

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6404 OF 2003

Mrs.Saroj Rasilal Dave

Age : 42 yrs.

12/24, Anand Park Society,

Gultekdi,

Pune 411 037.

.. Petitioner

Vs.

1. State of Maharashtra

2. Deputy Director of Education

Pune Region

17 Dr. Ambedkar Road

Pune 411 001.

3. Poona Gujrathi Kelwani Mandal's

Acharya Shri D.B. Dadawala

Junior College,

(Through the Principal)

1433 Kasba Peth, Pune 411 011.

4. Secretary,

Poona Gujrathi Kelwani Mandal

1433 Kasba Peth,

Pune – 411 011.

.. Respondents

Mr. P. J.Thorat, for the Petitioner.

Mrs.K.R.Kulkarni, AGP for Respondents No.1 & 2.

Mr.Akhilshwar Sharma i/b Ashwin Ankhad & Associates, for
Respondents No.3 & 4.

Respondent No.2 i.e. Dy. Director of Education, Pune Region in-
person present.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

**RESERVED ON : 07th JUNE, 2017
PRONOUNCED ON : 15th JUNE, 2017**

JUDGMENT (PER M.S.KARNIK, J) :

1. The petitioner acquired a post graduation degree of Master of Arts in the year 1994. She acquired a degree of Bachelor of Education in the year 1999. Ever since 13/07/1999 she is in the employment of third respondent - Acharya Shri D.B. Dadawala Junior College as a teacher.

2. It is the case of the petitioner that the third respondent is a junior college established by a Public Charitable Trust called 'Poona Gujrathi Kelwani Mandal' i.e. fourth respondent in this Petition. Respondent No.4 also runs a secondary school by name 'Ratanben Chunilal Mehta Gujarathi High School' to which the aforesaid junior college is attached. The junior college and the secondary school run by the said Trust are fully aided and receive 100% grant from the State of Maharashtra except for one division of XIth standard and one

division of XIIth standard.

3. The petitioner was initially appointed as an assistant teacher by an appointment order dated 03/07/1999 in the scale of Rs.4500-125-7000/- by the said secondary school run by respondent No.4 – Trust. The appointment was on probation of 2 years in clear vacancy. 10 days after the said appointment, she was issued another order of appointment on 13/07/1999 by respondent No.3 - junior college appointing her as an assistant teacher on temporary basis on the pay scale of Rs.1200-2040/-. According to the petitioner, she received 2 independent appointments for 2 independent posts in 2 independent institutions. The secondary school and junior college are administered separately although run by the same Charitable Trust and although the Principal happens to be common. The petitioner started teaching in both the institutions and according to her, she was predominantly appointed for the junior college. For the period from July 1999 till June 2000, the petitioner was assigned lectures for 11.20 hours per week for junior college. As

against this, she was assigned only 7 hours per week for the secondary school during the said period. The Deputy Director of Education, however, had granted approval to the appointment of the petitioner as an assistant teacher in the secondary school in the scale of Rs.4500-125-7000/- and had purportedly granted approval to her appointment in the junior college as if it was only an additional assignment when the approval should have been vice a-versa. This according to the petitioner is based on some erroneous information supplied by the junior college. The appointment letter dated 13/07/1999 issued by the junior college provided only teaching allowance of Rs.125/- to the petitioner in consideration of her teaching assignment in the junior college instead of regular scale applicable to an assistant teacher of junior college i.e. Rs.7225 – 225 – 11025/- (the order of approval of teacher working on a full time basis mentions the scale as Rs.7225-11050/-) and an allowance for additional charge of junior college.

4. The Principal of the respondent No.3 - college by

letter dated 27/09/2000 to the Deputy Director of Education, Pune Region brought to the notice the said anomaly. In the said letter dated 27/09/2000, it is stated that the petitioner was M.A. B.Ed and was appointed for XIth and XIIth standard for 17 lectures i.e. workload of 11 hours and 20 minutes. The said letter also records the fact that the petitioner's assignment in the secondary school was only of 7 hours workload and the same was in addition to the aforesaid appointment in the junior college. The request was thus made that the petitioner be given appointment in the junior college as a full time teacher for the year 1999-2000 and consecutive years.

5. According to the petitioner, even in the next year i.e July 2000 to June 2001 she predominantly worked for junior college and only additionally for secondary school. The petitioner taught for 14 hours per week in junior college and for 6 hours per week in the secondary school. She, however, was not given the pay as per the pay scale applicable to the post of teacher in junior college. It is thus the case of the petitioner that

though she was teaching on full time basis in the junior college, her approval however was granted as an assistant teacher in the secondary school. The petitioner was only given a teaching allowance for the assignment in the junior college.

6. The petitioner contends that after completion of her probationary period which came to an end on 02/07/2001, she ceased to teach the secondary school with effect from 02/07/2001. She was, however, appointed as an assistant teacher in the junior college by a fresh order of appointment with effect from 12/06/2001. It is the thus the petitioner's case that she has been working as an assistant teacher in the third respondent – junior college with effect from 12/06/2001 till the date of filing of the Petition as a confirmed full time assistant teacher on the pay scale applicable to an assistant teacher of the secondary school. She has been regularly teaching for 17.20 hours per week from July 2001 till the date of filing of the Petition (01/04/2003).

7. During the pendency of the Petition, further

affidavits came to be filed by the petitioner. Learned Counsel for the petitioner invited our attention to the various approval orders dated 21/12/2002, 06/09/2007, 02/09/2008 and 23/09/2009 indicating that workload of the petitioner in the junior college was 17 hours and 20 minutes. Learned Counsel for the petitioner also pointed out the records of the Deputy Director of the Education dated 21/12/2002 and 18/10/2003 indicating the workload of the petitioner as 17.20 hours per week. Learned Counsel for the petitioner contends that even after filing of the Petition as indicated above, the petitioner continues to work in the junior college having workload of 17.20 hours which is a full time workload of teacher in the junior college. Learned Counsel for the petitioner further pointed out that she is due to retire in October 2018.

8. Learned AGP on behalf of the respondents No.1 & 2 invited our attention to the affidavit-in-reply dated 15/06/2004 filed by the Assistant Director of Education, Pune region, Pune. The stand of the respondent No.2 is that the petitioner was

appointed in the secondary school as an assistant teacher. The appointment of the petitioner is approved in the said secondary section in the S.S.C. D.Ed scale in 13/07/1999 and B.A. B.Ed scale with effect from 01/03/2003 plus special pay of Rs.250/- only per month for teaching in the junior college. According to respondent No.2, the petitioner was possessing required qualification to teach in the junior college and the said college was in need of a teacher to teach Gujarathi language. She was also appointed in the said college on 17/07/1999 alongwith special allowance of Rs.125/- per month for teaching in the junior college. It is material to reproduce the stand of respondent No.2 as stated in paragraph 2 of the affidavit.

“I say that the petitioner has been appointed vide appointment order dated 03/07/1999, as Assistant teacher in secondary section of the respondent No.3 w.e.f 03/07/1999 and her services were approved by the Education Officer, Zilla Parishad, Pune in the scale of Rs.4500-125-7000 i.e. in the S.S.C. D.Ed scale on 13/07/1999. I say that as the petitioner was possessing required qualification to teach in Junior College classes and the said college was in need of a teacher to teach Gujarati language, she was also appointed in the said college w.e.f 17/07/1999 along with special pay of Rs.125/- only p.m. for teaching in junior college. I say that the petitioner was given B.A.B.Ed scale w.e.f. 01/03/2003 (i.e. 5500-9000) plus special pay of Rs.250/- only per month for teaching in the Junior College. I say that there was no full work load available when she was appointed in the secondary section but at present the petitioner has full work-load at Junior College. I say that since the petitioner is appointed

in secondary section, therefore she is entitled for pay scale of Rs.5500-9000 and Rs.250/- per month only as special pay for teaching in the junior college. I say that the petitioner was not appointed as full time Junior College Teacher, therefore she cannot be paid salary as per pay-scale prescribed by the Government for that post.”

(emphasis supplied)

9. It is further stand of the respondent No.2 that as per approval orders of the petitioner, she was assigned lectures for 4 hours per week for teaching in junior college and not 11.20 hours as alleged and rest of the time she was teaching in the secondary section. According to the respondent No.2 since the petitioner's initial appointment was of the secondary section as a full time teacher in clear vacancy, therefore, she cannot be paid pay scale of a teacher in the junior college @ Rs.7225-125-11050/- as alleged. Respondent No.2 has also relied upon Rule 20 of the Maharashtra Employees of Private Schools Act indicating that as a full time teacher in secondary or junior college or junior college of education who is teaching in classes with an average enrollment of 30 or less number of the pupils shall do actual teaching work for 19 hours per week. It is the stand of the respondent No.2 that the petitioner is not entitled

to pay scale of an assistant teacher of the junior college. According to respondent No.2 if the petitioner wants to be appointed in the junior college, she can be appointed as a Shikshan Sevak on contract basis as per Government Resolution passed by the Government in the year 2000.

10. Affidavit-in-reply is filed on behalf of respondents No.3 & 4. It is categorical stand of the respondent No.4 that the petitioner is appointed in secondary school only and is given additional allowance for working in the junior college. According to respondent No.4, there was no workload available in the junior college to make independent appointment to teach Gujarathi subject nor any such post was advertised. The petitioner was never given any order of appointment to work in the junior college as an assistant teacher on full time basis. Respondent No.4 has in paragraph 9 of the affidavit stated the actual workload discharged by the petitioner in the year 2001-02 and 2002-03. The actual workload in the junior college for the year 2001-02 & 2002-03 is mentioned as 17.20 and 16.20

hours respectively. For these years in the high school, actual workload discharged by the petitioner is shown as nil. According to respondent No.4, the petitioner was granted approval as an assistant teacher in the junior college and therefore she cannot claim the benefit of teaching staff in junior college. In fact, it is the petitioner who had addressed a letter dated 21/05/2004 to the respondent No.4 wherein she has categorically stated that she has no claim against respondents No.3 & 4 and her fight is only against respondents No.1 & 2. It is therefore submitted on behalf of respondent No.4 that the petitioner was working in the secondary school with some workload of junior college and her appointment of assistant teacher is approved for the secondary school and therefore she cannot claim the benefit of a teacher working in the junior college.

11. We have given our anxious consideration to the rival contentions advanced on behalf of the petitioner and respondents. The petitioner was appointed as an assistant

teacher by an order dated 03/07/1999 in the secondary school on probation for two years. Thereafter on 13/07/1999 within a period of 10 days, she was appointed as an assistant teacher in the junior college on temporary basis with a rider that as she is appointed full time teacher at secondary level and hence, she is entitled to junior college teaching allowance of Rs.125/-. It is not disputed that by communication dated 27/09/2000, the respondents No. 3 & 4 had requested respondent No.2 to give the petitioner appointment in the junior college as full time teacher for the year 1999-2000 and consecutive years. It, however, appears that the proposal of the respondent No.4 for appointing the petitioner as full time teacher with the respondent No.3- junior college was not accepted and the petitioner's approval continued as an assistant teacher with the secondary school.

12. The petitioner has come up with a specific case that she is not teaching in the secondary school as an assistant teacher from 02/07/2001. Since 02/07/2001, the petitioner is

working on full time basis in the junior college. However, she was paid only special allowance and her approval continued to be that of an assistant teacher in the secondary school and salary was paid accordingly.

13. We have gone through the approval orders produced on record. The approvals granted by the Education Department clearly indicate that from the year 2000 onwards, the petitioner has been discharging workload of 17.20 hours in the junior college, the same is however on payment to the petitioner a special allowance of Rs.125/-. In fact in the affidavit filed by respondents No.3 & 4 in the chart produced at paragraph 9, it is categorically mentioned that in the year 2001-02 and 2002-03, the actual workload discharged by the petitioner in the high school is nil. We therefore find substance in the contention of the petitioner that she has ceased to discharge her workload in the secondary school with effect from 02/07/2001 and was discharging her workload in the junior college. For the academic year 2001-02 onwards the actual workload discharged

by the petitioner in the junior college is in the range of 17.20 hours per week. The approval orders which are placed on record indicate that the teachers working in the junior college who are discharging the workload of 17.20 hours are placed in the pay scale of Rs.7225 – 11050/- and they are shown to be working as full time teachers. One such approval is dated 02/09/2008. The approval orders of teachers working in the junior college reflect that the petitioner is discharging workload of 17.20 hours for which she is paid a special allowance, obviously because her regular approval is that of a full time assistant teacher in the secondary school.

14. In these circumstances, when the approvals of the teachers working with the respondent No.3 - junior college who are discharging the workload of 17.20 hours per week are treated as full time teachers, there is no reason why the petitioner should be deprived of this benefit. The petitioner is working in the junior college discharging workload of 17.20 hours right from 02/07/2001 till date.

15. The affidavit-in-reply filed by the Assistant Director of the Education also mentions that as on the date of filing of the affidavit on 15/06/2004, the petitioner has full workload at the junior college. The approvals issued by respondent No.2 at least till the year 2010 annexed along with the affidavit dated 03/04/2014 filed by the petitioner indicates that she is discharging workload of 17.20 hours in the junior college. Though the respondents No.3 & 4 have taken a stand at paragraph 32(b) of reply filed on 10/06/2015 that the petitioner has been working for only 4 hours per week as an assistant teacher in the junior college and failed to fulfill criteria of having workload of 17.20 hours per week, the stand can only be stated to be rejected as the approval orders of teacher working in the junior college from 2001 right upto 2010 clearly indicate that the petitioner's workload is 17.20 hours. All other teachers working in the junior college with the workload of 17.20 hours are granted the pay scale of Rs.7225-11050/-.

16. In our opinion, it would be unfair if the petitioner is deprived the benefit of the pay scale as a teacher of the junior college. The material on record in the form of approvals granted by the Education Department clearly indicate that from 02/07/2001 at least till 30/04/2010, the petitioner was discharging workload of 17.20 hours per week for which she was only paid special pay of Rs.125/- per month (for teaching in the junior college) in addition to the pay scale of an assistant teacher of secondary school. The petitioner is not teaching in the secondary school from 02/07/2001 as is clear from the averments made in the Petition and also the stand taken by the respondents No.3 & 4 in the affidavit-in-reply wherein it is categorically stated that in the years 2001-02 and 2002-03, the actual workload discharged by the petitioner in the high school is nil. The full time teachers in the junior college who discharge a workload of 17.20 hours and to whom approval has been granted (not being Shikshan Sevak) are paid in the pay scale of Rs.7225/- to Rs.11050/-. The petitioner is due to retire in October 2018. Even the respondents No.1 & 2

in the affidavit have stated that the petitioner has full workload at junior college. The statement is substantiated by approvals which are on record indicating the full workload discharged by the petitioner in the junior college.

17. In this view of the matter, merely because the petitioner's husband has written a letter to respondents No.3 & 4 that the petitioner would ensure no monetary loss is caused to the respondents No.3 & 4 is no justification to deny the petitioner the pay scale of teacher of the junior college the post in which she is teaching since 02/07/2001.

18. It is the primary responsibility of the respondents No.3 & 4 to pay to the petitioner the pay scale of a teacher of the junior college with effect from 02/07/2001. Since the petitioner has received the salary of an assistant teacher in the secondary school and special allowance for teaching in the junior college, in these circumstances, the petitioner would be entitled to the difference of the arrears thereof. Respondent No.3 are at liberty to apply to respondents No.1 & 2 for

reimbursement in accordance with the prevailing rules and if permissible under law. If such an application is made by respondents No.3 & 4 for reimbursement, the same may be considered by respondent No.2 – Deputy Director of Education on its own merits and in accordance with law. Hence the following order.

ORDER

- i) Respondents No.3 & 4 are directed to pay to the petitioner the scale of Rs.7225-11050/- of teacher in the junior college with effect from 02/07/2001 and also pay the difference in the gross emoluments under the said pay scale and pay actual drawn by the petitioner from 02/07/2001 till the date of actual payment within a period of 8 weeks from today.
- ii) Respondents No.3 & 4 may apply to respondent No.2 – Deputy Director of Education, Pune region, Pune for reimbursement and in the event such an application is made, respondent No.2 to consider the same on its own merits and in accordance with law.

- iii) Rule is accordingly made absolute with no order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)