

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2510 OF 2004

Madhukar Bhaskar Pawar,
Age 34 years, Occ. Service
R/o Pahur (Kasbe), Tq. Jamner,
District Jalgaon.

..Petitioner

Versus

1. The State of Maharashtra

2. The Dy. Director of Education,
Nasik Division, Nasik.

3. The Education Officer (S),
Zilla Parishad, Jalgaon.

4. The Chairman,
Pahur Group Education Society,
Pahur, Tq. Jamner, Dist. Jalgaon.

5. The Secretary
Pahur Group Education Society,
Pahur, Tq. Jamner, Dist. Jalgaon.

6. The Head Master,
R.T.Lele High School,
Pahur, Tq. Jamner, Dist. Jalgaon.

..Respondents

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Advocate for Petitioner : Shri V. B. Garud
AGP for Respondents 1 to 3 : Smt. V. S. Choudhary
Advocate for Respondents 4 to 6 : Shri K. M. Nagarkar

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CORAM : RAVINDRA V. GHUGE & SUNIL K. KOTWAL, JJ.

Dated: November 30, 2017

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ORAL JUDGMENT : (PER RAVINDRA V. GHUGE, J.):-

1. The petitioner, by this petition, has putforth prayer clause

21(A), which reads as under:-

"(A) For a Writ of Certiorari, order, direction in the nature of certiorari, calling for the record and proceeding of the order dated 15.7.2003, bearing No. Education / Secondary/ 7/ W.P.772/02, passed by the respondent No.3 and after examining the legality, validity and propriety therefor, the order dated 15.7.2003, bearing No. Education / Secondary/ 7/ W.P.772/02, passed by respondent No.3 may kindly be modified and the petitioner be granted B.Ed., scale of Rs.1400-2600 and all the benefits attached to the B.Ed. post from the date of his initial appointment w.e.f. 16.7.1993."

2. Contention of the petitioner is that he was appointed in 1993 as an Assistant Teacher and was wrongly given the D.Ed. scale. He was wrongly continuing in the said scale and subsequently was given the B.Ed. scale in 2002. From 1993 to 2002, he was wrongly continued on the D.Ed. scale and he is entitled to the difference in salary of the B.Ed. scale for that entire period.

3. Learned counsel for the petitioner has argued on some illegal gratification given to the management in the nature of the construction of some class room. He has also canvassed his

submissions on the aspect of his unlawful termination and his subsequent reinstatement by the Tribunal.

4. Learned AGP points out that when the petitioner was appointed there was no sanctioned B.Ed. scale. It was by Government Resolution dated 25.6.1992 that the D.Ed. scale was granted to the concerned school. Subsequently, thereto, the petitioner has been granted the B.Ed. scale from 16.8.2002 by the orders of the Education Officer, dated 15.7.2003.

5. In the light of the submissions of the learned Advocate for the petitioner, the learned AGP on behalf of Education Department and Shri Nagarkar, learned Advocate on behalf of the management, we have gone through the petition paper book and the record available.

6. The appointment order of the petitioner dated 16.7.1993, clearly indicates that he was appointed on a D.Ed. Scale for a temporary period of one year from 1993-94. By a communication dated 10.6.1994, the service of the petitioner was continued. By one more communication dated 9.6.1995, his service was again continued for one year on the same terms and conditions.

7. By the order of the Education Officer dated 9.9.1996,

approval was granted to the appointment of the petitioner on the D.Ed. scale. Based on the said approval, it is submitted that the petitioner is deemed permanent.

8. Since the secondary school, in which the petitioner is imparting education is a grant in aid school, it needs to be scrutinized as to when was the B.Ed. scale granted by the Government. In the absence of the salary grants admissible to a Teacher as per the B.Ed. scale, a Teacher who has accepted his appointment on the D.Ed. scale with eyes wide open, a grievance after 24 years cannot be entertained. There is no dispute that the petitioner was working on the D.Ed. scale until he was granted the B.Ed. scale, the moment it was made available by the State w.e.f. 16.8.2002.

9. The issue, therefore, would be as regards the salary to be paid to the petitioner as per the B.Ed. scale from the salary grants. An affidavit in reply has been filed on behalf of the Education Department on 22.12.2005, stating therein, that since the petitioner was appointed in the D.Ed. scale, he cannot be considered to be appointed in category "C" of Schedule "F" under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Unless he is brought into category "C", he would not be entitled for

the B.Ed. scale.

10. The record reveals that the Education Department had issued a Circular on 25.6.1992, declaring that those trained teachers, who were appointed on the posts for un-trained teachers, will have to work on the scale available for un-trained teachers and will not be entitled to claim the pay scale of trained graduate teachers. It was further provided that such trained graduate teachers, who were working on un-trained teachers' posts, will not have a right to be included in the category 'C' of Scheduled 'F' of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

11. In the light of the above, we do not find that the grievance of the petitioner that he should be paid the B.Ed. scale from the date of his appointment in 1993, which was a temporary appointment, could be entertained.

12. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

13. At this juncture, the learned Advocate for the petitioner submits that the management has not paid his monthly salary for the academic years 1993-94 and 1994-95. Considering the said request,

we deem it appropriate to grant liberty to the petitioner to make a representation to the Education Officer (Secondary) / Respondent No.3 within three weeks from today, putting forth his claim for the salary for the period for which it is unpaid. After receiving such representation, respondent No.3 shall verify from the records as to whether any unpaid salary is outstanding and accordingly shall pass an order directing the management to make the said payment within a period of six weeks. The management would be obliged to implement the said order.

(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)

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