

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

**Writ Petition No. 2165 of 2019**

(1) Tilak Rashtriya Saraswati Mandir,  
Umari, through its President,  
R/o – At Umari, Tq. And Dist. Akola.

(2) Sau. Ujjawala Narendra Hiwase,  
Age- 54 years, Occ-Service,  
R/o- Patil Layout, Shrihari Nagar,  
Jatharpeth, Akola, Tq. And Dist. Akola.

**... Petitioners**

**... Versus ...**

(1) Surendra Anandrao Jathal,  
Age about 57 years, Occ-Service,  
R/o – At Mothi Umari,  
Tq. And Dist. Akola.

(2) Education Officer (Sec)  
Zilla Parishad, Akola,  
Tq. and Dist. Akola.

**... Respondents**

-----  
Mr. P. S. Patil, Advocate for the petitioners

None for respondent no. 1

Ms. T. H. Khan, A.G.P for respondent no. 2  
-----

**CORAM : ANIL S. KILOR, J.**

**DATED : 8-8-2023**

**ORAL JUDGMENT**

Rule. Rule made returnable forthwith. The petition is heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner was promoted as Head Mistress on 16-5-2016, which was the subject matter of challenge before the School Tribunal, Amravati at the instance of respondent no. 1. The School Tribunal set aside the promotion of the petitioner vide judgment and order dated 5-3-2019 which is under challenge in this writ petition.

3. After going through the record, it is evident that the petitioner was appointed on 1-8-1992. Whereas, respondent no. 1 was appointed on 1-9-1992. Both were qualified on the date of appointment to be appointed as Assistant Teacher. Thus, considering the date of their appointments, there is no doubt that respondent no. 1 is junior to the petitioner.

4. However, on 26-6-1993, the petitioner was terminated and thereafter in view of the settlement, she was reinstated in service and accordingly, she joined duties on 26-7-1993. It is pertinent to note that continuity of service was granted to the petitioner from the date of termination till the date of reinstatement and there is no dispute about the said fact.

5. The reason for setting aside the promotion of the petitioner by the School Tribunal was that the petitioner was served from 1-8-1992 till 30-4-1993 and the termination was on 26-6-1993 i.e. on

opening day of the school after vacation and during the vacation from 1-5-1993 till 26-6-1993, the petitioner was not in service as such there was a break in service and this break was not condoned by the management by passing any resolution.

6. On perusal of the record, it is evident that the period from 1-5-1993 to 26-6-1993 was the period of vacation and even during the said period, the petitioner received the salary. Therefore, even though in the appointment order, period of appointment was from 1-8-1992 till 30-4-1993, as the petitioner received the salary for the vacation period and the termination was from opening day of the next session, it cannot be said that there was a break in service as held by the learned School Tribunal.

7. Moreover, when the dispute arose in respect of seniority after the respondent no. 1 was shown as senior to the petitioner. The Education Officer, thereupon, after conducting the enquiry, held that the petitioner is senior to respondent no. 1.

8. In that view of the matter, the findings recorded by the learned School Tribunal that there was a break of service of the petitioner and the petitioner is junior to respondent no. 1 is erroneous.

Consequently, the order setting aside the promotion of the petitioner goes. Accordingly the petition is allowed.

9. The judgment and order dated 5-3-2019 passed by School Tribunal, Amravati is hereby quashed and set aside.

**[ANIL S. KILOR, J.]**

*wasnik*