

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7696/2008

Balasaheb s/o Kalyanrao Kulkarni,
age 41 yrs., occu.service,
r/o Nipani Tq.Bhoom
Dist.Osmanabad.

...Petitioner..

Versus

- 1] The State of Maharashtra,
through Deputy Director of Education,
Latur.
- 2] The Deputy Director of Education,
Latur Division, Latur.
- 3] The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
- 4] The Head Master,
Beleshwar Vidyalaya, Pakhrud,
Tq.Bhoom Dist.Osmanabad.
- 5] The Secretary,
Lokmanya Shikshan Sanstha,
Vizora Tq.Washi Dist.Osmanabad.

...Respondents...

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Smt.M.A. Kulkarni, Advocate for petitioner.

Smt.M.A. Deshpande, AGP for respondent nos.1 to 3.

Shri B.A. Dhenge, Advocate for respondent nos.4 & 5.

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- 2 -

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

DATE: 13.09.2017

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :

1] Heard learned counsel for the parties.

2] By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order and direction against the respondent nos.3 and 4 to grant the petitioner trained graduate regular scale with effect from 1.2.2001 by issue of writ of mandamus or any other appropriate, writ, order or direction in the like nature.

3] It is the case of the petitioner that he was initially appointed as an Assistant Teacher on 13.6.1988 in D.Ed. scale with the respondent no.5. The services of the petitioner were terminated some time in the year 1982. The petitioner filed an appeal before the School Tribunal at Aurangabad. The petitioner and the management filed compromise petition before the School Tribunal on 14.9.1994.

4] Under the said compromise petition, the management agreed to reinstate the petitioner on the post of Assistant Teacher in D.Ed. scale with seniority and

- 3 -

other benefits from June, 1988, excluding the arrears of salary. The petitioner waived his right in respect of arrears of salary from date of termination till reinstatement. The management agreed to consider the claim of the petitioner on the post of trained graduate pay-scale in future if vacancy arises. The petitioner reserved his right to claim the post of trained graduate Assistant Teacher if vacancy arises in future.

5] The respondent no.3 granted the trained graduate scale to the petitioner with effect from 1.6.2008. The petitioner thus filed this petition *inter-alia* praying for an order and direction to grant trained graduate scale with effect from 1.2.2001.

6] Learned counsel for the petitioner submits that on 1.2.2001, there was a vacancy and thus the petitioner was eligible to be appointed to the said post and also the trained graduate scale with effect from 1.2.2001. She submits that the respondent nos.3 and 4, however, have granted the trained graduate scale to the petitioner with effect from 1.6.2008. The respondent nos.3 and 4 thus shall be directed to grant trained graduate scale with effect from 1.2.2001.

- 4 -

7] Learned counsel for the respondent nos.4 & 5 invited our attention to the compromise petition dated 14.9.1994 and more particularly Clause (3) thereof and would submit that the management had agreed to consider the claim of the petitioner on the post of trained graduate pay-scale in future only if vacancy would arise. Similarly, the petitioner also had reserved his right to claim the post of trained graduate Assistant Teacher if vacancy would arise in future. He submits that on 1.2.2001, one Mr.K.P. Paul, who was working as Head Master in Vidya Vikas Vidyalaya, Vizora, run by the respondent no.5, retired on attaining the age of superannuation. However, there was dispute between one Mr.D.R. Bhosale and Mr.N.P. Chavan and both were claiming the post of Head Master in the said school. The said dispute reached upto this Court.

8] The said Mr.D.R. Bhosale was appointed to the said post on 1.2.2001. The Education Officer, however, refused to grant approval to the said appointment. The said Mr.D.R. Bhosale thus filed a Writ Petition bearing No.6721/2006 in this Court *inter-alia* impugning the refusal on the part of the Education Officer (Secondary)

- 5 -

to grant him approval. By an order dated 27.6.2008 passed by Division Bench of this Court in the said writ petition filed by Mr.D.R. Bhosale, this Court was pleased to set aside the impugned order passed by the Education Officer and remitted the matter back to him for decision afresh in accordance with law. This Court held that the respondent no.4 to that petition i.e. Mr.N.P. Chavan was junior than the said Mr.D.R. Bhosale.

9] Pursuant to the said order passed by the Division Bench of this Court, the Education Officer was pleased to grant permanent approval for the post of Head Master occupied by Mr.D.R. Bhosale with effect from 1.2.2001 to June, 2008 and accordingly fixed his pay. The said Mr.D.R. Bhosale retired some time prior to 1.10.2008. The respondent no.3 accordingly granted the trained graduate scale to the petitioner with effect from 1.6.2008.

10] It is not in dispute that the petitioner was fully aware of the claim made by Mr.D.R. Bhosale and the said Mr.N.P. Chavan to the said post of Head Master. The said dispute was resolved by an order dated 27.6.2008 passed by this Court. The Education Officer has

- 6 -

ultimately granted approval to the appointment of said Mr.D.R. Bhosale to the said post with effect from 1.2.2001. The petitioner never challenged the appointment of Mr.D.R. Bhosale to the said post with effect from 1.2.2001.

11] Since the said post was already occupied by the said Mr.D.R. Bhosale, the respondent nos.4 and 5 could not have appointed the petitioner to the said post being not vacant. The respondent nos.4 and 5 have implemented the order passed by this Court on 27.6.2008. The petitioner did not apply for modification and/or vacating the order dated 27.6.2008 passed by this Court in Writ Petition No.6721/2006 filed by said Mr.D.R. Bhosale. The petitioner also did not challenge the approval granted by the Education Officer to the appointment of said Mr.D.R. Bhosale to the post of Head Master with effect from 1.2.2001.

12] In our view, the respondent nos.4 and 5 were thus justified in refusing to grant trained graduate scale to the petitioner prior to 1.6.2008. It is not in dispute that the petitioner has been already granted trained graduate scale with effect from 1.6.2008, which

- 7 -

is accepted by the petitioner.

13] For the reasons recorded aforesaid, we are of the view that there is no merit in this petition and the same deserves to be dismissed. We, therefore, pass the following order.

O R D E R

The writ petition is dismissed. Rule is discharged. There shall be no order as to costs.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)