

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1152 OF 2014

(Sau. Bhawana Vijayrao Datir vs. State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

CORAM : B.P. DHARMADHIKARI AND
 P.N. DESHMUKH, JJ.

DATED : AUGUST 21, 2015

Heard Adv. Mohgaonkar for petitioner,
Smt. Dangre, learned Government Pleader for
respondent nos.1 and 2 and Adv. Thakare for
respondent nos.3 to 5.

Question is whether 25% graduate quota
available in a Primary School can be filled in by
giving it to a direct recruit, who already has graduate
qualification before his recruitment.

Adv. Mohgaonkar has placed reliance
upon judgment dated 21/6/2013 delivered in Writ
Petition Nos. 7/2011, 688/2011 and 945/2011 to urge
that there this question has been kept open.
According to him, the very purpose of providing

such quota in Primary Schools will be frustrated if graduate pay scale is conferred upon a Teacher, who joins with graduate qualification.

Adv. Thakre appearing for respondent nos.3 to 5 disputes this. According to him, direct recruitment of a Graduate, if he is otherwise eligible, to occupy post as a Primary Teacher is not prohibited and hence, respondent no.5 is rightly found senior and given the post.

Adv. Mohgaonkar, however, is relying upon the reasons recorded by this Court in paragraphs 23, 28 and 29 of the judgment mentioned supra. According to him, the impugned order does not contain any application of mind in this regard.

Smt. Dangre, learned Government Pleader submits that position of parties before this Court is regulated by judgment dated 21/6/2013 supra. She relies upon the conclusion in the impugned order to show that respondent no.5 is found senior to petitioner.

The conclusion is reached in one line and the observations of this Court in paragraphs mentioned supra of its judgment dated 21/6/2013

do not figure anywhere. If purpose of providing graduate pay scale on establishment of Primary School is to encourage under-graduate Teachers to obtain that qualification and, therefore, to better their prospects, the said purpose may be frustrated by conferring graduate pay scale on a person, who is already graduate while joining employment. We have left that question open in our judgment mentioned supra (one of us - B.P. Dharmadhikari, J. is party to the said judgment).

In this situation, the impugned order communicated vide letter dated 16/8/2013 is quashed and set aside. The matter is placed back before respondent no.2. Respondent no.2 shall hear petitioner as also respondent nos.3 to 5 and take fresh decision at the earliest and in any case, within a period of three months after communication of this order to him. Till date, situation prevailing today shall not be disturbed. The petition is disposed of accordingly.

JUDGE

JUDGE

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