

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 823 OF 2004

DEVIDAS DHONDIBA TEKALE,
Age 35 years, occupation :
service as part-time Librarian,
Shriram Vidyalaya, Pimpalgaon
Malvi, Taluka and District
Ahmednagar

.. PETITIONER

versus

- 1- State of Maharashtra,
School Education Department,
Mantralaya, Mumbai - 32
- 2- Deputy Director of Education,
Pune Region,
Pune - 1
- 3- Education Officer (Secondary)
Zilla Parishad, Ahmednagar
- 4- Gorakshnath Vidya Prasarak
Mandal, Pimpalgaon Malvi,
Taluka and District : Ahmednagar
through its Secretary

.. RESPONDENTS

Mr. Satyajit S. Bora, Advocate for petitioner

Ms. S.S.Raut, Asstt. Govt. Pleader for respondents no. 1 to 3

CORAM : SUNIL P. DESHMUKH
AND P. R. BORA, JJ

DATE : 16th January, 2018

ORAL JUDGMENT : (SUNIL P. DESHMUKH, J.)

1. Present writ petition is one more matter before this court wherein petitioner has been compelled to make an approach since benefits and rights accrued in his favour under

government resolution dated 28-06-1994 had not been coming his way for over a decade.

2. There is no dispute about that the petitioner had been appointed by respondent no. 4 as a part-time librarian in its Shriram secondary and higher secondary school at Pimpalgaon Malvi, Taluka and District Ahmednagar, when government resolution dated 24-06-1994 had been issued on the basis of report by V. V. Chiplunkar committee creating posts of full-time librarians in the schools where students' strength is 1000 or more.

3. In pursuance of government decision of 1994, list of 54 schools eligible and entitled to approval to appointment of full-time librarians had been prepared by respondent no. 3 - Education Officer (Secondary) Zilla Parishad, Ahmednagar. The school of the petitioner had been at serial no. 39 in the list of said 54 schools. A full-time librarian's post in the school where the petitioner had been working was due for sanction. Despite the resolution, the posts in said schools were being sanctioned in phase-wise manner. Respondent no. 3 had granted approval to the post of full-time librarian in respect of schools at serial number 40, 46 and 49, skipping petitioner's school despite it was at serial no. 39.

4. Petitioner's case in short is that while a post of full-time librarian had been created by virtue of 1994 resolution referred to hereinbefore, phase-wise sanction for filling up said posts by

authorities had not been proper and petitioner's post ought to have been upgraded immediately after aforesaid resolution had been passed by State government. Yet, he had been waiting patiently going by the words of the authorities that sanction would come his way and he would get benefit of the resolution.

5. Learned counsel Mr. S. S. Bora, appearing on behalf of the petitioner, has pointed out that year-wise sanctioned strength of students in the school where he had been working had been more than 1000 all through till petition had been filed. He further refers to that there have been quite a few occasions for this court to consider the situation as subsisting in present matter. He particularly refers to decisions of this court in writ petition no. 6630 of 2013 and two companion matters, and in writ petition no. 2732 of 2013 wherein learned brother (P. R. Bora, J.) was a constituent member of division bench. There is one more decision viz; in writ petition no. 7779 of 2012.

6. Learned counsel also advances a submission that quite often government resolution of 2006 was pressed into service, however, this aspect has also been dealt with in writ petition no. 7779 of 2012. He submits subsequent resolutions of the State government would not hold entitlement of petitioner to legitimate and rightful claim to the post of full-time librarian accrued to him under government decision of 1994.

7. Countering aforesaid submissions, learned Assistant Government Pleader Ms. Raut appearing on behalf of respondents no. 1 to 3 submits that phase-wise sanction of posts in the school was being granted in descending order of strength of students. It is not case that petitioner case was segregated and full-time post of librarian was not sanctioned. She refers to two schools preceding petitioner's school and subsequent schools in the list of 54 schools. She further submits that strength of students had been dwindling after 2005 in petitioner's school and as the question would arise about the entitlement to full-time post of librarian in the school, based on strength of students, she refers to 2006 resolution, stating that stable strength of more than 1000 students in the school and the incumbent's appointment for further five years is a matter that would be required to be considered while granting sanction to the post of full-time librarian to petitioner's school.

8. Learned Assistant Government Pleader further refers to a decision of 2013 and submits that according to said decision a committee had been constituted for looking into grievances of the persons like the petitioner. She also submits that since sanctioned posts were not available at the relevant time and only 34 posts were sanctioned and the list had been exhausted, petitioner's school could not be considered for sanction to the post of full-time librarian.

9. The submissions on behalf of the petitioner that subsequent decisions of the government, particularly of 2006 onwards, laid stress upon by learned Assistant Government Pleader are of little consequence since those hardly would have any retrospective effect, carry lot of force.

10. This court while deciding writ petition no. 7779 of 2012 has observed in paragraphs no. 3 and 4 thus;

" 3. We have considered the submissions. The order that such Petitioners would be considered Full Timer from 2006 itself was a matter of challenge in various writ petitions before the Division Bench of this Court, at Nagpur. This Court in the said writ petitions had held that the Petitioners would be entitled for the benefit of the post of Full Time Librarian from the date the strength of the students increased to one thousand or more and the said date would be counted for all purposes as such notional pay fixation, time bound promotion and pensionary benefits in accordance with Rules. However, the benefits of arrears of salary was not extended.

4. In light of the aforesaid decision, we pass the following order:

I. The Petitioner shall be considered as Full Time Librarian from the date of his initial appointment i.e. 1st March, 1998, in view of the fact that the strength of the students was more than one thousand. The said date shall be considered for notional pay fixation so also for time bound promotion and other retiral and pensionary benefits. However, the Petitioner would not be entitled for the difference of salary from 1998 till 2006.

II. Accordingly, the writ petition is disposed of. No costs. "

11. Taking into account aforesaid position and also as would be emerging from the resolution, we consider that it would not be appropriate that the benefits accrued to petitioner pursuant to the decision and the position obtaining from the decisions of this court

referred to hereinbefore, would be detained from coming to petitioner's way.

12. In the circumstances, we consider it to be expeditious to grant writ petition in terms of prayer clause (C) save that petitioner would not be able to claim difference in salary till 2006 as observed in decisions in writ petitions no. 2732 of 2013 and 7779 of 2012.

13. Writ petition accordingly, is allowed in terms of prayer clause (C) save that the petitioner would not be entitled to difference of salary till 2006, and disposed of.

14. Rule made absolute accordingly.

P. R. BORA
JUDGE

SUNIL P. DESHMUKH,
JUDGE

pnd/-