

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 665 OF 2008

Smt. Indu G.N. Rane,
Principal, People's Higher
Secondary School (Government Aided
School), Mala, Panaji, Goa,
resident of M-163,
Housing Board Colony,
Alto Porvorim, Bardez, Goa.

... Petitioner

Versus

1. The Director of Education,
Government of Goa,
having office at
Directorate of Education,
Panaji, Goa.
 2. The State of Goa,
through its Secretary (Education),
having office at Secretariat,
Porvorim, Bardez, Goa.
 3. People's Higher Secondary School,
(Government Aided School),
Mala, Panaji, Goa.
- ... Respondents

Mr. Jitendra P. Supekar, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondent
Nos. 1 and 2.

None present on behalf of Respondent No. 3.

Coram : F.M. REIS &
C.V. BHADANG JJ.

Reserved on : 17th December, 2015.

Pronounced on : 23rd December, 2015.

JUDGMENT: (Per C.V. Bhadang, J.)

By this petition, the petitioner is seeking parity in pay scale, with her counterpart in a Government Higher Secondary School.

2. The brief facts are that the petitioner was promoted to the post of Principal, in the People's Higher Secondary School, Panaji (respondent no. 3) on 22.11.2000 in the pay scale of Rs.8,000-13,500. The appointment of the petitioner was eventually approved by the respondent no. 1. The material dispute pertains to two circulars issued by the respondent no. 1 dated 28.05.1998 and 31.03.1999. It appears that by the circular dated 28.05.1998, it was stipulated that the post of Principal in the Higher Secondary School having a total student enrollment between 120 and 300 shall carry a pay scale of Rs.8,000-13,500. By a subsequent circular dated 31.03.1999, it was clarified that in case of marginally higher strength of students i.e. upto 350 students, the post of Principal will carry the pay scale of Rs.10,000-

15,200, with a rider that the said pay scale shall not be granted immediately, but subject to the condition that the strength/enrollment of the students in that school remains stable for a period of three years.

3. According to the petitioner, from the year 1995-96 to 2007-08, the total enrollment of the students, in the concerned school was 399 or more. It is thus, contended that the strength of the students in the school was consistently in excess of 350 students, which has been prescribed by the circular of the year 1999. It was thus contended that the petitioner was entitled to the higher pay scale of Rs.10,000-15,200.

4. The petitioner sent two representations, one, in the year 2006 and thereafter, in the year 2008, seeking higher pay scale, which did not yield the desired result. The petitioner also approached the Ombudsman in the State of Goa, who claimed inability to grant any relief for want of necessary powers and jurisdiction. It is in these circumstances that the petitioner filed the present petition on 19.08.2008 *inter-alia* seeking quashing of the communications dated

14.09.2006 and 12.05.2008, as also the part of the circulars dated 28.05.1998 and 31.03.1999 and to bring about parity between the Principal of the Government Aided Higher Secondary School and the Government School. The petitioner is also seeking a direction to the respondents to grant her the pay scale of Rs.10,000-15,200 from the date of her promotion as Principal.

5. The respondent no. 1 has filed an affidavit in reply of Dr. Celsa Pinto, the Director of Education, Government of Goa. It is contended that, on account of grant of new permissions for opening of Higher Secondary Schools in the State, the enrollment in some schools had fallen below 30 students. In some of the Higher Secondary Schools, it was little over 50 students. In such circumstances, the Government had decided to restructure the Higher Secondary Schools set up, in the State. As per the circular dated 26.11.1997 and after discussion with the Goa School Advisory Board, the two circulars were issued on 28.05.1998 and 31.03.1999 with the approval of the Finance Department whereby, the post of Principal in the Schools, having enrollment between 120 to 300 students, was brought in the

pay scale of Rs.8,000-13,500. It is the material contention that while reckoning the total strength/enrollment, it is only the students in the general stream i.e. Science, Arts and Commerce, which were required to be considered. It is contended that the students in vocational stream had to be excluded, as the said scheme is sponsored by the Central Government and the funds are provided by the Central Government and it was carrying a different staffing pattern. It is contended that the Higher Secondary Schools having three vocational courses are sanctioned, one post of Vice-Principal in the pay scale of Rs.6,500-10,500/-.

6. It is contended that since the earlier incumbent namely, the in-charge Principal had resigned on 30.05.2000, by communication dated 17.10.2000, the respondent no. 3 had sought renewal of NOC for appointment of the Principal by promotion. It is contended that the respondent no. 3 had enclosed the enrollment position of the preceding three years namely, 1998-99, 1999-2000 and 2000-01 for 11th and 12th standard. It is contended that the strength of the students in the general stream was less than 300 students. It is thus contended that the strength of the students in the general

stream was never in excess of 350 students, so as to claim the benefit of the circular of the year 1999.

7. In short, it is contended that the Central Government sponsored, scheme, of vocational education was introduced in Goa in 1988-89, which envisaged a different staffing pattern and according to which, one post of Vice-Principal was sanctioned in Higher Secondary School, having three vocational courses, in the pay scale of Rs.6,500-10,500. It is contended that on a further review of vocational education in the State of Goa, by circular dated 28.05.1998, the commerce based vocational courses having low enrollment, were closed down, so as to concentrate on vocational courses, having better employment opportunities. It is thus contended that the post of the Principal was sanctioned for the Government Schools on the basis of the strength of the students, while the post of the Vice-Principal was sanctioned for vocational scheme. After the two circulars, 21 posts of Principals in the pay scale of Rs.8,000-13,500 were sanctioned to 21 Higher Secondary Schools. It was contended that the petitioner worked as a Teacher Grade-I in aided Higher Secondary School and she is directly promoted to the post of

Principal in the Higher Secondary School being the senior most Teacher, in terms of Rule 78 of the Goa School Education Rules, 1986. It is contended that while in Government Higher Secondary School, a Teacher Grade-I cannot be directly promoted to the post of the Principal, but is initially promoted as Vice-Principal in the pay scale of Rs.7,500-12,500 and the next promotion is to the post of Principal of the Higher Secondary School. It is thus claimed that the circulars are neither arbitrary nor they result into any discrimination, so as to violate the principles of equal pay for equal work.

8. We have heard Mr. Supekar, the learned Counsel appearing for the petitioner and Mr. Salkar, the learned Government Advocate appearing for the respondent nos. 1 and 2.

9. It is submitted by Mr. Supekar, the learned Counsel appearing for the petitioner that the circulars of the year 1998 and 1999 run counter to the provisions of Section 13 of the Goa Daman and Diu School Education Act, 1984 (the Act of 1984, for short) and the Rules framed thereunder. It is contended that the Government is bound to maintain parity of

pay scales between the “employees of corresponding status” in the recognized private aided schools and the schools run by the Government. It is submitted that the circulars to the extent that they are in breach of the aforesaid provisions cannot have any effect. The learned Counsel submits that the requirement of strength/enrollment for sanctioning the post of Principal is distinct from the question of pay scale, which such a post can carry. It is thus submitted that the Government cannot conceivably claim to exclude the strength in the vocational section, so as to determine the eligibility as to enrollment, being in excess of 350 students.

The learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Jaipal Niaz Mohammed Vs. State of Haryana**, reported in **1988 AIR (SC) 1504**, **Haryana State Adhyapak Sangh Vs. State of Haryana**, reported in **1988 AIR (SC) 1663** and **Haryana State Adhyapak Sangh Vs. State of Haryana**, reported in **1990 AIR (SC) 968**, in order to submit that under Article 14 read with Article 39 of the Constitution of India, the Government is bound to maintain parity of pay scales between the employees of the corresponding status.

10. On the contrary, it is submitted by Mr. Salkar, the learned Government Advocate appearing for the respondent nos. 1 and 2 that the enrollment position submitted by the respondent no. 3 for the years 1998-99, 1999-2000 and 2000-01 would clearly show that the enrollment was much below the required strength of 350 students and thus, the petitioner cannot claim parity. The learned Government Advocate submits that the term "employees of the corresponding status" in school would necessarily presuppose that the two posts are in schools having a comparable number of students/enrollments. In other words, it is submitted that the work load/administrative responsibility of a Principal in a school having, say 50 students, cannot be equated to the responsibility which a Principal of a school having 500 students would carry. It is thus submitted that even Section 13 of the Act of 1984 envisages that such parity is given to the employees in the "schools having corresponding status", which is not forthcoming in this case.

11. We have given our anxious consideration to the rival circumstances and the submissions made.

12. Undisputedly, the respondent no. 3 is a recognized school getting grant in aid from the Government. It further appears that on account of the earlier in-charge incumbent of the post of Principal having resigned on 30.05.2000, the post of Principal of respondent no. 3-School had fallen vacant. As per the proposal dated 17.10.2000, the Management had sought renewal of the NOC for appointment of the Principal. By promotion. The Management had enclosed the enrollment position for the last three years pertaining to the general stream, which would show that the total enrollment in the Higher Secondary School for the year 1998-99 was 285, for year 1999-2000 it was 255 and for the year 2000-01 it was 258. Thus, insofar as the general stream is concerned, the enrollments was not in excess of 300 students. According to the petitioner, the enrollment of the students in the vocational stream has also to be counted. If the enrollment of the students for the vocational stream is taken into consideration, the total enrollment from the year 2000-01 to 2006-07 was in excess of 400 students, as set out in the representation dated 08.08.2006. This aspect was not disputed during the course of the arguments at bar. The submission on behalf of the respondent is that the strength of the students under the

vocational stream cannot be counted for the said purpose. In this regard, it may be mentioned that circulars of the year 1998 and 1999, on the basis of which, the Government has prescribed two separate pay scales for the post of Principal based on the strength of the students, do not provide that the strength as contemplated therein has to be limited to the general stream. In other words both these circulars are silent as to whether the enrollment of the students in the vocational stream requires to be excluded. It is contended on behalf of the respondent that the vocationalization of education is a separate scheme sponsored and financed by the Central Government and the said scheme envisages a distinct staffing pattern, where the Higher Secondary Schools having three vocational courses, one post of Vice-Principal is admissible. For the present purpose, we find that we need not go into this aspect for more reasons than one. In the first instance and as noticed earlier, the circulars of the year 1998 and 1999 do not specifically provide that for the purpose of reckoning the enrollments, the strength in the vocational stream has to be excluded and secondly, in the present case it is not shown that for the purpose of the vocational section any independent post of Vice-Principal was approved/sanctioned or a Vice-Principal

was appointed in the School. If that be so, in the facts of the present case, we are not inclined to hold that on the basis of the strength, the representation could have been rejected.

13. Yet another submission on behalf of the respondents is that unlike in the recognized aided school, in the Government School, there is a post of Vice-Principal intervening between the Teacher Grade-I and the Principal. The contention is that in a Government School, a Teacher Grade-I would be first promoted as Vice-Principal and thereafter as a Principal. It is thus contended that the petitioner being at an advantage in this regard, in as much as she was promoted from Teacher Grade-I to the post of Principal, cannot claim a higher pay scale of Rs.10,000-15,200. We are not impressed by the contention and the submission as made, for the reason that if, the staffing pattern in the private aided school do not provide for the post of Vice-Principal, merely on that count the petitioner cannot be deprived of the higher pay scale. It may not be out of place to mention that the circulars of the year 1998 and 1999 do not make any reference to this aspect. In our considered view, the difference in the staffing pattern and the absence of the post of the Vice-

Principal in the private recognized aided school is an independent aspect, which has nothing to do with the differential pay scale of the Principals provided by the two circulars based on the enrollment of the students.

14. In the case of **Haryana State Adhyapak Sangh** (supra), the Hon'ble Apex Court has *inter-alia* held that the Teachers working in the recognized aided private schools are entitled to a parity in pay with the Teachers employed in the Government Schools. Under Section 13 of the Act of 1984, the scales of the pay and allowances, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status of the school run by the Government. There was a certain amount of debate at the Bar, as what is the meaning to be assigned to "employees of the corresponding status in the school run by the Government". While on behalf of the petitioner, it is contended that it refers to the designation of the employee, on behalf of the respondent nos. 1 and 2, it is contended that the corresponding status pertains to the school, based on the strength of the students/enrollment. In the fact of the present

case, we find it not necessary to go into this aspect, as we find that the strength of the students was in excess of 350 students, as required by the circulars of the year 1998 and 1999. That apart, a bare reading of Section 13 of the Act of 1984, would show that the "corresponding status", referred to in the said section, is with reference to the employees. However, as stated earlier, we do not feel called upon, to express any final opinion, on this aspect.

15. This takes us to the question as to what relief can be granted to the petitioner. Admittedly, the petitioner has since superannuated from the post of Principal. It appears that the promotion of the petitioner to the post of Principal was approved by the respondent no. 1 vide letter dated 15.12.2000 in the pay scale of Rs.8,000-13,500. The petitioner did not challenge the same immediately. For the first time, the petitioner made a representation seeking higher pay scale on 08.08.2006, which was rejected on 14.09.2006. The petitioner addressed yet another representation on 06.03.2008, which was rejected on 12.05.2008. Thereafter, the petitioner unsuccessfully approached the Ombudsman and thereafter, filed the instant writ petition in August, 2008. Thus,

while on one hand we find that there is a certain amount of delay and latches on the part of the petitioner, there was also an issue as to whether the strength of the students in the vocational stream has to be included for reckoning the required strength as per the circular of the year 1999, as also the aspect of different staffing pattern, insofar as the vocational stream is concerned. In such circumstances, it would be just to limit the relief only to revision of the pension on the basis of the last pay drawn by the petitioner.

16. In such circumstances the following order is passed:

(a) The petition is partly allowed.

(b) The respondents are directed to notionally revise the pay of the petitioner in the pay scale of Rs.10,000-15,200, with effect from the date of her promotion as Principal.

(c) The petitioner shall only be entitled to the revision of her pension on the basis of the last pay drawn based on the revised pay scale of Rs.10,000-15,200.

(d) Rule is made absolute, in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

F.M. REIS, J.

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