



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

WRIT PETITION NO. 194 OF 2025

1. Jayant Shikshan Sanstha, Amgaon (Railway),
Tahsil Amgaon, District Gondia, Through its
Secretary Dilip Baliram Meshram, R/o Vaishali
Nagar, Khat Road, Bhandara.
2. Nankaranand Ramanand Ramteke, Aged about
57 years, Occupation Service, R/o Shubham Nagar,
Gondia Road, Amgaon, Tahsil Amgaon,
District Gondia.

PETITIONERS

VERSUS

1. The Education Officer (Secondary),
Zilla Parishad, Gondia.
2. Manik Godaruji Kamble, Aged about 57 years,
Occupation Service, R/o Subham Nagar, Gondia
Road, Amgaon, Tahsil Amgaon, District Gondia.

RESPONDENTS

Shri A.Z. Jibhkate, Counsel for the petitioners.
Mrs. Kavita Bhondge, Assistant Government Pleader for the respondent no.1.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 15, 2025

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith. Learned Assistant Government Pleader Ms Kavita Bhondge waives notice of hearing for the respondent no.1. In view of the order proposed to be passed, service on the respondent no.2 is dispensed with.

Heard finally with consent of the learned counsel for the parties.

2. The challenge in the present writ petition is to the orders dated November 25, 2024 and December 27, 2024 passed by the respondent no.1-Education Officer whereby the proposal forwarded by the petitioner no.1-Jayant Shikshan Sanstha (for short, 'the Society') for grant of approval to the appointment of the petitioner no.2 on the post of Headmaster came to be rejected. By this petition, the petitioners are claiming directions against the respondent no.1-Education Officer to accord approval to the appointment of the petitioner no.2 as Headmaster with effect from November 01, 2024.

3. The facts, which are necessary for deciding the present writ petition, are as under:-

The petitioner no.1 is a registered Society and public trust which is managing the Panchsheel High School, Science and Arts Junior College in Tahsil Salekasa, District Gondia. The petitioner no.2 and the respondent no.2 were appointed as Assistant Teachers on June 01, 1995. The petitioner no.2 is holding academic qualification of B.Sc., B.Ed., whereas the respondent no.2 possesses qualification of B.A., B.Ed. The respondent no.2 is due for superannuation on January 31, 2026, whereas the petitioner no.2 is due to retire on March 31, 2026.

The post of the Headmaster fell vacant in the school upon superannuation of Shri R.M. Muneshwar, the then Headmaster and accordingly the Society passed a resolution in the meeting of the Managing Committee held on October 30, 2024 thereby resolving that the petitioner no.2 can be promoted to the post of Headmaster of Panchsheel

High School, Science and Arts Junior College. Said resolution speaks of qualification of 'Diploma in School Management' conducted by Yashwantrao Chavan Open University to be mandatory as per the Government Resolution dated June 13, 2005 and as such, the Society recommended the name of the petitioner no.2 for being appointed as Headmaster of the said school. Accordingly, the appointment order came to be issued to the petitioner no.2 based on which a proposal was submitted for grant of approval to the said promotion on November 04, 2024. Said proposal came to be rejected *vide* impugned order dated November 25, 2024 so also the revised proposal was rejected on December 27, 2024. As such, the petitioners have preferred the present writ petition.

4. Shri A.Z. Jibhkate, learned counsel for the petitioners would urge that the petitioner no.2 is senior to the respondent no.2 though they are appointed on the very same date as could be inferred from the seniority list which is produced on record. The petitioner no.2, holds qualification of B.Sc., B.Ed., which is considered to be higher to that of the respondent no.2, who holds qualification of B.A., B.Ed. He would invite our attention to the Government Resolution dated June 13, 2005 so as to claim that the petitioner no.2 holds additional qualification of Diploma in School Management conducted by Yashwantrao Chavan Open University and in such an eventuality the petitioner no.2 has to be held as more qualified than the respondent no.2. So as to substantiate the said contention, he would draw support from the Government Resolution dated June 13, 2005 which is produced on record at Page 73. He would further claim

that this Court is required to be sensitive to the fact that even if promotion is granted to the respondent no.2, who is not holding the prescribed qualification as per the Government Resolution dated June 13, 2005, he would not be able to acquire such qualification before his retirement.

The counsel for the petitioner would invite our attention to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, particularly Rules 3, 12 and Schedule-F appended thereto, to submit that the petitioner no.2 is senior to the respondent no.2 and that being so, the petitioner no.1 is justified in promoting the petitioner no.2 on the post of Headmaster. As such, it is claimed that the orders impugned are liable to be quashed and set aside.

5. As against above, Assistant Government Pleader Ms Kavita Bhondge would invite our attention to Rule 12 of the Rules of 1981 and Schedule-F appended thereto, to claim that in case where the teachers are holding same qualification and are appointed on the same date, the one who is senior in age has to be reckoned as 'senior' in the seniority list. According to her, the respondent no.1-Education Officer has followed the aforesaid provision while passing the impugned order. She would invite our attention to the language of the Government Resolution dated June 13, 2005 to claim that the improvement in the qualification viz. Diploma in School Management, can be acquired within a period of five years from the date of promotion. As such, she has sought for dismissal of the writ petition.

6. We have considered the rival submissions.

7. We are first required to be sensitive to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 and the Rules of 1981 framed thereunder. The petitioner no.1 is the Society managing the affairs of a private school and is required to fill-in the vacancy of the post of Headmaster in a manner prescribed from the eligible employees. Section 6 of the Act of 1977 casts an obligation on the head of a private school. Under Section 16 of the Act of 1977, the Rules of 1981 are framed and Rule 12 of the said Rules provides for the seniority list to be maintained of the teaching staff including that of Headmaster, Assistant/Deputy Headmaster and the non-teaching staff in the school in accordance with the guidelines laid down in Schedule-F, appended thereto. It is mandatory to circulate the seniority list amongst the members of the staff concerned and to obtain their signatures for having noted the same. A change in the seniority list subsequent thereto is necessary to be brought to the notice of the members of the staff concerned by obtained their signature for having noted such change.

Apart from above, the objections to the seniority list are required to be taken into consideration by the Society and disputes, if any, in the matter of *inter se* seniority, are required to be referred to the Education Officer (Secondary) for the decision. Sub-Section 9 of Section 2 defines 'head of a school' or 'head' which means a person by whatever name called, in-charge of academic and administrative duties and functions of a school conducted by the Society and recognized under this Act and includes a Headmaster.

8. If we peruse Schedule-F appended to Rule 12 of the Rules of 1981, the same provides for the guidelines for fixing the seniority of the teachers in secondary schools, junior colleges of education. Clause 2 of Schedule-F is worth referring to. Under the said Clause, in Note-3, it is provided that in case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age, would be treated as senior. In the aforesaid background, we are required to analyze the contentions raised by the counsel for the petitioners.

9. We are required to adjudicate as to whether the reasons recorded by the respondent no.1-Education Officer in the impugned communications dated November 25, 2024 and December 27, 2024 could be germane to the cause. In the aforesaid communications, the respondent-Education Officer has noted that the petitioner no.2 and the respondent no.2 were appointed on June 01, 1995 and the date of birth of the respondent no.2 is January 19, 1968 whereas that of the petitioner no.2 is March 16, 1968. As such, the respondent no.2 is senior by age to the respondent no.2. The fact about the seniority by age of the respondent no.2 to that of the petitioner no.2 is not disputed by the counsel for the petitioners. What is disputed by the counsel for the petitioners by relying upon the seniority produced at Page 87 is that the petitioner no.2 is shown to be senior to the respondent no.2. The said seniority list is claimed to have been published on December 10, 2024 and the respondent no.2 has objected to the said seniority list as could be noticed from the perusal of the same. If we consider the other seniority lists at Annexure-8, we have a little doubt

about the same being the genuine seniority lists as the said seniority lists are not drawn as per the date of appointment of the employees. Though the petitioner no.2 and the respondent no.2 were appointed on June 01, 1995, one Shri T.K. Chaudhari, who was appointed on June 01, 1993 is shown to be senior only to the respondent no.2. The seniority lists produced on record needs to be discarded being not correct seniority lists.

In this backdrop, if we consider the fact that the respondent no.2 is senior to the petitioner no.2 by age, the petitioner no.2 and the respondent no.2 having been appointed on the very same date i.e. June 01, 1995 and that they are holding similar educational qualifications, as per Note-3 of Schedule-F appended to Rule 12 of the Rules of 1981, the finding recorded by the respondent-Education Officer that the respondent no.2 being senior by age to that of the petitioner no.2 is quite justified. In this background, it has to be held that the finding recorded by the respondent-Education Officer is in tune with Rule 12 of the Rules of 1981 and Schedule-F appended thereto. As such, the finding recorded by the respondent-Education Officer cannot be faulted with.

10. This takes us to the next submission of counsel for the petitioner that the higher qualification being held by the petitioner no.2 is in accordance with the mandate provided under Government Resolution dated June 13, 2005. The said resolution contemplates that the candidate who are going to be appointed on the post of Headmaster and Deputy Headmaster are required to acquire the qualification of Diploma in School Management conducted by Yashwantrao Chavan Open University. The said Government

Resolution came to be issued having regard to promote such person who can handle the administration of the school in a best manner which will have positive impact on the quality of education to be imparted to the students. In the said Government Resolution, it is provided that the Diploma in School Management is mandatory for the teachers who would be appointed as Headmaster and Deputy/Assistant Headmaster with effect from Academic-Sessions 2004-05. It is further mandated that the said qualification is to be acquired within a period of five years for such Headmaster and Deputy/Assistant Headmaster who are appointed after 2004-05. The Government Resolution in categorical terms provides that the Headmaster or Deputy/Assistant Headmaster who is promoted or who is qualified for such promotion shall be required to acquire Diploma in School Management from their own financial resources. As such, if we consider from the language employed in the aforesaid Government Resolution, it is not mandatory in nature to hold the qualification of Diploma in School Management before seeking the promotion to the post of Deputy/Assistant Headmaster or Headmaster. Rather such qualification can be said to be impermissible to be acquired within a period of five years by such candidates who are going to be appointed as Headmaster or Deputy/Assistant Headmaster.

11. In this background, it cannot be said that merely because the petitioner no.2 is holding the diploma in school management can be said to be holding higher qualification than the respondent no.2 and the Society was not justified in keeping the seniority of the respondent no.2

below that of the petitioner no.2. The qualification as prescribed in the Government Resolution dated June 13, 2005 is neither recognized under the Act of 1977 nor the Rules of 1981 framed thereunder. The qualification of acquiring a diploma in school management can be considered to be an additional qualification and upon plain reading of the same it can be said that such candidates who intend to be appointed as Headmaster or Deputy/Assistant Headmaster can acquire the same within a period of five years. If the contention of counsel for the petitioner that the respondent no.2 does not hold qualification of Diploma in School Management and therefore would not be entitled to be considered for the post of Headmaster is concerned, we are required to be sensitive to the fact that the language of the Government Resolution dated June 13, 2005 is not penal in nature so as to disqualify a candidate from holding the post of Headmaster for not acquiring the Diploma in School Management. Rather it can be inferred that such candidates who are getting tenure of one year after their appointment as Headmaster or Deputy/Assistant Headmaster can make every effort to acquire such qualification.

In this background, the contention raised by the counsel for the petitioner that the respondent no.2 being less qualified than the petitioner no.2 cannot be held eligible for the post of Headmaster is misconceived as such contention cannot be substantiated from the Government Resolution dated June 13, 2005. Therefore, the aforesaid contention canvassed by the counsel for the petitioner is liable to be rejected.

12. Having regard to the aforesaid discussion, it has to be held that pursuant to Rule 12 of the Rules of 1981 and Note-3 under Clause 2 of Schedule-F, the finding recorded by the Education Officer that the respondent no.2 is senior to the petitioner no.2 has to be accepted and the same does not call for any interference. That being so, we deem it appropriate to dismiss the writ petition being devoid of merit.

13. As such, the writ petition stands dismissed. However we clarify that the petitioner no.1-Society should take immediate steps to issue promotion order to the respondent no.2 so as to avoid academic and the educational loss to the students.

14. Rule stands discharged. No costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)