



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

33 WRIT PETITION NO. 7397 OF 2024

RAHATAL BABASAHEB KARBHARI

VERSUS

THE STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY AND
OTHERS

Mr.Shivaji T. Shelke, Advocate for the petitioner.

Mr.K.B. Jadhavar, AGP for respondent Nos. 1 and 2.

Mr.S.S. Wagh, Advocate for respondent No.3.

Mr.P.B. Shirsath, Advocate for respondent No.4.

CORAM : KISHORE C. SANT, J.

DATE : 02.09.2024

PC :-

01. Heard.

02. The petitioner has approached this Court being aggrieved by an order dated 11.06.2024 passed by the learned Education Officer (Secondary), Zilla Parishad, Ahmednagar. By way of impugned order he has directed to appoint respondent No.4, who stood at Sr. No.3 in the seniority list, as In-charge Head Master in the school, holding that he is senior-most teacher in the school.

03. Facts shortly stated are that, the petitioner joined service on 03.08.1993. Respondent No.4, who is now directed to be given charge of Headmaster also acquired qualification of B.Ed. On 13.06.1995, though he had joined school on 27.07.1993. The person at Sr. No.1 – Mr. Kotkar was to retire on 31.05.2024. In view of the retirement, the management forwarded proposal on 01.06.2024 to the Education Officer to approve name of the petitioner as regular Headmaster. The Education Officer by communication dated 31.05.2024 had already directed the petitioner to look after the financial transactions, daily business and correspondence for period from 01.06.2024 to 31.07.2024, till regular Headmaster is approved. The Education Officer, however, on 06.06.2024 passed another order stating that there are disputes between two groups of the management of institution. No change report is yet accepted by the Assistant Charity Commissioner. He further observed that there are several complaints received against the petitioner. He also received one communication from Mr. Todmal that he is senior to the petitioner and requested to hand-

over charge to him of the post of Headmaster. The Education Officer, therefore, passed an order giving such rights to one Mr. P.B. Bande, Assistant Teacher. Immediately, thereafter on 11.06.2024 the Education Officer again passed an order in the name of Mr. Magar – respondent No.4 asking him to look after the affairs of the school till further orders. This communication was on the basis of hearing that took place on 11.06.2024 before the Education Officer, wherein he decided the seniority and passed the order. It is stated in the said communication that since there is dispute about seniority of the teachers, he called the teachers for hearing.

04. The learned Advocate for the petitioner, therefore, argued that, admittedly, this petitioner is the senior-most teacher after retirement of Mr.Kotkar. Order dated 31.05.2024 was rightly passed directing to give charge to the petitioner. For no reason, order dated 06.06.2024 was passed. Even order dated 06.06.2024 was changed vide order dated 11.06.2024. In-fact, there is no dispute regarding seniority raised by any of the teachers. For some extraneous reason, the Education Officer has passed the impugned

order. He submits that seniority of the teacher is to be counted in accordance with Rule 12 of the MEPS Rules and Schedule-F under this Rule. He further submits that seniority is to be counted from the date on which person acquires qualification necessary for the said post. In this case, Mr. Magar acquired qualification of B.Ed. in 1995 and this basic fact is not considered by the Education Officer and treated him to be senior. He further submits that once promotion is granted and the appointment is made, the question of seniority needs to be decided only by the Tribunal. The Education Officer does not have any jurisdiction to decide question of seniority once promotion is given. In support of his submission, learned Counsel for the petitioner relied upon judgment in the case of **Bhagwant Sheshrao Borale Vs. Education Officer (Secondary), Zilla Parishad, Buldhana** reported in **2009 (6) Mh.L.J.478**. He thus prays for quashing and setting aside the order dated 11.06.2024. He also pointed out that Mr. Todmal has already voluntarily retired w.e.f. 31.07.2024. Respondent No.4 has also given no objection if present petitioner is promoted to the post of Headmaster.

05. Learned AGP supports the impugned order submitting that the Education Officer received a report that there are two groups in the society and also that he received some complaints about the petitioner. Therefore, he took decision to decide the question of seniority. However, no such communication by any of the group is produced on record, though affidavit is filed by the Education Officer. With the affidavit he has annexed one complaint addressed to the Chief Minister dated 15.01.2024 by one Tukaram Hanumant Gerange, who posed himself to be District President of National Human Rights Association. He thus submits that, therefore, the Education Officer took cognizance of the complaint.

06. Learned Advocate for respondent No.4 also stated that his client has no objection if the petitioner is promoted to the post of Headmaster.

07. The petitioner has produced on record seniority list as on 03.05.2019 as per Schedule "F", Rule 12 of the MEPS Rules in B.Ed.

Category. As per the said list, the petitioner is shown at Sr. No.2 showing his date of appointment as 03.08.2093; whereas respondent No.4-Mr. Magar is shown at Sr. No.4 and his date of appointment is shown as 13.06.1995.

08. Considering the above, this Court finds that, as rightly pointed out by the learned Advocate for the petitioner, there are no two groups as such in the management. One change report was filed by the present management and that is also accepted by the learned Assistant Charity Commissioner by order dated 17.05.2024. Thus, there was no occasion for the learned Education Officer to observe that there are two groups in the management, coupled with the fact that the Education Officer has also not filed any representation received by him from any of the groups. On record, what appears from letter dated 06.06.2024 that Mr. Todmal had made complaint to the Education Officer. Other complaint which is annexed by the Education Officer is the complaint by the so called District President of National Human Rights Association. Looking to the said complaint it is seen that it is not addressed to

the Education Officer at all. Only copy of the same is sent to the Education Officer. It is not clear that under which authority the Education Officer took cognizance of such complaint, without ascertaining as to what interest said complainant has and how he was concerned with the business of the school. He has also produced on record one FIR lodged on 07.06.2024 by Mr. Todmal, who already has taken voluntary retirement. It is also pointed out by the petitioner that the Chairman of the society has also filed complaint against Mr. Todmal and others, since he was assaulted in an incident.

09. Be it as it may, this Court is only concerned with the impugned order. From the discussion above, it appears that the Education Officer has unnecessarily gone into aspect of seniority without there being any occasion.

10. Considering the above, the impugned communication is quashed and set aside. The petition stands allowed in terms of prayer clause (B). The petitioner be appointed as In-charge

Headmaster till proposal of the management in that regard is accepted. In view of this, the Education Officer to consider proposal forwarded by the management dated 01.06.2024 within eight weeks from today. The writ petition is accordingly disposed off with no order as to costs.

[KISHORE C. SANT, J.]