

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 570 OF 2013

DISTRICT: - AURANGABAD.

Nitin S/o Kashinath Salunkhe,
Age-40 years, Occu. : service,
R/o.: M-2, N-9,
Sant Dnyaneshwar Nagar,
CIDCO, Dist.: Aurangabad.

.. APPLICANT

V E R S U S

- 1. The State of Maharashtra,**
Through its Principal Secretary,
Ministry of Tribal Development,
Mantralaya, Mumbai.
- 2. The Commissioner,**
Tribal Development,
Amravati, Dist.: Amravati.
- 3. The Project Officer,**
Tribal Development,
Dist.: Aurangabad.
- 4. The Head Master,**
Government Ashram School
(Secondary), Teesgaon,
Camp Wadner,
Tq. Kannad,
Dist.: Aurangabad.

.. RESPONDENTS.

APPEARANCE : Ms. Rebekah Daniel, learned Advocate
holding for Shri S.B. Talekar, learned
Advocate for the applicant.

: Shri B.S. Deokar – learned Presenting
Officer for the respondents.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN**
AND
: **ATUL RAJ CHADHA, MEMBER (A)**

RESERVED ON : **02.04.2019**

PRONOUNCED ON : **22.04.2019**

ORDER**[Per : Justice A.H. Joshi, Chairman]**

1. Heard Ms. Rebekah Daniel, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents.

2. The applicant has approached this Tribunal with the following prayers: -

“A. To grant promotion to the applicant either as Graduate Teacher (Secondary) from the category of O.B.C. candidates from the date of his eligibility i.e. 2007 as well as Education Extension Officer by issuing appropriate directions.

B. To direct the respondents No. 2 and 3 to decide the representations dated 25.12.2011, 18.12.2012, 01.02.2013 and 02.03.2013 preferred by the applicant claiming promotion as Graduate Teacher (Secondary) as well as Education Extension Officer.

C. To grant any other relief to the applicant in the facts and circumstances of the case as this Hon’ble Court deems fit.

D. To direct the respondents to grant the applicant deemed date of promotion on the post of Graduate Teacher Primary from the year 2007 and Graduate Teacher Secondary from the year 2010, and grant the arrears of salary, seniority and other consequential benefits to the applicant.”

(Quoted from page Nos. 13 & 13-A of paper book of O.A.)

3. At the outset, learned Advocate for the applicant states that in view of the judgment of Hon’ble Supreme Court in Civil Appeal No. 2425/2019 @ SLP (C) No. 5810/2017 decided on 1st March, 2019 [Coram

: Hon'ble Justice Dhananjaya Y. Chandrachud & Hon'ble Justice Hemant Gupta] relief of this nature - prayer 'B' is undesirable practice and, therefore, the applicant consciously withdraws the prayer 'D'. Hence, aspect need not be considered or dealt with.

4. While the applicant has prayed for relief that he be promoted as Education Extension Officer, he has a duty to:-

- (i) Plead and show the recruitment rules for the post of Education Extension Officer;
- (ii) Show that there exists a cadre of Education Extension Officer in the department of respondent Nos. 1 & 2.

5. Affidavit in reply contains the following averment: -

"17. As regards to para No. 3 (18) of the Original Application, I say and submit that, no meeting was held 10-8-2009 in respect of promotions of the Graduate Primary Teacher, Block Education Officer, Secondary Teacher and Primary Teachers, and Primary Head Master. I say and submit no junior than the applicant has been promoted up to 2013, as such no prejudice or injustice has been caused to the applicant. I say and submit that, in future as per seniority cum merit the applicant will be considered for promotion.

23. As regards to para no. 3 (27) of the Original Application, I say and submit that, no meeting was held 10-8-2009 in respect of promotions of the Graduate Primary Teacher, Block Education Officer, Secondary Teachers and primary Teachers, and Primary Head Master. I say and submit no junior than the applicant has been promoted up to 2013, as such no prejudice or injustice has been caused to the applicant. I say and submit that, in future as per seniority cum merit the applicant will be considered for promotion."

(Quoted from pages 90, 92 & 93 of paper book of O.A.)

6. In the affidavit in reply to the amendment of O.A filed on behalf of the respondent Nos. 1 to 3, the respondents have pleaded as follows :

"05. As regards to the contents of Para No. 26-B & 26-C of the Original Application, I say and submit that the list of service seniority published on 01/01/2007 as per letter issued by Amrawati Regional Department for B.A., B.Ed., D.Td. qualified primary teachers, the name of Shri H.S. Bodhe is on Sr. No. 22, Shri A.P. Gharde is on Sr. No. 21, Shri D.B. Ghanmode is at Sr. No. 23, Shri S.B. Thakre is at Sr. No. 29 and Shri A.B. Bhanburkar is at Sr. No. 31, on the contrary the name of Shri Nitin Kashinath Salunke i.e. applicant is at Sr. No. 54 in the said list dated 01/01/2007. The copy of said list is annexed herewith and marked as EXHIBIT R-1.

I further say and submit that, in the year 2008 the list dated 01/01/2007 considered by Divisional Promotion Committee meeting dated 16/01/2008 at the time of promotion of graduate primary teacher, the promotion given to senior employees than Shri. Nitin Kashinath Salunke, and there was no any junior employees were promoted.

*06. As regards to the contents of Para No. 26-D of the Original Application, I say and submit that the present applicant i.e. Shri Nitin Kashinath Salunke is qualified in "SHIKSHA VISHARAD" is equal as B.Ed Degree and this educational report sent to Project Officer, Tribal Development Project, Aurangabad through Headmaster, Government Ashram School, Tisgaon, Taluka Khultabad, District Aurangabad. It is further submitted that, before submission of above report meeting of Divisional Promotion Committee was held on 21st December, 2010 and therefore in meeting of Divisional Promotion Committee, the promotion of Shri. Nitin Kashinath Salunke was not considered. The copy of above said report submitted by Headmaster, Government Ashram School, Tisgaon is annexed herewith and marked as **EXHIBIT R-2**.*

07. As regards to the contents of Para No. 26-E & 26-F of the Original Application, I say and submit that the proposal of incidental benefits received this office as per letter bearing No. 4904 dated 10/11/2017 issued by Project Officer, Tribal Development Project, Aurangabad. And therefore, it is not true to say that, in the year

2014 the promotion held of Shri. Jadhav, Shri Ruidhe and Shri. Ankale instead of present applicant Shri Nitin Kashinath Salunke. It is also submitted that, as per Divisional Promotion Committee meeting held on 20/10/2015 the present applicant Shri. Nitin Kashinath Salunke promoted as Secondary Teacher on 20/02/2016. That, as per Government Resolution of general administration department bearing No. MRV-2002-/P.K.2/2002/12 dated 6th June, 2002 therein Para No. 2 mentioned therein some condition required for promotion as well as all condition mentioned in circular dated 6th June, 2002.

I further say and submit that, as per the G.R. dated 06.06.2002 the deemed date of seniority the competent authority is Commissioner, Nashik to take decision on deemed date of seniority. It is necessary to add Commissioner, Nashik as party respondent. The applicant is not eligible as per the G.R. dated 06.06.2002, particularly para 3 of the said G.R. dated 06.06.2002. The copy of said G.R. dated 06.06.2002 is annexed herewith and marked as **EXHIBIT R-3.**"

(Quoted from page Nos. 123 to 125 of paper book of O.A.)

7. It shall thus be evident that plea of respondents is that none of the junior to the applicant in his cadre from his class have been promoted. Respondents have shown the copy of the orders placed on record by the applicant at Page Nos. 111 & 115 that the Primary Teachers who are promoted as Secondary Teachers belong to various reservation cadres.

8. The statement contained in the Respondents' affidavit, which is quoted herein before contains adequate assurance that applicant's candidature for promotion as Teacher in High School, would be considered as and when vacancy is available and an occasion to do so occurs.

9. In view of the rival contentions, which are dealt with herein before and the applicant has failed to make out the issue of order in the nature

of writ of mandamus. Hence, the present Original Application is disposed of by keeping applicant's claim open for decision in due course.

10. The parties are directed to bear their own costs.

MEMBER (A)

CHAIRMAN

PLACE : AURANGABAD.

DATE : 22.4.2019

O.A.NO.678-2017(DB-Promotion)-HDD-2019