the Education Officer (Secondary) Gadchiroli by giving an opportunity to the petitioner as well as respondent No.5 held that though the petitioner is serving from 15.7.1994, but she acquired the qualification by passing B.Ed. on 19.9.1997. Whereas, the petitioner was Trained Teacher when he was appointed on 13.8.1997 and, therefore, the petitioner is senior. The order of the Education Officer was challenged by respondent No.5 by preferring Writ Petition No.2367/2003 which was dismissed by observing that the petitioner therein (respondent No.5 in the present petition) acquired the qualification on 19.9.1997. Whereas, respondent No.5 therein (the petitioner in the present petition) was Trained Teacher on 13.8.1997 itself and the writ petition was

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dismissed. The respondent No.5 has challenged the said decision of this court by preferring Civil Appeal No.11934/2018 before the Honourable Apex Court. The Honourable Apex Court had considered the legal provisions and dismissed the appeal. In the light of the dismissal of the appeal, the Deputy Director of Education directed the Education Officer to reconsider the petitioner as senior and to give appropriate directions. Accordingly, the Education Officer directed respondent Nos.3 and 4 to promote the petitioner against 25% Graduate Trained Teachers quota. However, the respondent Nos.3 and 4 have not taken any decision.

17. Before considering the question raised in the petition, it is necessary to see necessary provisions.

18. The MEPS Rules have been framed in exercise of powers conferred by sub sections (1) and (2) of Section 16 of the MEPS Act. Rule 2(j) of the MEPS Rules, defines "trained graduate" and Rule 2(k) defines "trained teacher" and qualification of teachers has been prescribed under Rule 6 with Scheduled-B and the appointment of the teaching staff is to be made in terms of the procedure laid down under Rule 9 and their seniority is to be determined in terms of Rule 12

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read with the guidelines laid down in Schedule-F to the Scheme of the MEPS Rules. Rule 12 of the MEPS Rules and Schedule-F, is reproduced for the reference:

"12. Seniority List - Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.

Schedule 'F'

1. Guidelines for fixation of seniority of teachers in the primary schools. - The seniority of primary school teachers in Primary Schools shall be based on the date of joining service and continuous officiation.

2. Guidelines for fixation of seniority of teachers in the secondary schools Junior Colleges of Education and Junior College classes attached to secondary schools and Senior Colleges. - For the purpose of fixation of seniority of teachers in the secondary schools. Junior Colleges of Education and Junior College classes attached to Secondary

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Schools the teachers should be categorised as follows :

Category A : Heads of Secondary schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of the dates of their appointments to the respective posts.

Category B : Heads of secondary schools having an enrolment of students of 500 and below, Principals of Junior Colleges of Education having four or less Divisions and Assistant Heads of Secondary schools having more than 20 classes on the basis of the dates of their appointments to the respective posts.

Category C : Holders of M. A. /M. Sc./M. Com., B.T./B. Ed., or its equivalent; or B. A./B. Sc./B. Com., B. T./B. Ed., or its equivalent; or B. A./B. Sc./B. Com. Dip. T. (old two years course); or [B. A./B. Sc./B. Com., S. T. C. /Dip. Ed./Dip. T. (one year course) with 10 years postS. T. C. etc. service. [B. A. or its equivalent plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service [after obtaining both academic and training qualifications.]

Category D : Holders of B. A., B. Sc./B.Com./S. T. C./Dip. Ed. (one year course) [Senior or Junior Hindi Shikshak Sanad] or its equivalent. [Explanation. On and after the date of publication of this notification in the Official Gazette and without affecting the promotion made until that date, the inter se seniority of teachers with qualification Senior Hindi Shikshak Sanad or Junior Hindi Shikshak Sanad in service should be fixed in Category 'C' with reference to the date of their acquiring both the qualifications i.e. B.A. or its equivalent and the Senior (5 years) or Junior Hindi Shikshak Sanad (10 years) as the case may be by the teachers concerned.]

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Category E : Holders of --
S. S. C., S. T. C./Dip. Ed./Dip. T. (one year course)
[Senior or Junior Hindi Shikshak Sanad] or its
equivalent.

Category F : Untrained Graduates or holders of
equivalent qualification.

Category G : Untrained Matriculates or holders of
equivalent qualification.

Category H : All teachers other than those
mentioned in categories A to G.

Note 1 : For the purpose of categories C, D, and E
teachers with S. T. C., T. D., Jr. P. T. C. Dip, T., Dip.
Ed. (post S.S.C. one year course) qualifications
appointed on or after 1st October 1970 shall be
considered as untrained and their seniority shall
be fixed in the 'F' or 'G' category of untrained
teachers as the case may be.

Note 2 : The following training qualifications which
can be secured two years after S.S.C.
Examination shall be considered as training
qualification for the purpose of seniority even
after 1st October 1970

- (1) D. Ed. (2 years).
- (2) T. D. (Bombay University).
- (3) Dip. Ed. (Nagpur University).

Note 3 : In the case of teachers whose date of
continuous appointment in one and the same
category is common, the teacher who is senior by
age will be treated as senior.

Note 4 : The categories mentioned above
represent the ladder of seniority and have been
mentioned in descending order.

Note 5 : Where a management runs more than
one school and where Junior College classes are

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or are not attached to any one or more of such schools, the seniority list for a particular cadre shall be a combined seniority list of all persons in that cadre working in all the schools (excluding night schools, if any), or Junior College classes attached to schools of the Management. The total continuous service rendered by the persons in a particular cadre in any school or Junior College class shall be taken into consideration for the purpose of seniority and for the purpose of promotion.

Note 6 : The seniority of the (coaching staff in night school shall be maintained separately.

Note 7 : Where one of schools is a Girls' school and where the Management desires to maintain a separate seniority list of teachers in that school, the management shall resolve accordingly and forward a copy of the resolution to the Education Officer or, as the case may be, the Deputy Director of Education. Such a decision shall not, however, be revocable at any time in future. Further, where the Management decides to do so the candidates to be appointed to the teaching posts shall be given a clear understanding to the effect that they shall not have any claim on the promotional posts in other schools run by the same Management. The services of the members of the teaching staff in such a school shall not be permanently transferable to any other school and vice versa. The temporary transfer of services of the members of the teaching staff in such a school shall also be with the prior permission of the Education Officer or, as the case may be, the Deputy Director of Education.

Note 8 : Where a Management runs one or more secondary schools and a Junior College of Education, then notwithstanding the fact that trained graduate teachers in Junior College of Education are in a higher scale of pay, a combined seniority list of all teachers, in both the types of

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Institutions shall be maintained in such schools and Junior College of Education in accordance with the guidelines laid down in paragraph 2 of this schedule. This seniority list shall form the basis for purpose of promotion to the posts of Head Masters and Assistant Head Masters in secondary school (s) and Principal (s) of Junior College of Education.

Note 9 : In the case of permanent teachers having a break or breaks in service (physical or otherwise i.e. owing to parttime service interposed) between two spans of fulltime service under the same management, after being made permanent but prior to the 1st July 1970 and who may not have changed the cadre after the period of break, the Management shall condone the break (s) for period(s) not exceeding three years for the purpose of seniority by commuting retrospectively the period of absence. If the period exceeds three years and if the teachers had worked on parttime basis, the Management shall also give credit for Period (s) of part time service to the extent of half the total period, for the purpose of seniority only. Each type of such breaks shall not exceed three in number during the career of a teacher and seniority so gained shall not entitle the teacher for retrospective promotion.

Note 10 : The seniority of secondary school teachers in Vidarbha Region who were permanent on the 31st December 1965 and whose seniority was determined as per the provisions contained in the Madhya Pradesh Secondary Education Act, 1951 and the rules made thereunder shall not be disturbed. If any teacher among such teachers, improves his qualifications and thereby switches over to higher category, these guidelines of seniority shall apply so far as the determination of his seniority in the higher category is concerned."

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19. Thus, as regards fixation of seniority in the secondary schools, junior colleges of education and junior college classes attached to the secondary schools and senior colleges have been graded into separate categories. As regards categories 'A' and 'B' are concerned, the seniority is determined on the basis of date of appointment to respective posts. As a consequence thereof, a person who is a member of category 'F' or 'G', as the case may be, would in no manner can rank senior to the teaching staff who is member of category 'C', 'D' or 'E' based on their continuous service rendered in the category to which the person belongs.

20. Indisputedly, the petitioner was holding qualification of B.A. and B.Ed. at the time of his initial appointment on 13.8.1997 and comes under the Category 'C.' Whereas, respondent No.5 though appointed on 24.6.1996 as "Untrained Teacher", she acquired training qualification i.e. B.Ed. on 19.9.1997 and comes under Category 'C' at subsequent point of time than the petitioner.

21. Learned Senior Counsel for the petitioner rightly pointed out that the seniority was the only criterion to grant graduate pay-scale to which the petitioner was entitled.

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22. In view of the above discussions, there is no dispute that the petitioner was "Graduate Trained Teacher" from the date of his initial appointment. Whereas, respondent No.5 acquired the said qualification at subsequent point of time and, therefor, the petitioner is entitled for the benefit of promotion against 25% Trained Graduate Teachers quota. Admittedly, the Honourable Apex Court dismissed the appeal of respondent No.5 on 4.1.2019. The petitioner approached this court after two years that is on 17.2.2021. The petition was under objection and the objections were removed on 28.3.2002 and the petition was first time circulated on 1.7.2022. The petitioner approached this court after a period of two years and claimed benefit and arrears w.e.f.1.7.2003.

23. In the light of the above discussion, the petitioner is entitled for the promotion in 25% Trained Graduate Teachers quota and entitled for the pay-scale of the said promotional post w.e.f.1.7.2003. However, as the petitioner approached the court belatedly, the petitioner is entitled for arrears of the said pay-scale preceding three years of filing of this petition i.e. 17.2.2021 along with the interest at the rate of 6%.

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24. In view of the above, the writ petition is partly allowed, in the following terms:

The respondent Nos.3 and 4 are directed to implement the order of the Education Officer (Secondary) Gadchiroli to place the petitioner in the scale of Graduate Teachers from the date of 1.7.2003 and to pay him arrears of the salary of preceding three years of the petition i.e. 17.2.2021 along with interest @ 6%. The arrears calculated accordingly be paid to him by respondent Nos.3 and 4 within a period of eight weeks from the date of receipt of writ of this judgment.

Rule is made absolute in above terms. No costs.

(URMILA JOSHI-PHALKE, J.) (AVINASH G.GHAROTE, J.)

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