



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5617 OF 2023

Suresh Kashinath Jarkad
Occ: Service, Assistant Teacher,
Vidya Vikas Mandir Secondary
& Higher Secondary Vidyalaya
Awasari, B.K. Taluka-Ambegaon,
Dist. Pune – 412 406

.....Petitioner

Vs.

1. Shikshan Prasarak Mandal through its
Chairman/Secretary, Talukar Ambegaon
Dist. Pune – 412 406

2. Vidya Vikas Mandir Secondary and
Higher Secondary Vidyalaya through
its Headmaster, Awasari, B. K.
Taluka -Ambegaon, Dist. Pune
412 406

3. State of Maharashtra,
through its Government Pleader,
Mumbai

4. The Education Officer (Secondary)
Zilla Parishad-Pune, Pune 411 001

5. Navnath Rabhaji Taware
Occ: Service, Assistant Teacher
Vidya Vikas Mandir Secondary
and Higher Secondary Vidyalaya
Awasari, BK, Taluka: Ambegaon
Pune – 412 406.

.....Respondents

Ms. Anupama B. Shah a/w Ms. Mitali Shah for the petitioner
Mr. Vinayak Kumbhar i/b Ms. Ashwini Bandiwadekar for respondent nos. 1 and 2
Ms. Rita Joshi for respondent no. 5
Mr. A. I. Patel, Additional GP with Smt. P. J. Gavhane AGP for respondent nos. 3 and 4

CORAM : GAURI GODSE, J.

DATE : 26th APRIL 2024

ORAL JUDGMENT:

1. Heard. Rule.
2. Mr. Vinayak Kumbhar waives service for respondent nos. 1 and 2.
2. Learned GP Mr. A. I. Patel waives service for respondent nos. 3 and 4.
4. Ms. Rita Joshi waives service for respondent no. 5.
3. Rule made returnable forthwith. Considering the nature of the dispute in the present petition, the petition is taken up for final disposal.
4. Affidavit-in-reply filed on behalf of respondent no. 5 is taken on record.
5. This petition is filed to challenge the order dated 14th February 2022 passed by respondent no. 4 under Rule 12 of The Maharashtra

Employees of Private Schools (Conditions of Service) Rules, 1981 (“MEPS Rules”) deciding the interse seniority of the teachers of respondent no. 2-School.

6. Petitioner and respondent no. 5 had objected to the seniority list prepared by respondent no. 1. Hence, the dispute was referred to respondent no. 4 for his decision.

7. Learned counsel for the petitioner submits that the legal principle regarding the interse seniority and the dispute on the interse seniority is settled by this Court in the decisions of **Sahakar Vidya Prasarak Mandal and Ors Vs. Dinesh Kute and another¹** and **Krishna Mahadu Gasti and another vs. Mahesh Shamrao Deshmukh and another²**. The learned counsel for the petitioner and learned counsel for respondent no. 5 submits that the benefit of the legal principle laid down by the aforesaid decisions was not available while passing the impugned order. Hence, the matter be remitted to respondent no. 4 for a fresh decision by considering the legal principle laid down in the aforesaid decisions. Learned counsel for respondent no. 5 also agrees with this

¹ Writ Petition No. 1221 of 2022 11/04/2023

² Writ Petition No. 2952 of 2021 Dt. 26/03/2024

submission.

8. Learned counsel for respondent nos. 1 and 2 submits that the petitioner is at serial no. 18 and respondent no. 5 is at serial no. 19 in the disputed seniority list. He further submits that any decision taken by the respondent no. 4 will affect the other teachers who are upto serial no. 17. He therefore submits that it is necessary to give hearing even to the said teachers.

9. Learned counsel for respondent nos. 1 and 2 submits that the affected teachers will be intimated by respondent no. 1 regarding the hearing before the Education Officer.

10. Learned AGP appearing for respondent no. 4 submits that some date may be fixed for appearance of the parties before respondent no. 4 and issuance of notice be dispensed with. He further submits that respondent no. 1 be directed to intimate all the affected teachers regarding the date of hearing before the Education Officer.

11. Considering the legal principle laid down by this Court in the aforesaid decisions, I find it appropriate to remit the dispute back to the

Education Officer for fresh decision. To avoid delay in the decision, respondent no. 1 shall intimate the date of hearing before the Education Officer to all the affected teachers. Hence, all the parties can be directed to appear before the Education Officer and no fresh notice for hearing would be necessary.

12. Learned counsel for the petitioner submitted that on 30th April 2024 post of Supervisor would be rendered vacant in view of superannuation. She therefore, submits that any further decision taken by respondent no. 1 be made subject to final outcome of the decision of the Education Officer on the interse seniority. To avoid any complications, I find it appropriate to issue such clarification.

13. In view of the aforesaid, the petition is partly allowed by passing the following Order:

ORDER

I. Impugned order dated 14th February 2022 passed by respondent no. 4 is quashed and set aside.

II. Reference made under Rule 12 of MEPS Rules, before respondent no. 4 on the objections raised by the petitioner and

respondent no. 5 is restored to his file for a fresh decision.

III. The dispute regarding interse seniority be decided by taking into consideration the legal principles laid down in the decisions of **Sahakar Vidya Prasarak Mandal and Krishna Gasti**.

IV. Parties to appear before respondent no. 4 on 27th May 2024 at 11.00 a.m. Respondent no. 4 thereafter shall fix the date of hearing as per his convenience.

V. It is clarified that if any decision regarding promotion is taken by respondent no. 1, during pendency of the proceedings before respondent no. 4, the same shall be subject to final outcome of the decision taken by the Education Officer under Rule 12 of the MEPS Rules.

VI. In the event the decision of respondent no. 4 is adverse to any of the teachers, no further action based on the decision of respondent no. 4 shall be taken for 4 weeks from the date of decision.

VII. Writ petition is disposed of in above terms.

[GAURI GODSE, J.]