

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

WRIT PETITION NO.8947 OF 2013

Gorakh s/o Sadashiv Misal,
Age: 43 Years, Occ: Service,
R/o. Chobe Bungalow,
Near Jijamata School,
Kurduwadi Road, Paranda,
Tq. Paranda, Dist. Osmanabad

PETITIONER

VERSUS

- 1] State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai
- 2] The Deputy Director of Education
Latur Division, Latur
- 3] The Education Officer [Secondary],
Zilla Parishad, Osmanabad
- 4] The Headmaster,
Mahtma Gandhi Vidyalaya,
Paranda, Tq. Paranda,
Dist. Osmanabad
- 5] Arun s/o. Prlhad Autade,
Age: 55 Years, Occu. Service,
Presently working as Assistant Teacher
in Ravindra High School, Bhoom,
Tq. Bhoom, Dist. Osmanabad

RESPONDENTS

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Mr. S.R.Barlinge, Advocate for the Petitioner
Mr. V.H.Dighe, AGP for the Respondent Nos.1 to 3
Mr. A.N.Nagargoje, Advocate for the Respondent Nos.4 & 5

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**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Dated: 6th October, 2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard the learned counsel appearing for the petitioner, the learned AGP appearing for the Respondent Nos.1 to 3, and the learned counsel appearing for the respondent Nos. 4 and 5.

2] The learned counsel appearing for the petitioner submits that, the petitioner was selected for the post of Assistant Teacher, vide order dated 10th June, 1993 in the pay scale of Rs.1400-2600/-. The said pay scale was meant for the teachers possessing B.A. B.Ed. qualifications. The learned counsel appearing for the petitioner invited our attention to the appointment order dated 10th June, 1993 and submits that, the appointment was on clear vacant post, and in a Graduate pay scale. It is submitted that, time to time the approval was granted to the services of the petitioner.

3] It is submitted that, vide order dated 7th December, 1993, the Education Officer i.e. the respondent No.3 brought the petitioner in the pay scale of Rs.1200-2040/-, which was meant for the candidates, possessing qualification of S.S.C. D.Ed. It is submitted that, in the said order of the Education Officer bringing down the pay scale of the petitioner, the context of clause shows different outward number of proposal submitted by the Head Master, and the earlier proposal submitted by the Head Master was bearing Outward No.165 of the Year

1993-94, and the proposal which was allegedly sent on 7th December, 1993 refers to the Year 1993, and it's earlier in time as it bears No.148.

4] It is submitted that, the office of the same Education Officer passed order in respect of teachers of Mahatma Gandhi Vidyalaya, Paranda, which is run by the same Management, wherein the handwriting is different than the handwriting of earlier order dated 7th December, 1993. It is submitted that, the petitioner has made huge correspondence in this regard with the Deputy Director of Education, and the Deputy Director of Education has also made correspondence with the Education Officer. However, the Headmaster did not submit necessary information as required by the Deputy Director of Education. It is submitted that, the Deputy Director of Education on 29th August, 2013 passed the order, directing the Education Officer to release the salary of the petitioner as per the order dated 27th October, 1993. It is submitted that, the Education Officer instead of correcting his mistake and instead of paying arrears of salary to the petitioner from 27th October, 1993, stopped the salary of the petitioner from November, 2011 without any authority in law. The petitioner did file Writ Petition No.1729 of 2012 before the High Court, challenging the illegalities committed by the respondents. The said Writ Petition was disposed of by granting liberty to the petitioner to make comprehensive representation to the Deputy Director of Education, and the Deputy Director of Education was directed to extend the opportunity of hearing to all concerned parties, including

the respondent No.5. Accordingly, the detailed representation was filed before the Deputy Director of Education, Latur. It is the submission of the learned counsel appearing for the petitioner that, the Deputy Director of Education passed the cryptic order without properly appreciating the evidence adduced by the petitioner in support of his claim, and without considering the merits of the petitioner's case. It is submitted that, on one hand the Deputy Director accepted that, the Education Officer has passed order on 7th December, 1993, without there being any proposal to that effect from the Management and the relevant record was not available in the office of the Education Officer. The learned counsel appearing for the petitioner invited our attention to the order passed by the Deputy Director of Education and submits that, the said order deserves to be set aside.

5] It is submitted that, the earlier order passed by the Deputy Director of Education giving directions to the Education Officer was proper and the same ought to have been followed by all concern.

6] It is submitted that, the contention of the petitioner that, the pay scale which was granted at the time of appointment of the petitioner, was wrongly withdrawn with effect from 1st December, 1993, is not properly considered by the Deputy Director of Education. It is submitted that, the petitioner was appointed against a clear and permanent vacancy. The appointment order did not speak anything about the petitioner's appointment on the

reserved vacancy. The Education Officer has approved the appointment of the petitioner as trained Graduate teacher in the pay scale of Rs.1400/- to Rs.2600/-, vide his order dated 27th October, 1993. The order passed by the Education Officer withdrawing the said pay scale is without any authority. There is no explanation as to why the aforesaid pay scale was withdrawn. It is submitted that, the respondent No.5, who possesses qualification of B.P.Ed. has been given pay scale of a trained graduate teacher without there being any approval to that effect by the Education Officer. It is submitted that, along with the petitioner, pay scale of Rs.1400-2600/- was also granted to Shri D.K.Gade, however, his pay scale was not withdrawn. It is submitted that, the management has obtained signature of the petitioner on blank stamp paper, and therefore, there is no execution of the *Kararnama* by the petitioner. The said *Kararnama* are not in the handwriting of the petitioner. The respondent No.4 and the Education Officer are acting hand in glove and the then Education Officer is now appointed as Deputy Director of Education. Even the Deputy Director is not following the directions issued by the Principal Secretary of the concerned Department. It is submitted that, the Head Master has submitted a proposal seeking approval to the appointment of the respondent No.5 vide his letter dated 29th October, 2012. The learned counsel appearing for the petitioner submits that, this Court may verify the record. The learned counsel appearing for the petitioner invited our attention to the pleadings in the Petition, grounds taken therein, annexure thereto, and the contentions raised in the

rejoinder-affidavit and submits that, the Petition deserves to be allowed.

7] On the other hand, the learned counsel appearing for the respondent Nos.1 to 3, relying upon the affidavit-in-reply filed on behalf of the respondent Nos.2 and 3 submits that, there is inordinate delay and laches on the part of the petitioner, challenging the order of withdrawing trained graduate teacher pay scale. It is submitted that, initially, wrongly the pay scale of Rs.1400-2600/- was granted to the petitioner, however, the said mistake was rectified on 07.12.1993. It is submitted that, in pursuant to the order passed by the High Court in Writ Petition No.1729/2012, the Deputy Director of Education, Latur Region, Latur, has heard all concerned and also perused the relevant record and thereafter reached to the correct conclusion. It is submitted that, on the basis of the order issued by the Deputy Director of Education on 29th August, 2013, the Secretary of Bhartiya Shikshan Prasarak Mandal, Bhoom, granted pay scale to the petitioner as Secondary Teacher vide order dated 1st November, 2013 with effect from 1st June, 2012, as post was vacant on the said date i.e. 1st June, 2012. The petitioner, being aggrieved by the said order, filed Writ Petition and now asking to restore the pay scale which was withdrawn in the Year, 1993, and therefore, on the ground of delay, the Petition deserves to be dismissed. It is submitted that, the petitioner is having educational qualification of B.A.B.Ed. and initially he was appointed by the Secretary of the School Committee of Ravindra High

School, Bhoom, by order dated 10th June, 1993 in the pay scale of Rs.1400-2600/-. The then Education Officer, has granted approval to the appointment of the petitioner in the pay scale of Rs.1400-2600/- by order dated 27th October, 1993 for the academic Year 1993-94 only along with Shri D.K.Gade. It is further submitted that, it is pertinent to mention here that, the pay scale which was granted to the petitioner i.e. Rs.1400-2600/- was withdrawn by the order dated 7th December, 1993, by the then Education Officer and also withdrawn approval by the order dated 27th October, 1993 and the petitioner was granted pay scale of Rs.1200-2040/- along with Shri Gade D.K.

8] The learned AGP appearing for the respondent – State invited our attention to the Exhibit-R3 and submits that, the said document will make it abundantly clear that, on 7th December, 1993, Shri D.K.Gade and the petitioner were placed in the pay scale of Rs.1200-2040/- and the approval was granted by the Education Officer for the academic year 1993-94. It is further submitted that, the petitioner was again appointed in the academic Year 1994-95 in the pay scale of Rs.1200-2040/-, which the petitioner had accepted, and accordingly the office of Education Officer has granted approval to the appointment for the academic year 1994-95 only since the appointment of the petitioner was against the post reserved for S.T. category. The learned AGP invited our attention to the approval order dated 29th October, 1994 and the joining report dated 11th June, 1994, which are placed on record at Exhibit-R4 [colly]. It is submitted that, the petitioner is not

disputing that, he was working in the pay scale of D.Ed. of Rs.1200-2040/- in Ravindra High School, Bhoom and post was reserved for S.T. category. The petitioner has also given an undertaking that, he will not claim the pay scale of B.Ed. trained graduate teacher, therefore, approval was granted considering undertaking given by the petitioner. Now, the petitioner is stopped from contending that, he should be granted graduate pay scale, which was earlier given and withdrawn in the Year 1993 is devoid of any merit. The proposal was submitted by the concerned School to the Education Officer, in the Year 1996-97 and the Education Officer has granted approval again in the pay scale of Rs.1200-2040/- on probation period for a period of 2 years. The learned AGP invited our attention to the Exhibit-R5 placed on record along with the affidavit-in-reply and submits that, the said document would make it abundantly clear that, the approval was till the completion of probation period with effect from 11th June, 1996.

It is further submitted that, after completion of probation period by the petitioner, the Education Officer vide order dated 13th July, 1998, confirmed the services of the petitioner in the pay scale of Rs.1200-2040/- and till then the petitioner is receiving payment till the date in the said pay scale of Rs.1200-2040/- as revised from time to time. The learned AGP invited our attention to the copy of the order dated 13th July, 1998 at Exhibit-R6, which shows the services of the petitioners are confirmed in the pay scale of Rs.1200-2040/-.

9] It is further submitted that, the school record was verified by the Education Officer and a report was submitted to the Deputy Director of Education, Latur, on 17th April, 2013 as directed by the Deputy Director of Education during the course of hearing of the representation of the petitioner. It is revealed that, in the academic year 1993-94, when the staff approval was verified along with attendance of teacher register it is observed that, for the academic year 1993-94 total 29 posts of teaching staff were sanctioned which includes one post of Head Master, one post of Supervisor, 12 posts of Secondary Teachers having B.Ed. scale, two special teachers [Art, Krida], 3 posts of 25% graduate teacher and 10 posts of primary teachers having D.Ed. scale.

10] It is further submitted that, it is pertinent to mention here that, as per the staffing pattern sanctioned posts were as above, however, actual working teachers in the school for the academic year 1993-94 were as under:

Head Master 1 post, supervisor 1 post, Secondary teacher B.Ed. 14 posts, which includes posts held by the petitioner and Shri Gade D.K. which is excess in two number, special teacher 2 posts, 25% graduate teachers 3, primary teacher 8. From this, it would be clear that, in the graduate B.Ed. pay scale, two more teachers were appointed which includes petitioner and Shri Gade D.K., wherein in D.Ed. scale two less posts were filled in, when sanctioned posts are 10 and actual 8 teachers were appointed. From this, it would be also clear that, at the

time of initial appointment of the petitioner i.e. 14th June, 1993, the post of Graduate B.Ed. scale was not vacant and, therefore, the then Education Officer has rightly revised the individual approval given to the petitioner vide order dated 27th October, 1993 and withdrawn the pay scale by order dated 7th December, 1993, and given the pay scale to the petitioner of Rs.1200-2040.

11] It is submitted that, it is pertinent to mention here that, after a gap of long period, the petitioner is demanding pay scale of graduate teacher as per his initial appointment, which was wrongly granted in the pay scale of Rs.1400-2600/-, and which was subsequently withdrawn and pay scale was reduced to Rs.1200-2040 by the Education Officer. The petitioner is well aware about the approval order which was revised in the same academic year 1993-94 by the Education Officer, and thereafter, the petitioner was continued in the pay scale of Rs.1200-2040/- even the petitioner has given an undertaking that, he will not claim graduate pay scale in future.

12] Therefore, relying upon the averments in the affidavit-in-reply, annexure thereto and other documents placed on record, the learned AGP submits that, the petition is devoid of merits, the same may be dismissed.

13] The learned counsel appearing for the respondent Nos.4 and 5 invited our attention to the averments in the affidavit-in-reply and additional affidavit in reply and submits that, by an order dated 10th June, 1993,

the petitioner was appointed on temporary basis for the academic Year 1993-94. The approval order clearly shows that, approval was granted only for the said academic year. Thereafter again, the petitioner was appointed as an Assistant Teacher on temporary basis in D.Ed. pay scale for the academic year 1994-95 against the post reserved for S.T. category, and approval was granted by the Education Officer in D.Ed. pay scale [Rs.1200-2040]. It is submitted that, in the academic year 1995-96, there was gap and the petitioner was not appointed in the said academic year. Thereafter, in the academic year 1996-97, the petitioner came to be selected as Assistant Teacher against the post meant for N.T. category as the petitioner belongs to N.T. category. In the said year also, the same pay scale was given and the Education Officer, after completion of probation period, vide order dated 13th July, 1998, granted permanent approval in favour of the petitioner in D.Ed. pay scale [Rs.1200-2040]. The learned counsel also invited our attention to the other part of the affidavit and submits that, the Petition is devoid of merit, and the same may be dismissed.

14] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent – State, and the learned counsel appearing for the Respondent Nos.4 and 5. With their able assistance perused the pleadings in the Petition, grounds taken therein, annexure thereto, affidavit-in-reply filed by the respondent – State and State Authorities, and also affidavit-

in-reply filed by the respondent Nos. 4 and 5 and also rejoinder-affidavit filed by the petitioner.

15] Upon careful perusal of the entire documents placed on record, it appears that, the petitioner first time raised grievance in the Year 2011 about alleged change in pay scale from Rs.1400-2600/- to Rs.1200-2040/- on 7th December, 1993. On the ground of delay / laches alone, this Petition deserves to be dismissed. Apart from it, upon perusal of the impugned order passed by the Deputy Director of Education, it is abundantly clear that, after perusal of the documents / record, and after hearing the parties, the Deputy Director has reached to the correct conclusion. The contention of the learned counsel appearing for the petitioner that, the petitioner was appointed on probation on permanent basis by appointment order dated 10th June, 1993, and subsequent appointment letters and the approval letters placed on record by the management, are fabricated and forged documents, deserve no consideration inasmuch as the respondent No.2 after going through the record and taking into consideration the factual aspect has reached to the correct conclusion. While exercising writ jurisdiction, it is not desirable to adjudicate disputed questions of fact. We do not see any reason to entertain the Writ Petition, hence Petition stands rejected.

[A.M.BADAR]
JUDGE

[S.S.SHINDE]
JUDGE