



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4849 OF 2022

SANJAY S/O MADHUKAR KULKARNI
VERSUS
SAMARTH VIDYA PRASARAK MANDAL & OTHERS

Mr. P. M. Nagargoje, Advocate for Petitioner.
Mrs. M. L. Sangeet, AGP for the State.
Mr. L. V. Sangeet, Advocate for Respondent Nos. 1 to 4.
Mrs. C. S. Deshmukh, Advocate for Respondent No. 5.
Mr. A. N. Kakade, Advocate for Respondent No. 6.

WITH
WRIT PETITION NO. 677 OF 2022

SANGITA W/O VIKAS SANTAKKE
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

Mr. A. N. Kakade, Advocate for Petitioner.
Mrs. M. L. Sangeet, AGP for the State.
Mrs. C. S. Deshmukh, Advocate for Respondent Nos. 5 and 6.
Mr. L. V. Sangeet, Advocate for Respondent No. 2.
Mr. P. M. Nagargoje, Advocate for Respondent No. 7.

CORAM : R. M. JOSHI, J.

DATE : 4th OCTOBER, 2025

P.C. :-

1. These Petitions take exception to the order dated 16/03/2021 passed by the School Tribunal, Solapur in Appeal Nos. 23/2018 and 80/2018, dismissing the Appeals filed by the Petitioners.
2. Since both these Petitions involve similar questions of facts and law, by consent of both sides, heard together and decided by this

common judgment.

3. For the sake of convenience, parties are referred to by their name in order to avoid confusion.

4. Facts which led to filing of these Petitions can be narrated in brief as under :-

(i) In Writ Petition No. 4849/2022 Petitioner Sanjay Kulkarni (for short 'Mr. Kulkarni'), claims that he was appointed in Respondent No. 1-school on 29/08/1988 and was given letter of appointment of the same date. He claims that during service he completed B.Ed. on 05/05/1993. This came to be intimated to the Headmaster seeking B.Ed. scale. Accordingly, by letter dated 25/05/1993, the Secretary of Respondent-trust granted B.Ed. scale to him with effect from 01/06/1993.

(ii) In Writ Petition No. 677/2022, Petitioner Sangita Sontakke (for short 'Smt. Sontakke') claims to have been appointed as Assistant Teacher (Secondary) on probation in the year 1993 on the basis of qualification of BA B.Ed. It is the case of these Petitioners that contesting Respondent Sangita Joshi (for short 'Smt. Joshi') was possessing B.Com B.Ed. qualification and came to be appointed as Assistant Teacher from 1993.

(iii) It is the case of Petitioners that Respondent No. 1-Trust is running two schools in the vicinity of Ahmednagar at Sangle Galli and Savedi. Respondent-management prepared combined seniority list of above two schools and the same was circulated from time to time amongst the teachers inviting objections, if any. It is the case of Mr. Kulkarni that contesting Respondent and Smt. Sontakke have never raised objection to the said seniority list for almost 15 years showing their names below his name in the seniority list. It is claimed by Mr. Kulkarni that Smt. Joshi and Smt. Sontakke were appointed on the sanctioned post 14/06/1993 and 21/07/1993 and the Education Officer while granting approval to them has considered their date of appointment as 14/06/1993. It is claimed by him that they never challenged the said order of appointment.

(iv) Smt. Joshi took exception to the seniority list prepared by the Respondent-management. Education Officer by order dated 06/08/2013 has confirmed the seniority list. It is held that Smt. Joshi is senior to them. Mr. Kulkarni challenged same before the Education Officer itself. The same was unsuccessful on the ground that he has no power to review his own order. The Management by order dated 06/09/2013 promoted Smt. Joshi as Supervisor and Head Mistress on 30/07/2018. The decision taken by the Education Officer under Rule 2 of Maharashtra Employees of Private Schools Rules, 1981 was

challenged before this Court in Writ Petition No. 4736/2014. The Division Bench of this Court by order dated 28.02.2017 relegated the parties to School Tribunal for deciding issue of seniority amongst the teachers. Accordingly, Mr. Kulkarni filed Appeal No. 23/2018 before the School Tribunal. Similarly, Smt. Sontakke filed Appeal No. 80/2018 under the Maharashtra Employees of Private Schools Act, 1977. During the pendency of appeal Mr. Kulkarni was promoted as Head Master w.e.f. 28/09/2020 and Smt. Sontakke as Supervisor on 28/09/2020 and they accepted the said posts.

(v) It is the case of Mr. Kulkarni that during the pendency of Appeal, Smt. Joshi filed documents on 17.06.1986 claiming her appointment to be on 02/07/1992. He claims that said documents are forged and fabricated and the same were denied by him before the School Tribunal. Both Mr. Kulkarni and Smt. Sontakke have grievance in respect of the impugned orders dated 16/03/2021 passed in Appeal No. 23/2018 and order dated 19/07/2021 passed in Appeal No.80/2018 by School Tribunal rejecting their Appeals. Hence, these Petitions.

5. At the outset, learned counsel for Petitioner submits that it was not open for Smt. Joshi to take exception to the seniority list after lapse of substantial period of 15 years. It is his submission that as per the settled position of law, the Courts are expected not to entertain the Petitions challenging seniority after inordinate delay. In order to

buttress the said submission, he drew attention of the Court to the fact that since 1997 seniority list came to be published and till 2013 the name of Mr. Kulkarni was shown above Smt. Joshi and Smt. Sontakke which they never objected to. It is his submission that neither the management nor the Education Officer ought to have considered the objections raised by Smt. Joshi to the said seniority list and should not have accepted the same. This, according to him, is contrary to the position of law settled by the Hon'ble Supreme Court in case of **K. R. Mudgal and others vs. R. P. Singh and others, (1986) 4 Supreme Court Cases 531**. He also placed reliance on following judgments :-

- (i) *Shiba Shankar Mohapatra and others vs. State of Orissa and others, (2010) 12 Supreme Court Cases 471*
- (ii) *B. S. Bajwa and another vs. State of Punjab and others (1998) 2 Supreme Court Cases 523*
- (iii) *Saramma Varghese vs. Secretary /President S.I.C.E.S. Society 1989 Mh.L.J. 951*
- (iv) *Pragati Mahila Samaj and another vs. Arun s/o Laxman Zurmure & others, (2016) 9 Supreme Court Cases 255*
- (v) *Hindustan Education Society and another vs. Sk. Kaleem Sk. Gulam Nabi and others (1997) 5 Supreme Court Cases 152*
- (vi) *Chandramani Devraj Tiwari vs. Secretary Smt. R. B. Tiwari 2008(3) Mh.L.J. 274*

6. On merit of Petition challenging the impugned order passed by the School Tribunal, he drew attention of the Court to the claim made by Smt. Joshi that she was appointed on 14/06/1993. It is his

submission that for the first time before the School Tribunal it is sought to be claimed that her appointment was of 02/07/1992. It is his submission that the said claim has been made by Smt. Joshi on the basis of false and fabricated documents and the same ought not to have been accepted by the Tribunal. It is argued that the approval granted to the appointment of Smt. Joshi indicates that she was appointed on 14.06.1993 and therefore, neither it was open for Smt. Joshi to claim her appointed to be of 1992 nor it was justified for the Tribunal to accept the said claim. In this regard, reference is sought to be made to the documents placed on record. It is his submission that firstly the seniority list ought not to have been allowed to be taken exception to after 15 years and secondly the Tribunal should not have accepted the case of Joshi to hold her appointment to be of the year 1992 by ignoring the other documentary evidence on record. Thus, it is his contention that the findings recorded by the Tribunal are perverse and hence deserve interference.

7. Learned counsel for Smt. Sontakke also sought to take exception to the order impugned on similar grounds. However, he cannot dispute the fact that Smt. Sontakke was appointed on 14/06/1993 and that there is no dispute with regard to the said date of appointment.

8. Learned counsel appearing on behalf of Smt. Joshi

supported the impugned order. It is her submission that the list of seniority by itself does not create any right in teacher to get promotion and that faulty list of seniority can be subjected to challenge at appropriate time. It is her further submission that the cause of action arose for Smt. Joshi to take exception to the said seniority list only when the question arose with regard to the promotion of the teacher to the post of Supervisor in year 2013. It is submitted that the date of appointment and acquisition of necessary qualification would be decisive and not only the date of their entry into the service. It is pointed out from the documents on record that Smt. Joshi was appointed on 02/07/1992 and that she had requisite qualification of B.Com and B.Ed. at the time of the said appointment itself. In this regard, reference is made to Schedule F of Maharashtra Employees of Private Schools Act which indicates that for appointment as Assistant Teacher in secondary school, the qualification of B.Com is requisite qualification and according to her, undisputedly, she was B.Ed. at the time of her appointment. To support said submission, she placed reliance on judgment in case of *Mrs. Gaur Pratibha and others vs. The State of Maharashtra and others*, 2020(1) ALL MR 311. Similarly, reliance is placed on judgment in case of *Ku. Bhawana vs. State of Maharashtra*, AIR 2019 SC 238.

9. For the purpose of considering the submissions sought to be made across the bar, it would be necessary to take note of the facts

which are appearing from the documents placed on record before the Tribunal. Though it is claimed by Mr. Kulkarni that he was appointed in the year 1988 precisely on 29/08/1998, documentary evidence on record indicates that he was appointed on 29/08/1988 as untrained teacher and came to be appointed as Assistant Teacher on 01/07/1993. However, admittedly, he had acquired qualification of B.Ed. on 05/05/1993. Similarly, Smt. Sontakke was appointed on 14/06/1993 and she acquired B.Ed. qualification after her appointment i.e. on 21/07/1993 whereas the record indicates that the initial date of appointment of Smt. Joshi was 02/07/1992 and she acquired qualification of B.Com on 18/06/1987 and B.Ed. on 16/05/1991. Though it is sought to be argued on behalf of the Petitioners that Smt. Joshi never raised objection with regard to her date of appointment being shown as 14/06/1993, so also the same is appearing in the order of approval issued by the Education Officer. In this regard, it would be relevant to take note of the findings recorded by the Tribunal on the basis of documents placed before it. Before the Tribunal, apart from the appointment order dated 01/07/1992, joining report dated 02/07/1992 was placed on record by Smt. Joshi. This claim of Smt. Joshi is further supported by daily muster roll/catalog from July 1992 to June 1993. Thus, this is not the case of production of some documents i.e. the appointment letter which could be construed as false and fabricated document. Smt. Joshi thus has substantiated her case by placing cogent

material on record to indicate that she had worked in the school since July 1992 till June 1993, so also her acquisition of qualification before Mr. Kulkarni.

10. Though it is sought to be argued on behalf of the Petitioner the claim of Smt. Joshi is based upon false and fabricated documents, there has to be specific pleadings and proof thereof. The law on the point is clear to say that the plea of fabrication of document must be specifically raised and substantiated by cogent evidence. Apart from this the documents filed on record by Petitioner Mr. Kulkarni, create possibility that while preparing seniority list, mistake was committed. The seniority list (Pg.53) indicates date of appointment of Mr. Kulkarni as 13/06/1990 and he being continued in service till May 1993 as untrained teacher is not objected to by him. Now, however, it is claimed that he was appointed on 29/08/1988. Moreover, the communication dated 16/01/2013 (Pg 54) addressed by Mr. Kulkarni, while claiming post of Supervisor, indicates that he claimed to have acquired B.Ed. Before Smt. Joshi and Smt. Sontakke. These facts indicate that there was error in recording the facts about entry in service as well as date of acquisition of qualification in the seniority list. Thus, both Mr. Kulkarni and Smt. Joshi can not be said to have accepted the incorrect recording in the seniority list and it was open for them to seek correction thereof. Having regard to these facts, it cannot be said that claim of Smt. Joshi,

is an after thought or based upon false and fabricated documents.

11. Herein this case, contrary to proof of such fabrication, there is cogent material on record to hold that the appointment of Smt. Joshi is of July 1992 and that there is more than sufficient material more particularly in the form of the appointment order and the muster roll signed by her for the period from July 1992 till April 1993. This Court, therefore, finds that Mr. Kulkarni has failed to make out a case of fabrication of document as alleged.

12. Now question arises as to whether the claim of Mr. Kulkarni should be accepted for the purpose of determining seniority as he was appointed in the year 1988. Admittedly, though he was appointed in the year 1988, the said appointment was as untrained teacher. His appointment as Assistant Teacher is of 14.06.1993. The acquisition of qualification of B.Ed. by Mr. Kulkarni is on 05.05.1993. As against this, Smt. Joshi has substantiated her appointment and acquisition of qualification of B.Ed. on 16/05/1991. It would be fruitful to take note of the judgment of Division Bench of this Court in case of ***Mrs. Gaur Pratibha*** (supra) wherein it is observed as under :-

"Among Primary Teachers, the seniority is counted from the date of the teacher's joining service. On the other hand, among the Secondary Teachers, the seniority is counted based on when the teachers had been placed in a particular category-for their seniority stands graded

and categorized by the date of their very joining. This categorization is qualification-dependent. Placed in the descending order of category, the teachers rise in ranks of seniority with their additionally acquired qualifications under Guideline (2) of Schedule F, appended to Rule 12 of the MEPS Rules. Thus, a teacher who is a member of a lower category can in no manner rank senior to the teacher who is already a member of a higher category. Such a claim could be based neither on his continuous service nor on his acquiring the qualification and reaching the higher category. To be specific a teacher, for example, in Category D, E, or F, on later migration to Category C, cannot steal a march over a teacher already ensconced in that higher Category. That teacher's seniority by length of service and by his or her later acquiring the requisite, additional, or even superior qualifications does not defeat the right of teachers already found placed in Category C. What applies to Primary Teachers cannot apply to Secondary Teachers, for the Rules do keep these two streams of teachers unmixed. Therefore once the secondary teacher enter a common category from the different sources, their seniority must be reckoned from the date they enter the designated category i.e. from the date they acquire the necessary qualifications but not from the date of their entry into the service.

. Similarly fruitful reference can be made to the judgment in case of **Ku. Bhawani** (supra) wherein the Hon'ble Supreme Court has held that what would be relevant is acquisition of B.Ed. qualification and

thereby entry in category 'C'. Here in this case, admittedly, Smt. Joshi has acquired B.Ed. qualification prior to that by others and her seniority must be reckoned from the date of acquisition of qualification and not from date of appointment of others before they could acquire requisite qualification. Thus, rightly Smt. Joshi has been included in category 'C' much prior to inclusion of Mr. Kulkarni and Smt. Sontakke in the said category. Thus, there is no doubt that Smt. Joshi was senior to Mr. Kulkarni and Smt. Sontakke. The findings recorded by Tribunal in this regard are in consonance with the provisions of law and settled position of law. This Court therefore finds no substance in the challenge sought to be made by Petitioners to her seniority and consequently, right to get promotion before Petitioners.

13. With regard to the argument in respect of the delay in raising objection to the seniority list is concerned, in case of **K. R. Mudgal and others** it is held that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. It is further held that a government servant who is appointed to any post ordinarily should at least after period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of

insecurity. In the said case, the appellants had been put to the necessity of defending their appointments as well as seniority after nearly a three decades. In the facts of the said case, therefore it was held that the promotions should not be disturbed after a long lapse of time and Court should not entertain Petition challenging seniority after inordinate delay. The other judgments as relied upon by the learned Counsel for the Petitioner make reference to the judgment of Supreme Court in case *K. R. Mudgal and others.*

14. There cannot be any dispute with regard to the proposition of law laid down by the Hon'ble Supreme Court to say that any person who is promoted on the basis of a seniority list, should not be disturbed challenged of the seniority after inordinate delay. As far as present case is concerned, though seniority list used to be published for the substantial period, the question arose with regard to the correctness thereof only in or around 2013 when Smt. Joshi was entitled to be promoted as a Supervisor. In this backdrop, it cannot be said that there is any ordinate delay in taking exception to the seniority list. In any case, exception is taken to the seniority list has not resulted into dislodging any person who has been promoted on the basis of seniority. In considered view of this Court, therefore, the act of challenging seniority list at the time when the promotional post of of Supervisor was available cannot be faulted with.

15. As far as claim of Smt. Sontakke is concerned, admittedly not only she was appointed after Mr. Kulkarni and Smt. Joshi, but also has acquired B.Ed. qualification at later point of time than them. Thus, in any case her Petition sans merits.

16. Perusal of the judgment impugned indicates that the Tribunal has rightly taken into consideration the pleadings of the parties and evidence led before it and finding arrived at cannot be termed as perverse in order cause any interference therein. As a result of above discussion, both Petitions stand dismissed.

(R. M. JOSHI, J.)

ssp