

IN THE HIGH COURT OF JUDICATUR OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 540 OF 2004
WITH
CIVIL APPLICATION NO. 11418/2005
WITH
CIVIL APPLICATION NO. 2703/2008

NAMDEO GANPATI JADHAV
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

Advocate for Petitioner : Mrs. Sunita Sonawane
and Shri A.S. Shejwal.
AGP for Respondent No. 1 : Mrs. M.A. Deshpande.
Advocate for Respondent Nos. 2 to 4 : Shri. V.C. Patil
h/f. Shri U.B. Bondar.

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

Dated : 31st October, 2017

PER COURT :

1. By this petition, the petitioner has sought the quashing of the order dated 21/05/2002, issued by the Education Officer, Primary, thereby refusing to grant the status of deemed permanent as a secondary school teacher to the petitioner. So also, the petitioner is seeking unpaid salary as a secondary school teacher.

2. The prayers put forth by the petitioner in paragraph No. 23 (B), (C) and (D) read as under :

“(B) By issuing writ of certiorari or any appropriate writ of certiorari or any appropriate writ or directions in the like nature, the order passed by the education officer Z.P. Jalna on 21.5.2002 may please be quashed and set aside.

(C) Pending hearing and final disposal of the writ petition the respondents may kindly be directed to give the salary of secondary school teacher to the petitioner.

(D) The respondents be please be directed to regularize the petitioners as secondary school teacher Zilla Parishad, Jalna with all consequential benefits from May 1998, by issuing Writ off Mandamus or any other appropriate Writ.”

3. This Court had heard the learned advocates for the respective sides on 16/09/2005 and had passed the following order while admitting the petition :

“1. The petitioner was initially appointed, on his selection by Subordinate Services Selection Board as a primary school teacher, vide order dated 9.4.1992. As there were vacancies in the secondary school, the

petitioner was made to teach in secondary school w.e.f. 19.10.1993. The petitioner continued since 19.10.1993 till date to work as an Assistant Teacher in secondary school when the appointment was made as a primary school teacher. By an order dated 9th June 2005, the petitioner has been regularly appointed as an Assistant Teacher in secondary school. As such, that part of the prayer made in the present petition is rendered redundant.

2. The petitioner then claims difference in the salary of a secondary school teacher and that of a primary school teacher in view of the fact that though the petitioner has worked as secondary school teacher, he has been paid the salary as primary school teacher. It is an admitted position that the petitioner has acquired B.Ed. Qualification in May 1998 and it is from this point of time that the petitioner has acquired eligibility to teach in secondary school. The petition has been filed in October 2003.

3. The claim in the petition for difference of salary is for the period from May 1998 till the date of filing of the petition i.e. October 2003. We are entertaining the said claim for a period of three years preceding the date of filing of the petition. The earlier claim, we decline to

entertain.

4. We issue Rule to the extent of claim of difference of salary for a period of three years preceding the date of filing of the petition.

5. Shri C.S. Kulkarni, learned counsel waives service for respondents Nos. 2 and 3.”

4. From paragraph No. 3 and 4 of the order reproduced above, we find that this Court has concluded that the claim of this petitioner in this petition would be entertained only to the extent of the difference of salary for a period of three years preceding the filing of this petition. As such, we are required to consider whether the petitioner would be entitled for salary as a secondary school teacher from October, 2000 till October, 2003.

5. Learned counsel for the Zilla Parishad makes a categorical statement on the basis of the affidavit-in-reply filed on 11/06/2004 by the Education Officer that the petitioner was transferred to another primary school at Gondi on 28/06/1999 and since then he has been working as a primary school

teacher. This statement is denied by the petitioner, though, an affidavit in counter or a rejoinder has not been filed after the Education Officer entered the affidavit-in-reply.

6. What emerges before us at this juncture is that the petitioner claims to have been working as a secondary school teacher from the year 1993 and though, he has been appointed as a primary school teacher, he is still discharging his duties as a secondary school teacher on ad-hoc basis. In contra-distinction, the Education Officer indicates from the affidavit that after the petitioner was transferred to the primary school at Gondi in the year 1999, he has been working as a primary school teacher and is not discharging duties as a secondary school teacher.

7. Grievance of the petitioner is with regard to the order dated 21/05/2002, by which the request of the petitioner seeking deemed confirmation as a secondary school teacher has been rejected. The subject mentioned in the impugned communication indicates that the petitioner is working at

Gondi. It was by communication dated 11/10/1993, that the Zilla Parishad called for the services of the petitioner temporarily as a secondary school teacher, since a regularly selected secondary school teacher was not available. It emerges from the communication dated 11/10/1993, that the Sub-ordinate Selection Board is to make the selection and appointment of such teachers. As such, as the selection and appointment process was yet to be undertaken, the petitioner was temporarily called upon to work as a secondary school teacher. It also appears that he was made aware that he would work on the same pay scale on which he has been appointed as a primary school teacher and he would not be eligible for any higher pay scale or the pay scale of a secondary school teacher for the period in which he so works on ad-hoc basis.

8. We are of the view that if, the petitioner had any reservations about the conditions imposed by the order dated 11/10/1993, he could have declined to work as a secondary school teacher, since he was selected and appointed as a primary school teacher. Merely, because he has acquired the

eligibility qualification of B.Ed. in the year 1998 which made him eligible for promotion or appointment as a secondary school teacher, would not give him a ground to contend that he should be paid the salary of a secondary school teacher despite the specific condition set out in the order dated 11/10/1993. It was open for the petitioner to refuse to accept the said condition and continue to discharge his duties as a primary school teacher. We are therefore, of the view that the petitioner would not be entitled for the salary of a secondary school teacher.

9. Even, if this case is to be considered from a different angle as has been observed by this Court in paragraph No. 3 of the order dated 16/09/2005, passed while admitting this petition, it is brought to our notice that the petitioner has been transferred to a primary school on 28/06/1999. It is the specific contention of respondent Nos. 2 to 4 in paragraph Nos. 9 to 12 of the affidavit that the petitioner was made aware of the circumstances surrounding his ad-hoc engagement and that he was transferred to a primary school from which date he has not been working as a secondary school teacher.

10. Though, the petitioner denies the said contention and reiterates that he still continued to working as a secondary school teacher, this disputed question cannot be gone into by this Court. If at all, the petitioner is aggrieved, he can have the liberty of approaching the Divisional Commissioner under the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964, as is also mentioned in paragraph No. 13 of the affidavit by respondent Nos. 2 to 4.

11. In the above circumstances and keeping in view the condition imposed vide order dated 11/10/1993, we do not find that the petitioner can be said to be legally entitled to the pay scale of a secondary school teacher. By communication dated 09/07/2005, the petitioner is said to have been promoted as a secondary school teacher and since, then he has been drawing the salary of a secondary school teacher.

12. In the above, backdrop, we do not find any merit in this petition and the same, is therefore, dismissed. Rule is discharged.

13. The pending Civil Applications do not survive and stand disposed off.

(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)

S.P.C.