

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2396 OF 2004

Sanjay s/o. Ganpatrao Irlapalle,
Age 36 years, Occu. Asst. Teacher,
R/o. Gitta, Post Jawalgaon,
Tq. Ambajogai, Dist. Beed.

....Petitioner.

Versus

1. State of Maharashtra,
Education and Employment Department,
Mantralaya, Mumbai.
2. Raghuvathrao Munde Education
Society, Katkarwadi, Tq. Ambajogai,
Dist. Beed, through its President.
3. Kathakade Venkat Vittalrao
at Katkarwadi, Post Ujani,
Tq. Ambajogai, Dist. Beed,
Secretary,
Raghunathrao Munde Education
Society, Katkarwadi, Tq. Ambajogai,
Dist. Beed.
4. Dattatraya Ramrao Munde,
Secretary
of Raghuvanthrao Munde Education
Society, Katkarwadi, Tq. Ambajogai,
Dist. Beed.
5. Head Master,
Raghunathrao Munde Vidyalaya,
Katkarwadi, Tq. Ambajogai,
Dist. Beed.
6. Education Officer (Secondary),
Zilla Parishad, Beed.
7. Smt. Morale Nirmala Rambhau,
Age 40 years, Occu. Asst. Teacher,
Raghunathrao Munde Vidyalaya,
Katkarwadi, Tq. Ambajogai,

Dist. Beed.

....Respondents.

Mr. R.J. Godbole, Advocate for petitioner.

Mrs. V.N. Patil/Jadhav, AGP for respondent Nos. 1 & 6.

Mr. Satyajit Bora, Advocate for respondent Nos. 2 to 5.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

RESERVED ON : July 03, 2017.

DECIDED ON : July 11, 2017.

JUDGMENT : [PER T.V. NALAWADE, J.]

. The petition is filed to challenge the correspondence made by respondent No. 2/institution and the Headmaster, the employer of the petitioner with the petitioner by which the decision of the educational institution is informed that the petitioner is Assistant Teacher in primary school in the pay scale of Rs.1200-2040 and he is not Assistant Teacher in the secondary school in the pay scale of Rs.1400-2600. A direction is also sought by the petitioner to respondents that petitioner should be treated as trained graduate teacher in secondary school in the pay scale of Rs.1400-2600 with effect from 1.7.1991 and give him the scale as per the 5th Pay Commission and fix his pay accordingly. Relief is also claimed for giving direction to respondents to pay the arrears after fixing pay in the aforesaid manner. Both the sides are heard.

2) The educational qualification of the petitioner is B.A.,

B.Ed. It is his case that respondent No. 2/institution was running secondary school and in the school, he was appointed as Assistant Teacher with effect from 1.7.1991 in the pay scale of Rs.1400-2600. It is his case that in the year 1992, he was appointed as incharge Headmaster of the school and his appointment was approved by the authority like Education Officer Secondary. It is his case that in the seniority list prepared by the school for the years up to 1994, his name was shown in the pay scale of Rs.1400-2600 and his appointment was shown as on permanent post and as confirmed teacher.

3) The petitioner was terminated on 4.9.1995. This decision was challenged by the petitioner by filing appeal bearing No. 308/1996 before the School Tribunal. This appeal was decided in favour of the petitioner on merits. Direction was given to the respondent/institution and the school to reinstate the petitioner. Writ Petition No. 27/2000 was filed by the respondent/school to challenge the decision of the School Tribunal in this Court. This Court had refused to grant interim relief. In Writ Petition, compromise document was filed by the respondent/school and the petitioner that the respondent/school was reinstating the petitioner in service and it was making correspondence with the Education Officer Secondary to see that the petitioner gets the scale and the implementation of the

5th Pay Commission also. In terms of this compromise, Writ Petition No. 27/2000 of the respondent/school came to be disposed of.

4) It is the case of petitioner that in view of the decision of School Tribunal, a direction was given by the Education Officer Secondary to the respondent/institution to give the pay scale of Rs.1400-2600 to the petitioner. It is contended that further direction was given to see that the junior-most teacher (respondent No. 7) employed by the school is terminated and the post is made available to the petitioner. Respondent No. 7 is the wife of the Chairman of this institution and she was appointed subsequent to the appointment of the petitioner in the school.

5) It is the case of the petitioner that to protect respondent No. 7, the school management joined hands with respondent No. 7 and appeal was filed by respondent No. 7 against the school management in the School Tribunal. It is contended that intentionally, the management did not appear in the matter and the School Tribunal gave ex parte decision in favour of respondent No. 7. It is contended that respondent No. 7 was then given the post of Assistant Teacher in the pay scale of Rs.1400-2600 and the petitioner was deprived of this scale.

6) It is the case of the petitioner that he was then given the scale of Rs.1200-2040 and such letters, which are under challenge, were sent to him when he made many representations. It is the case of the petitioner that in spite of the representations made by him, no steps were taken by respondent/management to give him scale of Rs.1400-2600 and so, he was required to file present writ petition. It is the case of the petitioner that only to accommodate respondent No. 7, the management is avoiding to give the pay scale of Rs.1400-2600 to the petitioner, though he was appointed in secondary school and he was teaching for 8th, 9th and 10th standards.

7) The respondent/school has denied that petitioner was appointed in secondary school. It is contended that his appointment was in primary school in the pay scale of Rs.1200-2040.

8) Respondent No. 7 has not appeared in the present proceeding in spite of service of notice on her. Respondent No. 1/Government has contended that there is no vacant post in secondary school for giving appointment to the petitioner in the pay scale of Rs.1400-2600 with effect from 1.7.1997. It is the case of Government that as per the order made by the School Tribunal, a direction was given by the authority, Education Officer on 25.1.2000 to respondent/ school to give the appointment to the petitioner and

comply the order. It is the case of Government that as the post of teacher in scale of Rs.1400-2600 is not available for giving appointment to the petitioner with effect from 1.7.1991, the scale of Rs.1200-2040 was given to the petitioner and as such approval is given by Education Officer Secondary.

9) Following points and circumstances were mainly argued and stressed by the learned counsel for the petitioner :-

(i) Admittedly, the petitioner was appointed as Assistant Teacher by respondent/institution on 1.7.1991 and his educational qualification on the date of appointment was B.A., B.Ed. which is required for giving appointment as teacher in secondary school.

(ii) In the year 1991, there was no permission to respondent/institution to start 5th, 6th and 7th standard classes and so, it cannot be inferred that the appointment was given in primary section.

(iii) On 10.7.1990 permission was given by the authority to start 8th standard class, in 1991-92 permission was given for starting 9th standard class and in 1992-93 permission was given to start 10th standard class to respondent/institution and that was done as per the natural growth of the institution and this fact is not disputed by the

respondent/institution.

(iv) Admittedly, first time in the year 1993 permission was given to the respondent/institution to conduct the classes of 5th, 6th and 7th standard, though the permission was given with effect from June 1992. Thus, in the year 1991, there was no permission given to start the classes of primary section viz. 5th, 6th and 7th standards.

(v) Admittedly, the petitioner was appointed as incharge Headmaster in secondary school in the year 1993 and this appointment was approved atleast for one year by the Education Officer Secondary. This could not have happened if the petitioner was not appointed in secondary school.

(vi) In seniority list, civil list of the staff prepared by the school right from the year 1992 till the year 1994, the name of the petitioner was shown as Assistant Teacher in secondary school in the pay scale of Rs.1400-2600 and his appointment was shown as against the permanent post.

(vii) The petitioner had filed proceeding in School Tribunal viz. Appeal No. 308/1996 to challenge his termination made in the year 1996 against the school management and Education Officer Secondary. This appeal was decided in favour of petitioner by School Tribunal. In Writ Petition No. 27/2000 filed by respondent/school and management to

challenge the decision of School Tribunal, compromise document was filed by petitioner and management of the school in which the respondent/school had admitted that the appointment to petitioner was given on 1.7.1991 and that was in secondary section. As per the compromise, the respondent/institution had agreed to send the proposal to approve the salary to Education Officer Secondary and there was also agreement to send the proposal to give him scale as per 5th Pay Commission. This petition came to be disposed of in terms of compromise on 26.7.2001. Even prior to that date, the Education Officer Secondary by letter dated 25.1.2000 had directed the institution to give appointment to the petitioner, as per the decision given by the School Tribunal in Appeal No. 308/1996, in the pay scale of Rs.1400-2600. This circumstance leads to the inference that after verifying everything such order was made by the competent authority. The competent authority had informed the President of the institution to see that the junior-most teacher of the secondary school is removed to give the post to which the petitioner is entitled. Accordingly, the junior-most teacher, respondent No. 7 was removed from service.

(viii) Appeal filed in School Tribunal by respondent No. 7 to

challenge her termination by respondent/institution was intentionally not contested by the school as respondent No. 7 is the wife of Chairman of the institution. The School Tribunal allowed this appeal exparte. To the proceeding filed in the School Tribunal, the petitioner was not made party and this decision of the Tribunal was not challenged by the respondent/institution as respondent/institution wanted to give post to respondent No. 7 and not to the petitioner in the pay scale of Rs.1400-2600.

10) On the other hand, the learned counsel for respondent/management argued on following points :-

(i) There is no appointment order with the petitioner to show that he was appointed in the year 1991 in secondary school on the pay scale claimed.

(ii) For 5th, 6th and 7th standards, permission was granted by the authority to the institution in the year 1993 and it was to take effect from June 1992. The institution was running this section of primary school from prior to 1991 and there is record with the institution to show that students were admitted for these classes from prior to 1991. Thus, the appointment was given to the petitioner for 5th, 6th and 7th standards as trained teacher in the

scale of Rs.1200-2040.

(iii) The record and the contention of the petitioner that he was teaching subjects to even 10th standard class cannot entitle him to get the pay scale of Rs.1400-2600 as no appointment order was issued in his favour of that scale and in secondary school.

(iv) Though the Education Officer Secondary had given direction to the management to give appointment to the petitioner in the pay scale of Rs.1400-2600, there was no such power with the Education Officer and that can be done only the management of the school.

11) This Court had directed the respondent/management by order dated 16.6.2017 to produce all the record with regard to the appointment of the petitioner for 5th, 6th and 7th standards if there was such appointment made in the year 1991. The respondent/management was also expected to produce the record of acceptance of such appointment by the petitioner. The record of appointment of respondent No. 7 was also directed to be produced by the management. This record is not produced by the respondent/management. Sufficient time and opportunity was given to the respondent/management in that regard. The learned counsel for respondent/management submitted that though there is some

record in favour of petitioner as contended by him, that record could be created due to some dispute between the Secretary of the management and the Chairman. The learned counsel submitted that the Headmaster has no power to create seniority list and that power is vested with the management and so, the record produced by the petitioner in that regard cannot be relied upon. He also submitted that probably that record is fabricated.

12) Though arguments of aforesaid nature are advanced by the learned counsel for management, the fact remains that the necessary record in support of aforesaid contentions was not produced by the management. The main circumstance which needs to be kept in mind is that the School Tribunal has given decision in favour of the petitioner in the proceeding which was filed against the management of the school and the Education Officer Secondary. For compliance of that order, Education Officer Secondary had issued order against the management. In Writ Petition filed by the management bearing No. 27/2000, the compromise document was signed by the Headmaster and also by the Chairman of the institution and the compromise shows that the management has accepted that appointment was given to the petitioner on 1.7.1991 in secondary school. The management had agreed to forward the proposal to the authority like Education Officer Secondary to see that

the petitioner gets the scale and also the scale as per 5th Pay Commission. When such settlement was there, it is not open to the management now to say that the appointment was initially given in primary section in the year 1991. The circumstance that the primary section was not in existence in the year 1991 cannot be ignored. There is no record of correspondence with Education Officer Primary. The educational qualification required for getting post in primary section is D.Ed. and not B.Ed. No separate record of teachers, who were appointed for 5th, 6th and 7th standards in that year is produced on the record when contrary record is produced by the petitioner to show that his name was appearing in the list of teachers prepared for secondary school. The appointment of the petitioner as incharge Headmaster was approved by the Education Officer Secondary in the year 1993 and the seniority list for the year 1994 of the secondary school bears the signature of Education Officer Secondary. This record shows that the appointment of the petitioner was as against the permanent post in secondary school in the pay scale of Rs.1400-2600. At that time, respondent No. 7 was not in picture. Even the previous Headmaster was shown as incharge Headmaster. It can be said that as there was some grievance against incharge Headmaster, the petitioner was appointed as incharge Headmaster in the year 1993 and there was no other reason for the same.

13) A typed copy is produced by the management in the present proceeding to show that when the post of incharge Headmaster was given to the petitioner, it was informed to him that he was working in primary section. Another typed copy is produced to show that the petitioner had accepted such appointment and he had mentioned that though he was working in primary section, he was accepting the charge of incharge Headmaster of secondary school. No original record in this regard is produced before this Court. This Court has no hesitation to hold that there is clear possibility of creating false record by the management of such nature. The respondent/management has avoided to produce all the relevant record as per the order made by this Court and so, adverse inference needs to be drawn against the respondent/management. It can be said that it is not disputed that the petitioner was teaching for 8th, 9th and 10th standard classes. In ordinary course, when and if the post had become available in secondary school after the natural growth of secondary school, the petitioner ought to have been given that post as he was already there. Even if the record is accepted as it is, it can be said that the petitioner was standing at Sr. No. 3 in seniority list of trained graduate teachers. These circumstances are sufficient to infer that when the wife of Chairman became available, only to accommodate her, the dispute was created

with the petitioner, he was terminated and then the appointment was given to respondent No. 7 in secondary school.

14) The aforesaid circumstances are sufficient to infer that the respondent/institution was involved in illegal activities. To see that respondent No. 7 gets the post, even false record is prepared by respondent/management. It appears that the management had influence even over the authorities and so, it dared to create such record and to get approval on the pay scale of Rs.1200-2040 when there was specific order against the Education Officer Secondary of the School Tribunal. Such institutions virtually exploit the employees like the petitioner as the employees like the petitioner are in need of job and they have no alternative than to work on scale which is given to them. Even after filing of compromise document in aforesaid writ petition of the nature mentioned above, the respondent/management dared to create the record of aforesaid nature against the petitioner. In view of these circumstances, this Court holds that the relief claimed by the petitioner needs to be granted to him. As the petition came to be filed in the year 2004, in view of the law of limitation, the petitioner will be entitled to get the pay scale from three years preceding the date of institution of the present proceeding. The petitioner is entitled to get the pay scale as per 5th Pay Commission also. For the reasons already given, if the

additional post is not available and the post which was available is given to respondent No. 7, that post needs to be vacated for giving the post to the petitioner. In the result, following order is made.

O R D E R

(I) The petition is allowed. The decision of respondent/management to give petitioner scale of Rs.1200-2040 is set aside.

(II) The petitioner is to be treated as trained graduate teacher in secondary school of respondent/management with effect from 1.7.1991. The pay scale is to be fixed accordingly. The petitioner is to be treated as teacher appointed on the post which became available, if any, due to natural growth of secondary school. If this date is subsequent to 1.7.1997, the scale is to be fixed as per that date. Then the pay is to be fixed as per the recommendations of the 5th Pay Commission. The arrears of the pay for the period starting from three years preceding the date of filing of the petition till the date of decision is to be paid to the petitioner by school management. Further pay of the petitioner is to be paid by the Government if for this post, there is grant-in-aid sanctioned. Arrears of pay shall be paid to the petitioner within four months from today, failing which the petitioner

would be entitled to recover it with interest at the rate of Rs.9% per annum. However, the appointment of the petitioner is to be treated as mentioned above on the permanent post from the previous date. The necessary orders are to be issued by the authority in this regard and if required necessary orders with regard to the post given to respondent No. 7 are to be passed by the authorities. It is to be seen that the petitioner will have the priority over respondent No. 7 if post had become available. The respondent/management will be liable to bear the expenses in respect of the salary paid to respondent No. 7.

Rule is made absolute in aforesaid terms.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

After pronouncement of the judgment, the learned counsel for respondent/management requests for time to challenge the decision rendered today by this Court in Writ Petition No. 2396/2004. At his request, time of four weeks from today is hereby granted.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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