



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

WRIT PETITION NO. 459 OF 2019

Gokulsingh S/o. Jaysingh Pardeshi,
Aged about 39 years, Occ. Service,
R/o. Kawrabandh, Tah. Salekasa,
District : Gondia.

.... **PETITIONER.**

// VERSUS //

1. Commissioner (Additional),
Nagpur Division, Nagpur,
Old Secretariat Building,
Civil Lines, Nagpur.
2. Zilla Parishad, Gondia,
Through its Chief Executive
Officer, Gondia, Tah.& District:
Gondia.
3. Education Officer (Primary)
Zilla Parishad, Gondia,
Tah. and District : Gondia.
4. Prabhakar Ramaji Londhe,
Age 43 years, Occ. Service,
R/o. Gajanan Colony,
Ring Road, Gondia, Tah. &
District : Gondia.

.... **RESPONDENTS.**

Shri I.N.Choudhari, Advocate for Petitioner.
Shri A.J.Gohokar, A.G.P. for Respondent No.1.
Shri A.Y.Kapgate, Advocate for Respondent Nos.2 and 3.
Shri A.R.Deshpande, Advocate for Respondent No.4.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 08, 2024

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The petitioner is an Assistant Teacher in Respondent No.2 Zilla Parishad and he belongs to VJ(A) Category.
4. The respondent No.2 promoted the respondent No.4 on the post of Headmaster, who belongs to NT(C) Category. On the date of promotion of the respondent No.4 as per the prevailing roster there was backlog of one post of VJ(A) and one post of NT(C). As per the roster the post reserved for VJ(A) ought to have filled in first. However, from the record, it is evident that the name of the petitioner was not considered for promotion though he was qualified to be promoted on the date when the respondent No.4 was promoted. On the contrary, it was observed that, since no qualified person belonging to VJ(A) category was

available, the respondent No.4 was promoted. However, the promotion letter dated 10/09/2014 bears a note at the bottom that, on availability of a candidate from VJ(A) category, the respondent No.4 would be reverted back to his original post.

5. Thereupon, the petitioner made a representation to the Chief Executive Officer pointing out the above referred position and thereby claimed the promotion. The Chief Executive Officer vide order dated 19/04/2018 corrected the mistake and thereby promoted the petitioner to the post of Headmaster and reverted the respondent No.4 to the post of Assistant Teacher.

6. The said order was the subject matter of challenge before the Divisional Commissioner in appeal filed under Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 at the behest of the respondent No.4.

7. The said appeal came to be allowed vide impugned order dated 20/07/2018 and thereby the order dated 19/04/2018 issued by the Chief Executive Officer came to be set aside. Hence, this petition.

8. The roster shows that any vacancy shall be filled in in the following sequence :

- i) Scheduled Castes
- ii) Scheduled Tribe
- iii) VJ (A)
- iv) NT(B)
- v) NT (C)
- vi) NT(D)
- vii) SBC
- viii) Open.

9. Thus, from the above referred roster it is evident that VJ(A) comes before NT(C) and as per the roster, admittedly, on the date of promotion of the respondent No.4 there was a backlog of one post of VJ(A) and one post of NT(C).

10. Thus, it is evident that the name of the petitioner ought to have considered for promotion before the name of the respondent No.4, being of VJ(A) category.

11. It is pertinent to note here that in the report submitted by the Education Officer (Primary) on 11/07/2018 to the Divisional Commissioner he has categorically stated that inadvertently the name of the petitioner was not taken into consideration for promotion. The report further says that as there was no candidate available from the category VJ(A), the respondent No.4 was promoted from the NT(C) category with the note below it that, on availability of the VJ(A) candidate the respondent No.4 would be reverted back to his original post.

12. Shri Deshpande, learned counsel for the respondent No.4 however, submits that since VJ(A), NT(B), NT(C) and NT(D) are in one category, it is interchangeable and therefore, even though the post of VJ(A) was available and it was filled in by NT(C) category, no illegality has been committed.

13. The said argument cannot be accepted for the reasons recorded herein above that as per roster VJ(A) comes before NT(C) and when the candidate is available from VJ(A) category, it cannot be permitted to jump to any other category which is below VJ(A).

14. The learned counsel for the respondent No.4 tried to make out a case that the petitioner was not qualified to consider him for promotion on the date of promotion of the respondent No.4, for the reason that he was terminated few years before because of which he does not fulfill the condition of having five years' experience. This argument cannot be accepted and needs to be rejected for the reason that there is no material brought on record by the respondent No.4 that there was a termination and the petitioner does not fulfill the required criteria of five years' experience.

15. Thus, when the report of the Education Officer clearly states that the petitioner was qualified on the date when the respondent No.4 was promoted, the submission of respondent No.4 that the petitioner was not qualified, is misconceived.

16. In these circumstances, I have no hesitation to hold that the respondent No.4 was wrongly promoted when the petitioner was qualified and eligible for promotion.

17. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 20/07/2018, passed by respondent No.1-Commissioner (Additional), Nagpur Division, Nagpur in Appeal No.48/2017-18, is hereby quashed and set aside and the order dated 19/04/2018 passed by the respondent No.2-Chief Executive Officer is upheld.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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