

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO. 11975 OF 2014

JAYANT S/O VASANT WANKHEDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. S.R. Barlinge
AGP for Respondent/State : Mr. D.R. Kale
Advocate for Respondent nos.6 and 7 : Mr. A.G. Talhar

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**CORAM : S.S. SHINDE &
P.R. BORA, JJ.**

RESERVED ON : 18th February, 2016

PRONOUNCED ON : 4th March, 2016

PER COURT :-

This Petition is filed with following prayers :-

“A) By a writ of certiorari, or any other appropriate writ, or order or direction in the like nature, the impugned order dated 24.01.2013, passed by the Education Officer, Zilla Parishad, Jalgaon, granting scale of trained graduate teacher in favour of the respondent No.7 w.e.f. 01.01.2003, may kindly be quashed and set aside.

B) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondent No.4 – Education Officer (Secondary), Zilla Parishad, Jalgaon be directed to grant benefit of trained graduate teacher's pay scale in favour of the petitioner w.e.f. 01.01.2003.”

2. It is the case of the petitioner that, the petitioner is duly qualified for the post of Assistant Teacher, having passed B.A. B.Ed. qualification. Despite his higher educational qualification, the petitioner was appointed by the respondent Nos. 5 and 6 on a vacancy meant for D.Ed. teacher, vide order dated 17th November, 1999 on probation for a period of two years. It is the case of the petitioner that, the petitioner's appointment as Assistant Teacher was continued by the respondents vide order dated 19th December, 2001, and was also approved by the Education Officer (Secondary), Zilla Parishad, vide his order dated 15th December, 1999. During service period of petitioner, from last more than fifteen years, there were number of vacancies of trained graduate teachers, however, bypassing the circular of Director of Education, the respondent Nos. 5 and 6 appointed

several candidates, by ignoring the claims of the petitioner as well as that of respondent No.7. Therefore, the petitioner was earlier compelled to file Writ Petition No. 6521 of 2008 (Jayant S/o Vasant Wankhede V/s The State of Maharashtra and others) before High Court, in which vide order dated 1st September, 2009, the Division bench has disposed of the Writ Petition directing the Education Officer to consider the rival claims and grant approval to the appointment of the petitioner as well as the respondent No.7, at least from 3rd July, 2008. However, the Education Officer while considering the claim of the petitioner as well as the respondent No.7 has offered a discriminatory treatment. He approved the appointment of the petitioner as a trained graduate teacher vide his order dated 20th July, 2010 w.e.f. 3rd July, 2008 and approved the appointment of the respondent No.7 vide his order dated 24th January, 2013 w.e.f. 1st January, 2003. Hence this Writ Petition.

3. The learned counsel appearing for the petitioner submits that, there is no reason assigned by the Respondent No.4, as to why the petitioner is given approval w.e.f. 3rd July, 2008 and approval to the appointment of the Respondent

No.7 is given w.e.f. 1st January, 2003. It is submitted that, the respondent – management, instead of appointing the petitioner as trained graduate when vacancies arose in the Respondent – School, the Management chose to appoint the candidates by direct recruitment contrary to the circular dated 9th July, 1987 issued by the Director of Education, Pune. It is submitted that, while disposing of Writ Petition No. 6521 of 2008 (Jayant Vasant Wankhede V/s The State of Maharashtra and others), the Division Bench of this Court made it clear that, the Respondent No.4 – Education Officer to consider the claim of the petitioner as well as Respondent No.7 for grant of pay scale of trained graduate teachers, and therefore, it was incumbent upon the Education Officer to give proper opportunity to the petitioner and assign the reasons in support of the impugned order of granting pay scale. The learned counsel further invited our attention to the averments made in the affidavit in rejoinder, and submits that, though the petitioner was working on D.Ed. scale, at the time of appointment his qualification was B.A. B.Ed. It is stated that, the Respondent No.6 in its affidavit has stated that, on 28th February, 2002, one Shri Kisan Firke had retired from school and in his place, Shri Lalit Pimpalkar was appointed on 15th

June, 2002 on B.Ed. scale, who is having English qualification, because at that time, the school was in need of teacher from English subject. However, the said statement is incorrect and Shri Kisan Firke had qualification of Hindi and Geography and same would be clear from the service book of Shri Firke. It is submitted that, the petitioner's qualification in B.Ed. in the subjects of Marathi and Geography, and therefore, the petitioner ought to have been appointed as assistant teacher in B.Ed. scale in place of Shri Kisan Firke. It is submitted that, the Education Officer did not consider all the important facts and granted the scale of trained graduate in favour of the petitioner w.e.f. 3rd July, 2008. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

4. One Shri Subhash S/o Tryambak Warade, working as Deputy Education Officer (Secondary), Zilla Parishad, Jalgaon has filed the affidavit in reply. It is stated in the affidavit in reply that, the Respondent No.6 – Management has appointed the petitioner by giving advertisement, in which the specific condition was given that, the candidates will be appointed on D.Ed. pay scale. The petitioner was appointed

vide order dated 17th November, 1999 in D.Ed. pay scale. The petitioner filed Writ Petition No. 6521/2008 (Jayant S/o Vasant Wankhede V/s The State of Maharashtra and others) in the High Court for getting the trained graduate pay scale. The said Writ Petition was heard by the Division bench and the Education Officer was directed to consider the claim of the petitioner as well as the Respondent No.7. The Respondent – Management submitted the proposal. The Education Officer considered the same in the light of the relevant record and found that, the Respondent No.7 is appointed on 10th July, 1997, and possess the qualification of B.Sc. B.Ed. The petitioner has been appointed on 22nd November, 1999 holding qualification of B.A. B.Ed. Since the respondent No.7 is senior, the respondent no.7 has been granted senior pay scale w.e.f. 01.01.2003. Keeping in view the qualification and requirement of subject and as per the Government policy, the Education Officer has also considered the proposal of the petitioner for trained graduate pay scale and keeping in view the seniority, qualifications and requirement of subject has given trained graduate pay scale w.e.f. 3rd July, 2008.

5. The Respondent No.6 has also filed affidavit in

reply and demonstrated that, as and when the posts were available from the particular subject, the appointments were given in B.Ed. pay scale to the concerned teachers rendering the services in the Respondent – School. The learned counsel appearing for the respondent no.6 invited our attention to the averments in para 8 and submits that, as per the requirement of the subjects and keeping in view the qualifications in particular subjects, assistant teachers were placed in graduate pay scale, as per availability of the posts after retirement of the teachers from the respondent – school. Therefore, the learned counsel appearing for the Respondent No.6 submits that, the Petition is devoid of any merits and same may be dismissed.

6. We have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respective respondents. Upon careful perusal of the order passed by the Division Bench of this Court in Writ Petition No. 6521/2008 (Jayant S/o Vasant Wankhede V/s The State of Maharashtra and others), it appears that, the directions were issued to the Education Officer to consider the claim of the petitioner as well as Sau. Leena Satish Ingale and

accordingly the Education Officer has granted graduate pay scale to the petitioner w.e.f. 3rd July, 2008 and the Respondent No.7, being senior has granted the graduate pay scale w.e.f. 1st January, 2003. While disposing of the said Writ Petition, the Division Bench noticed that, the petitioner has remained silent from 1999 till 2008. It is also observed in the order that, the Court is not inclined to grant the prayer made by the petitioner for arrears. It is also observed that, at least, the petitioner would be entitled to a higher pay scale from 3rd July, 2008. Upon perusal of the affidavit in reply filed by the Respondent No.6 and also the Education Officer, we are satisfied that, the decision taken by the Education Officer is by keeping in view the relevant record, rules and procedure, though it is stated by the petitioner in the affidavit in rejoinder that, the petitioner ought to have been appointed in place of Shri Kisan Firke in the year 2002, as rightly observed by the Division Bench of this Court, while disposing of the Writ Petition No. 6521/2008, the petitioner has remained silent from 1999 till 2008. Therefore, we are not inclined to entertain the contention of the petitioner that, in place of Shri Kisan Firke, he should have been appointed, instead of appointing Shri Lalit Pimpalkar. In the first place, we cannot

appreciate and accept the contention of the petitioner after 13 years from the appointment of Shri Lalit Pimpalkar that, the petitioner should have been appointed in place of Shri Lalit Pimpalkar. The said contention of the petitioner deserves to be rejected on the ground of laches and said Shri Lalit Pimpalkar is not a party in the present Writ Petition. Assuming that, Shri Lalit Pimpalkar is party to the Writ Petition, the rights crystallized by virtue of rendering the services of 13 years in graduate pay scale by him, cannot be taken away after 14 years at the behest of the petitioner. Therefore, we do not wish to enter into controversy that, which subject Shri Kisan Firke was teaching and which are the qualifications possessed by Shri Lalit Pimpalkar.

7. Therefore, in the light of discussion in foregoing paragraphs, we are unable to persuade ourself to give any directions to the Respondents. The Petition lacks merit, hence rejected.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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