

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 512 OF 2010**

Shri Dattaram Vithal Chari, son of late Vithal Chari, 58 years old, married, Head Master, Dr. Ambedkar English High School, Nagseven, Kuchelim, Mapusa, Bardez, Goa, residing at House No. 44, Xell, Bastora, Mapusa, Goa. Petitioner

Versus

1. State of Goa, through its Education Secretary, with his office at Secretariat, Porvorim, Bardez, Goa.
2. The Directorate of Education, Government of Goa, through its Director, with his office at 18th June Road, Education Department, Panaji, Goa.
3. Halarnkar Education Society, through its Secretary, with its office at Anthony Vaddo, Colvale, Bardez, Goa.
4. People's High School, through the Chairman of its Managing Committee with its office at Camurim, Bardez, Goa.
5. Vidhya Bharati, Goa, a society registered under the Societies Registration Act, 1860, through its Chairman, with office at Chogam Road, Alto Porvorim, Bardez, Goa 403 521.

6. Dr. Babasaheb Ambedkar Education Society, a society registered under the Societies Registration Act, 1860, through its President, with office at Shetyewada, Duler, Mapusa, Bardez, Goa.
7. Dr. Ambedkar English High School, through the Chairman of its Managing Committee, with office at Nagseven, Kuchelim, Mapusa, Bardez, Goa. Respondents

Shri Devidas J. Pangam and Shri Parikshit Sawant, Advocates for the Petitioner.

Shri Vishwadh Sardessai, Additional Government Advocate for Respondent Nos. 1 and 2.

Coram : SMT. R.P. SONDURBALDOTA &

C.V. BHADANG, JJ.

RESERVED ON: 5th DECEMBER, 2016

PRONOUNCED ON: 20th DECEMBER, 2016

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

The petitioner was appointed as a graduate teacher (B.Sc) in People's High School run by the respondent no. 3- Education Society, on 15.07.1982. The Goa School Education Act, 1984 and the Goa School Education Rules, 1986 came into force in November, 1986. On 12.08.1987, the Government of India made applicable the revised pay scales to the school teachers, which

envisage grant of senior scale and selection scale on completion of 12 years and 24 years of service, respectively. The issue in the present petition is, whether the petitioner is entitled to grant of senior scale and selection scale, on the basis of his service counted from the date of initial appointment or from acquiring of necessary professional qualification. Undisputedly, the petitioner acquired educational qualification on 17.08.1987. The petitioner is challenging part of the circular dated 16.05.2008 issued by the Government of Goa, by which, although it stipulates that 12 years of service has to be counted from the date of initial appointment and not from the date of acquiring professional qualification (as was previously the case), there is a rider which says that the actual monetary benefits shall be paid from 16.05.2008. The petitioner has a quarrel with the said date from which actual monetary benefits, are made payable.

2. We have heard Shri Pangam, the learned Counsel for the petitioner and Shri Sardessai, the learned Additional Government Advocate for respondent nos. 1 and 2. None appears for the other respondents.

3. It is submitted by Shri Pangam, the learned Counsel for the petitioner that the petitioner joined service on 15.07.1982 and had acquired professional qualification on 17.08.1987. It is submitted that under the relevant Rules, a period of 5 years is allowed for acquisition of professional qualification and as such, the period of 12 years has to be counted from the date of initial appointment. The learned Counsel has pointed out that the circular dated 16.05.2008 also stipulates that the period has to be counted from the initial appointment. The learned Counsel was at pains to point out that in such circumstances, there is no plausible reason for restricting the monetary benefits from 16.05.2008. The learned Counsel submits that the petitioner having joined service on 15.07.1982, completed 12 years of service on 14.07.1994 and 24 years of service on 14.07.2006. It is submitted that the petitioner has neither been granted senior scale nor the selection scale. The learned Counsel has pointed out that the benefits of selection scale has been denied on the ground that the petitioner has already been promoted as Headmaster. He however, points out that the petitioner was promoted on 03.08.2013, much after 14.07.2006, when the petitioner became eligible for grant of

selection scale. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of **Shri Suresh D. Naik Vs. State of Goa, through its Secretary (Education) and Others, 1998(4) Bom.C.R. 365** and judgment dated 25.06.2003 in the case of **Smt. Maria E. de Souza Vs. The Director, Directorate of Education and Others** passed in Writ Petition No. 227/2003.

4. On the contrary, it is submitted by the learned Additional Government Advocate that the petitioner has acquired necessary qualification in the year 1987 and as such, the service for conferral of the benefits of the senior scale/selection scale, cannot be counted from the date of initial appointment. The learned Additional Government Advocate pointed out that the School Management had failed to send a proposal for conferral of such benefits on the petitioner, in the absence of which, the competent Authority could not consider the case of the petitioner. It is submitted that no grounds have been pointed out as to how, the date for grant of monetary benefits (in the circular dated 16.05.2008), is discriminative or bad in law. It is pointed out that apart from the requirement of the concerned employee having

completed 12/24 years of service, there are other requirements to be looked into, while considering the grant of such benefits. It is submitted that for want of proposal from the School Management, the Department could not examine this aspect. It is further submitted that by a letter dated 17.12.1999 (at page-83), the petitioner had himself requested to place him in the senior scale from 16.12.1999. It is submitted that now, the petitioner cannot claim for such benefits from 1994. It is submitted that the petition suffers from vice of delay and laches.

5. We have carefully considered the rival circumstances and the submissions made and we have gone through the record. We find that in view of the circular dated 08.09.2008, the grievance of the petitioner, in fact, stands redressed partly, in as much as the circular specifically provides that, the counting of 12 years of service, shall be from the date of initial appointment. Insofar as the grant of monetary benefits is concerned, the circular stipulates that they shall be granted from 16.05.2008. In the present case, according to the petitioner, he became eligible for grant of senior scale in the year 1994 and for selection scale in the

year 2006. The petition is filed in the year 2010. In fact, the record would disclose that the petitioner had addressed a letter dated 17.12.1999, seeking benefits from the year 1999 and even thereafter, the petitioner has waited for 10 years, as the petition is filed on 09.07.2010. In such a case, ordinarily, this Court would restrict grant of actual monetary benefits for a period of three years prior to the filing of the petition, which would be 09.07.2007. The circular envisages grant of benefits from 16.05.2008. Thus, the difference would be approximately of ten months. In the facts and circumstances of the present case, we are not inclined to dwell upon the validity of the said circular, to the extent it provides grant of monetary benefits from 16.05.2008. We thus find that the competent Authority will have to consider the claim of the petitioner for grant of senior scale and selection scale by counting the service, from the initial date of appointment. This will be subject to the petitioner satisfying all other requirements/norms as per the Rules applicable. For this purpose, the Management of the School will have to send a proposal to the Authority. In the event, the petitioner is held entitled to the senior scale/selection scale, the actual monetary benefits will have to be paid from 16.05.2008,

as provided for in the circular. We are informed that the petitioner has since retired from service. In such circumstances, the grant of senior scale/selection scale, if any, will have consequent effect on the last pay drawn and the pension, which is payable to the petitioner.

6. In the result, the petition is disposed of in the following terms:

(a) The Management of the School concerned, shall send a proposal for conferment of senior scale/selection scale on the petitioner, by reckoning the service from the date of initial appointment, subject to the petitioner satisfying all the other requirements as per the Rules applicable, within three months.

(b) The competent Authority shall take a decision, on such proposal, within three months from the receipt of the proposal, in accordance with law.

(c) In the event, the petitioner is conferred with senior scale/selection scale, actual monetary benefits shall be paid from 16.05.2008 in terms of circular dated 08.09.2008.

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

C.V. BHADANG, J. R.P. SONDURBALDOTA, J.

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