



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

WRIT PETITION NO. 1645 OF 2024

Hemant Ramavatar Sharma

-Vs.-

State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders.
or directions and Registrar's orders.

Mr.S.U.Bhuyar, Adv.for the petitioner.
Mr. P.P.Pendke, AGP for the respondents-State.
Mr.B.G.Kulkarni, Adv. for the respondent Nos.3 and 4.
Mr.P.S.Tiwari, Adv. for the respondent No.5.

**CORAM : SMT. M. S. JAWALKAR &
PRAVIN S. PATIL, JJ.**

DATE : 24TH JUNE, 2025

By this petition, the petitioner questions the order dated 15/06/2020, passed by the respondent No.2-Joint Director of Higher Education, Nagpur Division, Nagpur, whereby it is held that respondent No.5 being senior by age, is entitled for the promotion against the vacant post of head clerk in respondent No.4-School.

2. The admitted facts of the present petition are that the petitioner and respondent No.5 came to be appointed against the post of junior clerk on the same date, i.e. 22/11/2008. So also, they were further promoted as a senior clerk on the same date, i.e. 23/07/2014.

3. It is an admitted fact in the present petition that the date of birth of the petitioner is 08/03/1981, whereas the

date of birth of respondent No.5 is 01/01/1974. Hence, from this fact, it is clear that respondent No.5 is senior by age to the petitioner.

4. In the present petition, respondent No.3-Management initially on 17/04/2018 forwarded the proposal of the petitioner for the post of head clerk with effect from 23/03/2018. However, the said proposal was reverted back by respondent No.2 on the ground that respondent No.5 being a senior to the petitioner, his proposal be forwarded for the post of head clerk.

5. The respondent Nos.3 and 4 for a considerable period did not forward the proposal of respondent No.5 to the office of respondent No.2. Therefore, respondent No.5 was constrained to prefer Writ Petition No.3222 of 2022 thereby seeking direction to the Management to forward his proposal for the post of head clerk.

6. During the pendency of the said petition filed by respondent No.5, respondent Nos.3 and 4 forwarded the proposal of respondent No.5 in the year 2023 to the office of respondent No.2. In view of proposal forwarded by the Management, the said writ petition came to be disposed of by this Court by order dated 13/07/2023.

7. The present petitioner on 20/07/2023 raised objection to the proposal of respondent No.5 on the ground that he being meritorious than respondent No.5, his claim should have been considered against the post of head clerk. He further raised an objection that departmental enquiry is proposed against respondent No.5 by the Management and

therefore, considering this factual aspect, the proposal forwarded to respondent No.2 by the Management be rejected.

8. In the backdrop of above said factual position, respondent No.2 by the order dated 15/06/2020 decided the proposal and thereby held that respondent No.5 being senior by age, which is not disputed in the matter, is entitled for the post of head clerk in respondent No.4-School.

9. It is stated that respondent No.4-School is governed by the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder. As per Schedule-F of the MEPS Rules, guidelines for fixation of seniority are provided. As per the said guidelines, particularly clause (3) Note-II, it is specifically stated that if the date of appointment of two or more persons in the same cadre happens to be the same, the person, who is senior by age shall be considered as senior. As such, the findings recorded by respondent No.2-Joint Director of Higher Education in the impugned order dated 15/06/2020 are in consonance with the provisions of law.

10. It is settled position of law that merely because of departmental enquiry is proposed against the employee, he is debarred from promotion to the higher post. Hence, merely because Management decided to conduct enquiry against respondent No.5 cannot be a reason to hold him disentitle from promotion. The Management is always at

liberty to take appropriate decision after completion of enquiry proceeding.

11. Accordingly, we are of the considered opinion that respondent No.2-Joint Director of Higher Education has rightly considered the controversy in the matter and held that respondent No.5 is senior than the petitioner. Hence, there is no need of any interference in the impugned order and accordingly, the petition being devoid of merits is hereby dismissed. No order as to costs.

12. In view of dismissal of the writ petition, the subsequent order passed by respondent No.2-Joint Director of Higher Education dated 22/05/2024 is also hereby quashed and set aside.

(PRAVIN S. PATIL, J) (SMT.M.S.JAWALKAR, J)