

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5745 OF 2013

Sanjay Howgirao Swami,
Age : 42 years, Occup.: Service,
R/o Shivnagar, S.T. Colony,
Naigaon Road, Udgir,
Tq. Udgir Dist. Latur. .. Petitioner

VS.

1. Marathwada Shikshan Prasarak Mandal,
Aatnur, Udgir Tq. Udgir
Dist. Latur.
2. Kamleshwar Kanya Vidyalaya,
Jalkot Road, Udgir,
Tq. Udgir Dist. Latur
Through its Headmaster.
3. The Education Officer (Secondary)
Zilla Parishad, Latur Dist.Latur. .. Respondents

Mr. V. D. Gunale, Advocate for the petitioner.
Mr. V. V. Bhavthankar, Advocate for respondents No.1 & 2.
Mr. S. B. Joshi, AGP for respondent No.3/ State

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.**
DATE : 12-10-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties appearing finally, by consent.

2. The writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India has been invoked by the petitioner in order to challenge order dated 16-04-2013 passed by respondent No.3 Education Officer refusing to give him B.Ed. pay-scale with consequential benefits.

3. The factual matrix leading to the petition are that, the respondent No.1 is an educational institution which runs respondent No.2. The school is recognized by Government and also receiving 100% grants-in-aid. The petitioner is working in the said school as a Assistant Teacher since 16-08-1994. Respondent No.3 has granted approval to his appointment. He was selected for B.Ed. training course as a in-service candidate. He has undergone the training at Adhyapak Vidyalaya, Gangakhed Dist. Parbhani. After completion of the training, he resumed his duties on 17-05-1996, however on 18-05-1996 respondent No.3 issued an order of termination on the ground that the post on which the petitioner was appointed was reserved for Scheduled Tribe. The petitioner had filed appeal before the School Tribunal, Aurangabad. Interim orders restraining the respondents

No.1 and 2 from filling the post of the petitioner came to be passed. Ultimately the appeal came to be allowed on 03-02-2000 and the termination order was set aside. Respondents No.2 and 3 reinstated the appellant with back wages as untrained teacher since 15-05-1996 to 31-03-1997, and thereafter, the salary is paid as per the pay-scale for trained teacher since 01-04-1997. His proposal was forwarded for approval to the Education Officer, however the Education Officer vide order dated 03-05-2001 granted the approval to the appointment of the petitioner on probation with effect from 18-02-2000 in the pay-scale of Rs.4500-7000/-. In fact the petitioner is working in the said school as permanent employee since his initial appointment. He has completed continuous service for more than 17 years. He is the only science teacher in the respondent No.2 school and he is teaching the said subject for 7th to 10th Classes. Though his qualification is B.Sc. B.Ed., he is being paid the pay-scale of D.Ed teacher. He made several representations to the respondents No.1 and 2 to pay him the salary in the prescribed pay-scale for B.Sc. B.Ed. qualification, however respondent No.1 informed him on 06-02-2001 that at present there is no post available in the school in that pay-scale. It was assured that if the post in the pay-scale of B.Ed. is made available in the school, then he will be considered on the priority basis. He has been given revised

pay-scale as per the 6th pay commission on D.Ed scale and so also granted increments under the said pay-scale only. Therefore, he made representations as he is the senior most in the D.Ed category to grant him benefits of the B.Ed. scale on 29-09-2011, 16-11-2011, 19-11-2011, 05-12-2011 and 09-12-2011. He had approached this Court by filing Writ Petition No.448 of 2012 in which this Court directed the Education Officer (Secondary), Zilla Parishad, Latur to consider the representation of the petitioner within six months. His representations have been rejected by the Education Officer on 16-04-2013. Hence, this petition.

4. Respondent No.2 has filed affidavit-in-reply wherein it is stated that, the school authorities had communicated to the petitioner that there is no permanent vacant post of graduate teacher in the school and requested him to accept the post of Assistant Teacher in D.Ed. pay-scale. The petitioner after considering situation of non-availability of B.Ed. permanent post in the school, had accepted the post of Assistant Teacher in B.Ed. scale. Accordingly, he gave consent/undertaking on 08-04-2011 on a bond paper in favour of school authorities stating that he is ready to accept the post of D.Ed. scale in the school. He had also accepted in the undertaking that, he will not

claim seniority in “C” category in schedule “F” and will not claim graduate pay-scale. The said undertaking has been given by the petitioner voluntarily, and therefore, now he is estopped from claiming the higher pay-scale. The appointment has been granted approval under D.Ed. scale only.

5. The respondent No.3 has filed affidavit-in-reply wherein it is stated that, there was only vacant post in B.Ed. pay-scale in Mathematics, however the petitioner is teaching Science subject. As far as 25 % quota for B.Ed. pay-scale is concerned, already one Shri B. S. Bhalke has been appointed on the B.Ed. pay-scale, from that quota in the respondent school, who is senior to the petitioner. There is no vacant post from 25 % quota in the B.Sc. pay-scale, and therefore, the petitioner cannot claim the said pay-scale from 25% quota.

6. It has been argued on behalf of the petitioner that, though he was not having B.Ed. qualification when he was appointed to the post of Assistant Teacher, however he has acquired it subsequently as in-service candidate, under such circumstance his claim is justified. In support of his contention he is relied on the decision in Writ Petition No.6096 of 2010, decided by this Court on 12-10-2010, Writ Petition

No.121 of 2012 with other petitions, decided on 20-03-2012, wherein the view has been taken that, when undoubtedly the petitioners therein possessed the necessary qualification then it will have to be considered as requirement for trained primary teacher.

7. Per contra, it has been argued on behalf of the respondent that, no post in the said cadre of B.Ed. quota was available with the respondent school, and therefore, by his own undertaking when the petitioner accepted the pay-scale of the teacher of D.Ed. now he cannot claim the higher or enhanced scale. Copy of the undertaking given by the petitioner has been brought to our notice.

8. Undisputedly at the time of appointment, the petitioner was not having requisite qualification in the B.Ed. quota or scale. He has acquired it later. In the above cases relied by the petitioner, the distinctive feature was that the petitioners therein had the qualification of B.Ed. at the inception of their appointment. Therefore, the said ratio cannot be made applicable as it is to the present case.

9. Furthermore, the other distinctive factor is that, since post for the B.Ed. scale was not available with the respondent school, the petitioner opted for the D.Ed. scale and unequivocal undertaking was

given by him on 04-08-2001. In the said undertaking he has unequivocal term as stated that, "he will not claim seniority and B.Ed. pay-scale". The said undertaking was never challenged by the petitioner at any earlier point of time nor even in this petition. On the contrary he has suppressed the same. No doubt the respondent school had stated that, if the post in the pay-scale of B.Ed. will be available in future, then the claim of the petitioner will be considered. But now the petitioner cannot take advantage of the same. He has not pointed out that, said situation is prevalent that too as per the rules and regulations. The position as it stood in respect of respondent school is that from 25% quota of B.Ed., a pay-scale is given to one Shri Bhalke B.S. There is absolutely no vacant post from 25 % quota from the said pay-scale available with the school. Under such circumstance the writ petition is devoid of merits, and therefore, deserves to be dismissed. Rule discharged. No order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.