

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6814 OF 2010

Gajanan s/o Gopalrao Surayawanshi

Age : 55 Years, Occ Service

R/o-Shendurni, Tq-Jamner,

District-Jalgaon.

... Petitioner

Versus

1. The State of Maharashtra through its Secretary, School Education Department, Mantralaya, Mumbai.

(Copy to be served on Government Pleader,
High Court of Judicature of Bombay, Bench
at Aurangabad)

2. The Deputy Director of Education,
Nashik Region, Nashik.
3. The Education Officer (Secondary)
Zilla Parishad, Jalgaon.

4. The Shendurni Education Society Sanchlit
Aacharya G.R. Garud Secondary School
and Junior College, Shendurni,
Tq-Jamner, District-Jalgaon,
Through its Head Master.

... Respondents

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Miss Surekha Mahajan, Advocate for petitioner

Mr. S. D. Kaldate, A.G.P. for respondent Nos. 1 to 3

Mr. Sandeep Rathod h/f Smt. Varsha Kapse, Advocate for
respondent No. 4

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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

**Date of reserving Judgment : 9th OCTOBER, 2015
Date of pronouncing Judgment : 15th OCTOBER, 2015**

JUDGMENT (PER V. K. JADHAV, J.) :-

1. Brief facts of this case can be narrated as under :

The petitioner was appointed in respondent No. 4 Government aided school, as a Librarian full time w.e.f. 01.12.1977. At that time, the petitioner was having educational qualification of Certificate Course in Library Science from Nagpur University, which is equivalent to Diploma in Library Science. The petitioner had improved his qualification as B.A. Graduate on 27.06.1982. Subsequently, the petitioner had made a request to respondent No. 4 for grant of Trained Graduate scale. In response to the said request, the Senior Auditor, Education Department, Zilla Parishad, Jalgaon, by letter/order dated 28.09.1987, granted and confirmed the Trained Graduate scale of Rs.365-760 to the petitioner. However, on 01.01.1990, the Senior Auditor, Education Department, Zilla Parishad, Jalgaon, cancelled the said Trained Graduate pay scale granted to the petitioner, under the pretext that the petitioner was not holding Degree at the time of his appointment in the year 1977 and he became graduate on 27.06.1982. Hence this petition.

2. The learned counsel for the petitioner submits that due to non-consideration of educational qualification of the petitioner, he is kept away from the legitimate claim of Graduate Pay scale. The learned

counsel further submits that the authorities have not correctly interpreted Rule 7 and Part VIII of Schedule "C" the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter, for brevity, referred to as "Rules of 1981"). The learned counsel further submits that the Director of Education, Maharashtra State, Pune, by circular dated 24.10.1979, has made it clear that the Librarians, who are holding qualification of graduation with Library Science, Degree or Diploma, even though they are appointed subsequent to 21.08.1978, are entitled for the higher pay scale. The learned counsel further states that the Librarians, who are graduate but do not have Degree or Diploma in Library Science and who are appointed subsequent to 21.08.1978 are not entitled for the said pay scale. The petitioner is therefore, entitled to the pay scale of Rs. 365-760 which was initially granted and subsequently cancelled by interpreting the said Part VIII of Schedule "C" of the Rules of 1981 erroneously. The learned counsel further submits that the petitioner has retired in the year 2012 on superannuation. The petitioner has submitted an application requesting respondent No. 3 to grant him higher pay scale. However, the inaction on the part of respondent Nos. 1 to 4 in delaying pay fixation work of the petitioner in regular pay scale caused great monetary loss to the petitioner. The learned counsel, in support of her submissions, placed reliance in a case of **Shobhu Shankar Chavan Vs. Headmaster, Maharashtra**

Vidyalaya, Barsi, District Solapur and others, bearing writ petition No. 5938 of 1998 and also the decision of the Division Bench of this Court dated 28.04.2011 in a case of **Sachin Shankar Divkar Vs. State of Maharashtra and Others**, bearing writ petition No. 177 of 2011 along with connected writ petitions.

3. The learned A.G.P. for respondent Nos. 1 to 3 submits that in view of the provisions of Schedule "C" of the Rules of 1981, up-gradation of the post of Librarians, who are appointed prior to 27.12.1979, is permissible. The said up-gradation is permissible to the candidates who are appointed prior to 27.12.1979 if they are holding educational qualification of Graduate with Diploma or Degree in Library Science. The learned AGP further submits that in the case in hand, the petitioner has acquired educational qualification of B.A. on 27.06.1982. The petitioner was not found entitled for the higher pay scale after verification at the level of the office of the Senior Auditor, and accordingly, the pay fixation done earlier came to be revoked. The learned AGP further submits that the pay fixation of the petitioner has been done as per Schedule "C" of the Rules of 1981 and in view of the circular dated 24.10.1979. The learned AGP, thus, submits that the writ petition is devoid of any merits and is liable to be dismissed.

4. The learned counsel for respondent No. 4 submits that as per

the Government Resolution dated 24.10.1979 and as per Rule 7 r/w Schedule "C", Part VIII of the Rules of 1981, the petitioner is entitled for Graduate Pay Scale and accordingly, proposal of the petitioner was forwarded to respondent No.3, however, the same has not been considered by respondent No.3. The learned counsel for respondent No. 4 submits that respondent No. 4 is supporting the case of the petitioner.

5. We would like to advert to the condition specified in Part VIII of Schedule "C" of the Rules of 1981. The same reads thus;

Sr. No. 1	Category 2	Payscale 3. Rs.
1.....		
2.....		
3	Librarian-	
	(i) Matric or S.S.C. with Certificate in Library Training awarded by the Directorate of Libraries.	1200-2040
	(ii) Graduate with the Diploma or Degree in Library Science appointed before 27-12-1979 (including persons who are graduate with the Certificate in Library Training and are appointed on or before 21-8-1978).	1400-2300
4.....		

The petitioner came to be appointed as Librarian on 01.12.1977. At the time of his appointment, the petitioner was having

qualification of Diploma in Library Science. The petitioner has acquired graduation in Bachelor of Arts in the year 1982. As per the circular issued by the Director of Education, Maharashtra State, Pune, dated 24.10.1979, the Librarians, who are holding qualification of graduation with Library Science, Degree or Diploma, even though they are appointed subsequent to 21.08.1978, are entitled for the pay scale of Rs. 365-760. However, the Librarians, who are graduate but do not have Degree or Diploma in Library Science and who are appointed subsequent to 21.08.1978 are not entitled for the said pay scale. Since the petitioner possessed Diploma in Library Science, he is entitled for the pay scale of Rs.365-760 which was initially granted to him. In the year 1982, when the petitioner had acquired qualification of Bachelor's Degree in Arts, from that date, he was entitled for the said pay scale as specified in the above stated Rules, irrespective of his date of appointment.

6. In the case of **Sachin Shankar Divkar Vs. State of Maharashtra and Others**, bearing writ petition No. 177 of 2011 along with connected matters, this Court, after observing the similar condition specified in Government Resolution dated 01.10.1988 which has become part of Maharashtra Civil Services (Revised Pay) Rules, 1988, and after referring to the case of **Shobhu Shankar Chavan** (*supra*), held that the person who has been appointed as

Librarian possessing qualification of Graduation in Bachelor of Librarian Science is entitled to get revised pay scale as specified therein, irrespective of his date of appointment.

7. In the case in hand, by order dated 01.01.1990, the Senior Auditor, Education Department, Zilla Parishad, Jalgaon, misconstrued the aforesaid Rule and held that since the petitioner has acquired Bachelor's degree in Arts on 27.06.1982, the petitioner is not entitled for the pay scale of Rs.365-760, and accordingly, cancelled the earlier order dated 28.09.1987.

8. In the light of the above discussion, we allow the writ petition. Respondent No. 2 is hereby directed to carry out pay-fixation of the petitioner in the pay scale of Rs.365-760 w.e.f. 27.06.1982 till this date, with all benefits of senior scale and the scale as per the 5th and the 6th Pay Commission in terms of prayer clause "B" of the writ petition.

9. Rule is made absolute in the above terms. The writ petition is disposed of. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)