

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4489 OF 2006

Shaikh Mukhtar A. M. Qasim

...Petitioner

Versus

The State of Maharashtra and others

... Respondents

Mr. S. G. Kudle for the Petitioner.

Ms. Jyoti Jadhav, AGP for the Respondent Nos.1 to 3.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 27th JULY, 2017

P. C. :

1. The Learned Counsel for the Petitioner submits that for the grant of senior scale on completion of 12 years of continuous service, the period, the Petitioner has worked with an non-aided institutions also requires to be considered. The Learned Counsel submits that the Petitioner was initially appointed on 13.06.1988 in Patel High School, Mumbai. Thereafter the Petitioner was appointed by Respondent No.4 on 08.06.1992. The Petitioner's pay fixation was considering the services rendered by the

Petitioner in Patel High School, Mumbra. The Learned Counsel submits that on completion of 10 years, on or about 03.07.2000 the Respondent No.4 submitted Petitioner's proposal for granting senior scale with effect from 12.06.2000. However, on the count that the Petitioner has rendered some part of the services in non-aided school, the said proposal was turned down. The Learned Counsel submits that the same is erroneous.

2 We have heard the Learned AGP for the Respondent Nos.1 to 3.

3 The Petitioner has relied on the order of the Division Bench of this Court in Writ Petition No.4992 of 2003 decided on 18.12.2003 at the Aurangabad Bench of this Court. In the said judgment, the Division Bench had relied on the earlier Division Bench judgment of this Court dated 14.09.2000 in Writ Petition No.4346 of 2000, following observations were reproduced :-

“It can be mentioned at this stage that the Government Resolution dated 2/9/1989 nowhere mentions that the qualified service of 12 years should be from the school, which is brought on grant basis.

It is required to be noted that the qualification prescribed for the aided school on the same in the unaided school and those are not separate rules for unaided schools. The nature of work is also same in respect of school which is receiving grant

and school which is not receiving grant. Under the circumstances, it is not correct to assume that the 12 years service should be from aided school only....”

4 In the light of the above, it is clear that at the time of time bound pay scale, even service legitimately rendered in non-aided institution will have to be considered and cannot be ignored.

5 In the light of the above, we pass the following order :-

- I) The Respondent No.3 shall reconsider the proposal submitted by the Respondent No.4 for grant of time bound promotional pay scale /selection grade pay to the Petitioner afresh. The said proposal shall not be rejected only on the ground that the Petitioner had rendered some part of the services in unaided institution. The proposal shall be assessed by the Respondent authority expeditiously and preferably within six months from today and if the authority comes to the conclusion that the Petitioner is entitle for the benefit, then

same should be advanced to the Petitioner preferably within three months thereafter. It is needless to state that consequential benefits would follow.

6 Rule is accordingly made absolute in above terms. No costs. The Writ Petition as such is disposed of.

(A. M. BADAR, J.)

(S. V. GANGAPURWALA, J.)