



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 WRIT PETITION NO.4131 OF 2024

Atiq Ahmad Zamir Ahmad,
Age 49 yrs., Occ. Service,
R/o Maulviganj, Iqbal Chowk,
Dhule, Tq. & Dist. Dhule.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2 The Education Officer (Secondary),
Zilla Parishad, Dhule,
Tq. & Dist. Dhule.
- 3 Anjuman Farog-e-Taleem,
Dhule, Tq. & Dist. Dhule.
Through President.
- 4 National Urdu High School and
Junior College,
Azad Nagar, Dhule, Tq. & Dist. Dhule.
Through Head Master.
- 5 Najmul Hasan Noor Mahamad,
Age 36 yrs., Occ. Service,
R/o Firdos Nagar,
Dhule, Tq. & Dist. Dhule.

... Respondents

...

Mr. M.S. Shah, Advocate for petitioner

Mr. K.S. Patil, AGP for respondent Nos.1 and 2

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

DATE : 22nd APRIL, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Heard learned Advocate Mr. M.S. Shah for the petitioner and learned AGP Mr. K.S. Patil for respondent Nos.1 and 2. There is no necessity to issue notice to respondent Nos.3 to 5.

2 It is not in dispute that the petitioner came to be appointed on 05.01.1996 in respondent No.4 school as Peon (Class-IV). Respondent No.2 has granted approval to his appointment on 07.09.1996. He has rendered service continuously for at least 28 years.

3 Petitioner contends that in the year 2018 one Atiq Ahmad Mohd. Kasim retired from the service as Clerk from respondent No.4 school. Petitioner had requested respondent No.3 to promote him to the said post as per seniority. However, respondent No.3 had not taken any step. It went on to publish an advertisement in the newspaper and by adopting the said

procedure respondent No.5 came to be appointed. As the appointment of respondent No.5 was after non consideration of the legal claim of the petitioner, it is said that the said appointment is illegal. The petitioner had wrongly approached School Tribunal, Nashik by filing Miscellaneous Civil Application No.20/2019 for condonation of delay under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It was under misconception that the petitioner has been superseded. The said application came to be rejected by the School Tribunal, Nashik. The petitioner by this petition has challenged the appointment of respondent No.5 and direction to respondent No.3 to promote him to the said post.

4 At the outset, it is to be noted that the petitioner cannot ask for promotion as of right. Even if there are rules framed by the Government in the form of Government Resolution giving procedure when in private educational institutions when Class-IV employee acquires the higher qualification which is the qualification available for Class-II or Class-III employee, then the Management may consider such request and proceed according to the Government Resolution. However, the said Government Resolution is not mandatory. It lays down the procedure only when the Management decides. Here, it appears from the action of respondent No.3

that respondent No.3 was not in favour of having the said recourse of allowing the petitioner to participate in the process or even by way of promotion. Respondent No.3 being the private, that too, minority institution it can have its own recourse subject to the Government Resolutions to appoint its staff.

5 Another fact to be noted is that the petitioner was well aware about the advertisement issued on 11.02.2019 for filling up the post of Class-III after the retirement of Atiq Ahmad Mohd. Kasim. Still he has not approached this Court directly. It was the new appointment to be made, therefore, the appointment of respondent No.5 cannot amount to superseding. Superseding can occur in the same cadre choosing a wrong form with knowledge will not give any advantage to the petitioner. However, even if we give concession to the petitioner that he approached the School Tribunal and that period is required to be exempted; yet, writ of mandamus cannot be issued against respondent No.3 which would be the appropriate authority to make the appointments. The writ petition, therefore, stands dismissed at the threshold.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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