



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.948 OF 2017

Javed Khan Salim Khan

Age : 30 Years, Indian Inhabitant,
 Occupation : Service Shikshan Sevak,
 State Secretary of Maharashtra Rajya
 Urdu Shikshan Sevak Kruti Samiti,
 1365, 4th Floor, Amir Khan Building,
 Gaibi Nagar, Bhiwandi, District : Thane,
 421 302.

...Petitioner

Versus

1. **The State of Maharashtra**
 (Through Education Department),
 Mantralaya, Mumbai : 400 032.
2. **The Director of Education (Primary),**
 Government of Maharashtra, Pune.
3. **The Commissioner,**
 Examination Council, Maharashtra State,
 Pune.
4. **The Education Commissioner,**
 Balbharti, Senapati Bapat Marg,
 Pune : 411 004.
5. **Municipal Commissioner,**
 Bhiwandi Nizampur City Municipal
 Corporation, New Building, Old Sp Stand,
 Old ST Road, Opp. Rajiv Gandhi Fly Over,
 Old Zakat Naka Gokul Nagar,
 Bhiwandi : 421 302.
6. **Head Master,**
 Bhiwandi Nizampur City Municipal
 Corporation Urdu School No.101,
 Shanti Nagar, Bhiwandi : 421 302.

...Respondents

Mr.A.A.Maniyar, Advocate for Petitioner.
 Smt.M.S.Bane, AGP, for the Respondent Nos.1 to 4 – State.
 Mr.Narayan Bubna, Advocate for Respondent No.5.

CORAM : M.S.KARNIK &
 S. M. MODAK, JJ.
 DATE : 3rd FEBRUARY 2026

ORAL JUDGMENT : (PER : M.S.KARNIK, J.)

1. By this Petition, under Article 226 of the Constitution of India, the Petitioner seeks direction to the Respondent No.5 – Municipal Commissioner, Bhiwandi Nizampur City Municipal Corporation (“Corporation” for short) to count the seniority of the Petitioner from the date of the declaration of the result of “*Common Entrance Test*” (“CET”) dated 1st June 2010 and pay the salary as per the scale applicable to the Petitioner after taking into consideration the seniority of the Petitioner.

2. The facts of the case in brief are that on 16th December 2009, the State of Maharashtra issued a Government Resolution (“GR”) whereby the CET was prescribed for selection and appointment of “*Shikshan Sevak*” in Primary Schools in Maharashtra. The Petitioner applied and appeared for CET on 2nd May 2010. The results of CET were declared

on 1st June 2010. The Petitioner scored 102 marks which were less than cut off marks i.e. a score of 110.

3. Writ Petition No.1829 of 2011 was filed by another candidate raising grievance about the conduct of examination. This Court by the order dated 5th May 2011 directed the State to constitute an Authority for deciding the grievances of the candidates. The Government of Maharashtra passed two Resolutions dated 4th July 2011 and 22nd July 2011 and formed "*Takrar Nivaran Samiti*" ("Grievance Committee", hereinafter).

4. The Petitioner also filed his grievance about improper checking of the answer-sheet. The Grievance Committee published the revised results on 25th September 2012. The Petitioner was awarded 112 marks which were more than cut off marks of 110. The Petitioner was interviewed on 11th June 2014 and thereafter, appointment order was issued. The Petitioner was issued joining letter whereupon he joined the services.

5. It is the grievance of learned counsel for the Petitioner that he lost a total period of 4 years on account of mistake made in checking his answer-sheet by the Education Department. The Petitioner sent a letter dated 7th October 2015 to Respondent Nos.1 to 4 regarding the

loss of 4 years and requesting the rectification of the mistake in calculating his seniority. The Petitioner filed comprehensive representation on 20th June 2016 through his Advocate to all the Respondents calling upon them to calculate his seniority from the year 2010.

6. Learned counsel for the Petitioner submitted that it is because of the mistake of the Respondents that the Petitioner's appointment was delayed. The Petitioner should not be made to suffer for the mistake committed by the Respondents. In support of his submissions, learned counsel for the Petitioner relied upon the decision of the Hon'ble Supreme Court in *Rajesh Kumar and Others V/s. State of Bihar and Others*¹ and in *Pawan Kumar Agrawal & Anr. V/s. State of Chhattisgarh & Ors.*² Relying on the aforesaid decisions, it is submitted that the unjustified action of the Respondents should not cause prejudice to the Petitioner.

7. Learned AGP and learned counsel for the Corporation submitted that the Petition be dismissed as the Petitioner has no vested right to be appointed from the date claimed by him. It is further submitted that the right in favour of the Petitioner would accrue only from the date of

1 (2013) 4 Supreme Court Cases 690

2 Civil Appeal No.____ of 2025 (Arising out of Special Leave Petition (Civil) No.____ of 2025) (D.No.23536 of 2020) decided on 23rd April 2025.

his appointment. It is the contention that there is delay on the part of the Petitioner in raising grievance.

8. We have heard the learned counsel. We have perused the memo of the Petition and the relevant materials on record.

9. The Petitioner was appointed as a "*Shikshan Sevak*". The appointment as "*Shikshan Sevak*" in terms of the Government Resolution is for a period of 3 years. No doubt, the appointment as a "*Shikshan Sevak*" is made after following the procedure laid down in the GR. It is after completion of 3 years of service as a "*Shikshan Sevak*" that the Petitioner is entitled to claim the seniority as an "*Assistant Teacher*" from the date of original appointment as a "*Shikshan Sevak*".

10. It is not the Petitioner but some other aggrieved candidates had filed Writ Petition No.1829 of 2011 which led to the constitution of the Grievance Committee for examining the grievances of the candidates who had applied for the said post. Though the results were declared on 1st June 2010 wherein the Petitioner had scored less than the cut off marks, it was only after the Grievance Committee was constituted on 22nd July 2011 that the Petitioner made a grievance about the improper checking of his answer-sheet. The Grievance

Committee published the revised results on 25th September 2012 when the Petitioner was awarded 112 marks which were more than the cut off marks. It is on this basis that the Petitioner was interviewed and thereafter, the appointment order was issued on 11th June 2014.

11. At the first blush, the grievance of the Petitioner seems to be justified. Learned counsel for the Petitioner submitted that due to the mistake committed by the Respondents, the Petitioner should not be made to suffer. No doubt, it is true that had the Petitioner's paper been checked properly, the Petitioner may have received an advantage of four years so far as seniority for the said post is concerned. Factually, the Petitioner came be appointed only on 11th August 2014.

12. As indicated earlier, though the results were declared on 1st June 2010, it is only after 22nd July 2011 that the Petitioner made grievance about improper checking of his answer-sheet upon constitution of the Grievance Committee, which was so constituted as a result of the Petition filed by some other candidates. Even the Petitioner's appointment as a "*Shikshan Sevak*" is on temporary basis i.e. for a period of 3 years. It is after the period of 3 years that the Petitioner was appointed as "*Assistant Teacher*" with the seniority as "*Assistant Teacher*" relating to back to the appointment as a "*Shikshan Sevak*".

13. By this Petition, the Petitioner wants the benefit of seniority four years prior to the actual date of his appointment, in view of the mistake committed by the Respondents in checking the answer-sheet. There does appear some substance in the Petitioner's case that had the answer-sheet checked properly by the Education Department in the first attempt, the Petitioner could have been appointed much earlier. The question is, in absence of any rule being brought to our notice, whether the Petitioner could be granted such a benefit when he has not even discharged the duties during this period as he was not even borne in the cadre. In absence of any provision being brought to our notice, we find substance in the submission of learned counsel for the Respondents that the Petitioner cannot claim any right to be appointed from the date claimed by him, even though there may be a mistake in correcting the answer-sheets. It is a settled principle that an employee cannot be generally given seniority from a retrospective date when he is not yet '*borne in the cadre*'. Seniority in this case will have to be granted from the date when the Petitioner was first appointed.

14. Learned counsel for the Petitioner heavily relied upon the decision of the Hon'ble Supreme Court in ***Pawan Kumar Agrawal & Anr. V/s. State of Chhattisgarh & Ors.*** (supra) in support of his case.

Let us refer the relevant facts before the Hon'ble Supreme Court. The seniority of the Appellants was reckoned from the date of their appointment. The claim was for grant of seniority vis-a-vis those candidates who were appointed prior to the date of the order of the High Court i.e. 2nd May 2012. The Writ Petition filed by the Appellants before the High Court was decided on 2nd May 2012. The Hon'ble Supreme Court observed that the State ought to have appointed the appellants within a reasonable time. Though the State who had challenged the order of the High Court in SLP, the order of the High Court was never stayed by the Supreme Court. The SLP was dismissed by the order dated 30th November 2012 whereas for a period of around 8 months, no action was taken by the State in issuing an order of appointment to the appellants. In 2012, the batch was appointed on 10th July 2012, after a period of more than 2 months from the date of the order of the High Court. In such circumstances, the Hon'ble Supreme Court held that the right to be appointed accrued to the appellants on the date of the order of the High Court i.e. on 2nd May 2012. The period between the date of the order of the High Court and the appointment of the batch of 2012 is more than 2 months. It was observed by Their Lordships that during the said period, the

respondent-State could very well have fulfilled the necessary formalities like police verification, etc., and issued an order of appointment to the appellants. It is, in such circumstances, that the Supreme Court was of considered opinion that the delay in giving effect to the order of the High Court dated 2nd May 2012 by the State Government should not be permitted to act to the prejudice of the appellants. The decision in *Pawan Kumar Agrawal & Anr. V/s. State of Chhattisgarh & Ors.* (supra) is therefore distinguishable on facts.

15. Learned counsel for the Petitioner then relied upon the decision of the Hon'ble Supreme Court in *Rajesh Kumar and Others V/s. State of Bihar and Others* (cited supra). This decision is relied upon by the learned counsel for the Petitioner to contend that the Petitioner's appointment could relate back and he could be given continuity of service but without back wages or incidental benefits. In our considered opinion, the decision in *Rajesh Kumar and Others* (supra) is distinguishable on facts. The Hon'ble Supreme Court had observed that in case the names of the appellants figure in the merit list, their appointments were directed to relate back from their earlier selections with continuity of service but without back wages and for incidental benefits. Present is not a case where the Petitioner was selected. It is

after he passed the examination that the right accrued in his favour to be considered. Thus, the Petitioner's seniority has to be reckoned from the date of initial appointment as a "*Shikshan Sevak*". The Petitioner was not prompt in raising the grievance as regards the incorrect assessment of his answer-sheet and it is only after the Grievance Committee was formed that the Petitioner raised the dispute. Merely because upon rechecking of his answer-sheet, the Petitioner succeeded in getting more marks than the prescribed cut off, would not confer a vested right on him to claim his seniority from an earlier date. We, therefore, do not find any merit in this Petition. The Petition is dismissed.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)