

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 2359 OF 2002

Vimal Sudhkarrao Deshpande	()	
Age : 60 years, occu. : retired teacher	()	
R/o 'Manas', Gandhi Chowk, Double	()	
Gin Road, Kaluka Devi Mandir	()	
Old Jalna, Taluka & District Jalna	()	Petitioner.

Versus

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|----|---|----|--|
| 1. | The State of Maharashtra | () | |
| 2. | The Deputy Director of
Education, Aurangabad Divn.,
Aurangabad. | () | |
| 3. | District Education Officer
(Primary), Zilla Parishad,
Jalna. | () | |
| 4. | Head Mistress,
Dankunwar Hindi Kanya
Vidyalaya, Opposite Mission
Hospital, Durgamata Road,
Jalna. | () | |

(Copy for respondent Nos.1 to 3 served
on Government Pleader, Bombay High
Court, Bench at Aurangabad)

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|---|--------------------------------|----|--|
| 5 | Shakuntalabai w/o Asaram Dhake | () | |
| | Age : 52 years, occu.- Teacher | () | |

Smt. Dankunwar Hindi Kanya ()
 Vidyalaya, Opposite Mission ()
 Hospital, Durga Mata Road, ()
 Taluka and District Jalna.

6. Vasudha Vasantrao Ghoufule ()
 Age : 56 years, occu.: Teacher ()
 Smt. Dankunwar Hindi Kanya ()
 Vidyalaya, Opposite Mission ()
 Hospital, Durga Mata Road, ()
 Taluka and District Jalna.

Respondents.

Mr. V.M. Mane, Advocate for the petitioner.

Mr. Y.G. Gujrathi, A.G.P for the State.

CORAM : **R.D. DHANUKA &
 SUNIL K. KOTWAL, JJ.**

Dated : 01-09-2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J) :-

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner seeks order and direction against respondent Nos.2 and 3 i.e. Deputy Director of Education, Aurangabad Division, Aurangabad and District Education Officer (Primary), Zilla Parishad, Jalna respectively to grant and sanction the Selection Grade to the petitioner as on 01.01.1998 onwards and seeks further order and direction

against the School (respondent No.4) to carry out an order issued by respondent Nos.2 and 3 and that the petitioner be granted Selection Grade on 01.01.1998 onwards i.e. Rs. 5500 to 9000/-.

2. All the respondents are served. None appeared for respondent Nos.3 and 4. No affidavit-in-reply is filed by any of the respondents.

3. Some of the relevant facts for deciding this petition are as under.

4. The petitioner had passed her Higher Secondary Certificate Examination in the year 1959 and was placed in the Second Division. The petitioner was appointed as an Assistant Teacher in the respondent No.4 School on 11.06.1969. The petitioner also completed thereafter D.Ed. Course in the year 1974. It is the case of the petitioner that she attended 21 days training in service as per the Government Scheme and obtained

certificate of training in the month of May 1994. A copy of the said certificate is annexed at Exhibit-D to the petition.

5. It is the case of the petitioner that the petitioner was already granted higher pay scale as per Chattopadhyaya recommendations and was getting pay scale Rs. 1400 to 2600/-.

6. On 02.09.1989 the State Government issued Government Resolution. It was provided in the said Resolution that the provision for Selection Grade was provided to the suitable teachers to the extent of 20 % in the institution. It is the case of the petitioner that the petitioner had fulfilled all the conditions given in the said Government Resolution and was eligible to be granted Selection Grade since 01.01.1998.

7. The petitioner made representations to the respondents on 28.04.2000 and 29.05.2000. On 30.04.2000 the petitioner retired at the age of superannuation. On 21.07.2001 respondent No.4 informed the petitioner the decision of

respondent No.3 rejecting the representation of the petitioner, on the ground that the petitioner was not having higher degree and was not eligible to be granted Selection Grade under the said Government Resolution dated 02.09.1989. The petitioner, thus, filed this Writ Petition for the various reliefs.

8. Learned Counsel for the petitioner invited our attention to the annexures to the petition including the certificate granted by S.S.C. Examination Board in favour of the petitioner for passing Higher Secondary Certificate Examination held in the month of March 1959. The petitioner was appointed on 11.06.1969. Learned Counsel for the petitioner submits that under the said Government Resolution dated 02.09.1989 and more particularly under Clause 9 (2), the employees who had completed the age of 12 years in service, were required to submit the degree of higher education for the purpose of conferring higher Selection Grade. He invited our attention to sub-clause (4) of Clause-9 of the said Government Resolution and would submit that since the petitioner had completed 18 years of service as on 01.01.1998, the petitioner was not liable

to produce any higher degree certificate for the purpose of availing the Selection Grade under the said Government Resolution. He submits that the petitioner was exempted from passing such higher degree certificate for the purpose of availing of Selection Grade.

9. Learned Counsel for the petitioner invited our attention to the letter dated 21.07.2001 from the Management conveying the decision of respondent No.3 rejecting the representation of the petitioner on the ground that the petitioner did not have higher degree certificate. He submits that the said decision of respondent No.3 is ex-facie contrary to and in violation of condition No.9 (2) read with sub-clause (4) of the said Government Resolution.

10. A perusal of the record indicates that the petitioner had already completed more than 18 years of service as on 01.01.1998. In our view, the petitioner was thus not liable to pass any higher degree examination for the purpose of availing higher Selection Grade under the said Government Resolution

dated 02.09.1989. The petitioner had made representation to the respondents bringing these facts on record. However, a perusal of letter dated 21.07.2001 addressed by the School Management to the petitioner thereby conveying the decision of respondent No.2, indicates that respondent No. 3 has not considered the provisions of Clause9 (2) & (4) of the said Government Resolution while rejecting the representation made by the petitioner. In our view, the order passed by respondent No.3 is thus ex-facie illegal and contrary to the conditions granting specific exemption to those employees who had completed 18 years of service as on 01.01.1998 from passing any higher degree examination. In our view, the petitioner had fulfilled those requirements described under the said Government Resolution and thus was entitled to be granted higher Selection Grade in terms of the said Government Resolution. The order passed by respondent No.3, in our view, is thus illegal and contrary to the said Government Resolution and thus deserves to be set aside.

11. We, therefore, pass the following order.

ORDER

1. Writ Petition is made absolute in terms of prayer clause (C) and (D).
2. The order passed by this Court shall be complied with by respondent Nos.2 and 3 within 4 weeks from today.
3. Respondent No.4 shall comply with the order passed by respondent Nos.2 and 3 within 4 weeks from the date of communication of the order of respondent Nos.2 and 3, without fail.
4. The parties are directed to rely on the authentic copy of this order.
5. Rule is made absolute in aforesaid terms.
6. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE
