

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6094 OF 2004
WITH
CA/4308/2010 IN WP/6094/2004
WITH
CA/124/2013 IN WP/6094/2004**

Ayyub Khan Raje Khan Pathan,
age 39 years, Occ. Service,
R/o Ajintha, Tq. Sillod,
District Aurangabad.

Petitioner.

Versus

1.The State of Maharashtra
Through Secretary, Rural
Development Department
Mantralaya, Maharashtra State,
Mumbai.
(Copy to be served on Government
Pleader, High Court of Bombay
Bench at Aurangabad.)

2.The Education Officer (Secondary)
Zilla Parishad, Aurangabad.
Tq. & Dist. Aurangabad.

3.Urdu Education Society,
Shivana, Tq. Sillod, Dist. Aurangabad.

4.Salim Urdu High School, Shivana,
Tq. Sillod, Dist. Aurangabad.
(Through its Head Master).

5.Syyed Rajiuddin Syyed Burhanuddin,
age 34 years, Occ. Service,
R/o Salim Urdu High School,
Shivana, Tq. Sillod, Dist. Aurangabad.

Respondents

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Advocate for Petitioner : Mr. Vivek Dhage
AGP for Respondents 1,2 : Mr. A.R.Kale
Advocate for Respondent 5 : Mr. S.B. Talekar

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

Dated: October 14, 2015

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ORAL JUDGMENT :- (Per A.V. Nirgude, J.)

1. This petition challenges the order dated 21.8.2004, issued by the Education Officer, Secondary, Zilla Parishad, Aurangabad holding that, respondent No.5 was senior and was therefore entitled to higher pay scale than the petitioner. The question as to who amongst the petitioner and respondent No.5 was entitled to higher pay scale (trained graduate teachers pay scale) is required to be decided in the light of Government Resolution dated 9.7.1987 and 17.12.1991. First Government Resolution dated 9.7.1987 tells us that, for filling up the post of trained graduate teacher in secondary school, trained graduate teachers already working in the school under non graduate pay scale should be first considered as per seniority. If, such teachers are not available and if vacancy arises, the teachers who were already in service of the school, but, after acquiring graduation should be considered for filling up the said vacancy. The Government Resolution further mentions that the date on which such vacancy becomes available but not filled up, a non graduate teacher who acquires graduation subsequent to that date would not be able to claim right to fill up the vacancy.

2. The facts of this case are as under :-

For the first time post of graduate teacher become available on 16.7.1988. On that date, the petitioner was already graduate and trained teacher. Respondent No.5 acquired graduation in the year 1991. The Management did not fill up the post which fall vacant in the year 1988 till 1992. The impugned order favoured respondent no.5 mainly because he was senior in service than the petitioner. The only other difference between the petitioner and respondent No.5 is as said above. The petitioner had acquired graduation earlier in time. Therefore, the question before the Education Officer was whether the petitioner's acquiring the graduation earlier in time would decide as to who would take the vacant post. The Government Resolution clearly lays down a rule that a teacher who acquires graduation earlier in time would get preference even though he is junior than other teachers.

3. In view of this, the petitioner's case was meritorious than respondent No.5. At interim stage, this court protected the petitioner and since then he is getting higher pay scale. Respondent No.5 did not get higher pay scale because of the order of the court from 2004 onwards. We asked the parties as to whether there occurred any change since 2004,

whether respondent no.5 had also acquired higher pay scale due to passage of time or due to increase in number of posts in higher pay scale. The answer came in negative. We are, however, inclined to allow the petition for the reasons mentioned above.

4. In light of the above, writ petition stands allowed in terms of prayer clause 'B'. Rule is accordingly made absolute in above terms.

5. In view of disposal of writ petition, pending civil applications stand disposed of. No costs.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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aaa/-