

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.454 OF 2014

Shri Narendra A. Patil & Anr.	..Petitioners
Versus	
The State of Maharashtra & Ors.	..Respondents

Mr. N.V.Bandiwadekar , Advocate for the Petitioners.
Mr. V.M.Mali, AGP for the Respondent Nos.1 and 3-State.

**Coram : SHANTANU KEMKAR &
RANJIT MORE, JJ.**

Date : 16th APRIL, 2016.

P. C. :

Heard the learned counsel for the Petitioners and the learned AGP for the Respondent Nos.1 and 3. None for the Respondent Nos.2 and 4 though served.

2 The Petitioners claim that they are working on the post of teacher in a primary aided school. Their grievance is that they were granted the benefit of senior pay scale after completion of 12 years of service calculating their services rendered in the unaided school. However, by the impugned order dated 3.5.2013 Annexure 'D', benefit extended in their favour has been withdrawn on the ground that earlier period of the Petitioners was in unaided school and that period cannot be counted for the purpose of granting senior pay scale. To contend that the decision dated 3.5.2013 to withdraw the

benefit is illegal, the learned counsel for the Petitioners has placed reliance on the order passed by the Division Bench of this Court in **Ajay s/o Viraji Valvi & Ors. v. The State of Maharashtra & Ors.** in **Writ Petition No.2897 of 2012** and the other bunch of matters decided on April 26, 2012.

3 Having considered submissions of the learned counsel for the Parties and having gone through the order passed by the Division Bench in the case of **Ajay Viraji Valvi (Supra)**, we are of the view that the question involved in this Petition has already been considered and decided by the Division Bench of this Court. The Division Bench in paragraph 9 has observed thus:

*"9. We have carefully considered the submissions. We may make reference to the decision of this Court in the case of **S.T.Devare (Supra)** wherein this Court was dealing with the case of the petitioners therein, who were either Assistant Teachers or Head Masters in recognized secondary schools. This Court was dealing with the Government Resolution granting benefit of time bound promotion on completing the qualifying service of 12 years. Perhaps, the same argument, which is canvassed today on behalf of the respondent, was also canvassed before the said Court. This Court, in para 6 of the said decision held, thus:*

"6. It may be mentioned at this stage that the Government Resolution dated 2/9/1989 nowhere mentions that the qualified service of 12 years should be from the school which is brought on grant basis. It is required to be noted that the qualification prescribed for the aided school are the same in the unaided school and there are no separate rules for unaided

school. The nature of work is also same in respect of school which is receiving grant and the school which is not receiving grant. Under the circumstances, it is not correct to assume that the 12 years service should be from aided school only....."

This Court took a view that even the service rendered by an Assistant Teacher in a school for the period for which the school was not receiving grant-in-aid, has to be taken into consideration for computing the qualifying service. There are several other decisions which have been followed in the said decision."

Thereafter in concluding paragraph 13, the Division Bench has issued following directions:

"13. Accordingly, we pass the following order:

(I) The concerned authority shall accept the proposals of the petitioners for grant of Time Bound Promotions to them in terms of the policy of the State Government;

(II) We direct that while considering the eligibility of the petitioners for the benefits under the said scheme, completion of 12 years service shall be reckoned from the individual date of joining in a particular cadre and the service should not be reckoned from the date on which the school was brought on grant-in-aid basis. Thus, for considering the qualifying service of 12 years, the service rendered by the petitioners in the respective schools from the date of their joining till the date on which the school became an aided school, shall be taken into consideration;

(III) It is obvious that the petitioners will be entitled to the benefit of Time Bound Promotion provided that the petitioners are otherwise eligible.

We make the Rule absolute in the above terms with no order as to costs."

4 It has also been pointed out by the learned counsel for the Petitioners that after passing of the order by the Division Bench, the Government has taken decision vide the Government Resolution dated 6th May, 2014 that services rendered by the teacher in unaided school has to be taken for consideration for the purpose of granting benefit of senior pay scale.

5 In view of the aforesaid order as passed by the Division Bench of this Court as also the subsequent decision taken by the Government vide Government Resolution dated 6th May, 2014, we allow this petition by quashing the impugned order dated 3.5.2013 Annexure 'D' and we direct the Respondent No.2-Education Officer to extend the benefit of senior pay-scale to the Petitioners by counting the period of service rendered by them in unaided school.

6 With aforesaid directions, the Petition is allowed.

[RANJIT MORE, J.]

[SHANTANU KEMKAR, J.]