

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 179 OF 2014
IN
WRIT PETITION NO. 2555 OF 2007

Lakhmashi Narsi Shah (Gujrathi Guruji)..**Applicant**
Versus
State of Maharashtra and others .. **Respondents**

Mr. S. A. Kulkarni, Advocate for the Applicant.
Mrs. A. V. Gondhalekar, Addl.G.P. for Respondent
Nos. 1 to 3.
Mr. S. B. Pulkundwar, Advocate for Respondent
No. 4.
Respondent No. 5 – served.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 07th DECEMBER, 2018

PER COURT :

1. The present application is filed seeking review of the order dated 13th November, 2009 passed in Writ Petition No. 2555 of 2007.

2. Mr. Kulkarni, learned Advocate for the applicant submits that while dismissing the writ petition filed by the applicant for the pay scale to the post of Headmaster, the Court did not

consider Rules 3 and 4 (Scheduled-B) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to 'MEPS Rules'), so also the Government Resolution dated 4th October, 1983 in its correct perspective. This Court has upheld the communication of the Desk Officer dated 12th October, 2006. However, it ought to have been considered that the appointment of the applicant / petitioner as a Headmaster with effect from 1st July, 1973 has been approved. The applicant / petitioner till the date of his superannuation in the year-1999 was officiating as a Headmaster. The applicant / petitioner is deemed to be a trained primary teacher and the senior-most person is entitled to officiate and is entitled to be promoted as a Headmaster. The learned counsel submits that it was erroneous on the part of the Court to hold that the Government Resolution dated 4th October, 1983 is only meant for pensionary benefits.

3. Mrs. Gondhalekar, learned Additional Government Pleader submits that the applicant / petitioner was an untrained teacher. He did not possess the basic qualification required for the post of primary teacher. The applicant / petitioner was promoted by the management as a Headmaster. Approval is only for the purpose of grants. As the applicant / petitioner did not possess the basic qualification required for the post of Headmaster, the applicant / petitioner is not entitled for the pay scale applicable to the post of Headmaster. The Government Resolution dated 4th October, 1983 is only meant for giving pensionary benefits on humanitarian ground. The pay scale claimed by the applicant / petitioner from 01st January, 1986 of 1400-2600 is a pay scale of a trained graduate teacher and the same would not be applicable to the applicant / petitioner who was working as untrained Headmaster in a primary school.

4. We have considered the contentions of the respective parties.

5. It is not disputed that the applicant / petitioner was appointed as a primary teacher on 1st July, 1961. He did not possess the matriculation qualification. Rule 3 (Schedule-B) of the MEPS Rules provides that the primary school teachers whose date of first appointment as such teachers in the services of Zilla Parishad or Municipal School or Municipal Corporation or Municipal Council or recognised private school is 15th October, 1966 or prior are exempted from acquiring S.S.C. and training qualification. Rule 3 (Schedule-B) of the MEPS Rules would come to the aid of the applicant / petitioner. The applicant / petitioner's appointment is 1st July, 1961 i.e. prior to 15th October, 1966 and the applicant / petitioner is exempted from acquiring S.S.C. and training qualification. The applicant / petitioner was continued as a primary teacher.

According to the seniority, it appears that the applicant / petitioner is promoted to the post of Headmaster on 1st July, 1973. His promotion is also approved. The applicant / petitioner officiated as a Headmaster till the date of his superannuation in the year – 1999.

6. As the applicant / petitioner has officiated on the post of Headmaster without any demur on the part of the respondents, the applicant / petitioner certainly would be entitled for the pay scale available to Headmaster. We had asked the learned counsel for the Zilla Parishad and the learned Additional Government Pleader regarding the pay scale applicable to the post of Headmaster at the relevant time from 01st July, 1973 to the date of retirement of the applicant / petitioner in the year – 1999. We had specifically asked as to whether a different pay scale is prescribed to the post of a primary school Headmaster depending upon the qualification. No such distinction has been pointed out to us. The applicant / petitioner

in view of Clause 3 (Schedule-B) of the MEPS Rules is exempted from acquiring S.S.C. and training qualification.

7. The Government Resolution dated 4th October, 1983 deals with the pensionary benefits to be given to such persons. It further states that those who are appointed prior to 01st July, 1972 and not possessing the necessary qualification shall be deemed to be trained as a one time measure. The applicant / petitioner may not rely on the said Government Resolution also because the appointment of the applicant / petitioner is prior to the year – 1966 and would be covered by Rule 3 (Schedule-B) of the MEPS Rules, wherein he is exempted from acquiring S.S.C. and training qualification.

8. In the light of above, it is erroneous on the part of the respondents to deny the pay scale to the applicant / petitioner of the post of Headmaster. Of course, the applicant / petitioner

would not be entitled for the selection grade pay or the senior grade pay but he would be entitled to the pay scale of Headmaster of a primary school as is applicable from time to time from 1st April, 1976 till the date of his retirement.

9. In the light of above, the order dated 13th November, 2009 in Writ Petition No. 2555 of 2007 is recalled.

10. The respondent nos. 2 to 5 shall accord the benefit of the pay scale to the applicant / petitioner of the post of Headmaster as is applicable from time to time. The difference of the amount shall be paid within a period of four (4) months from today. All other benefits be calculated accordingly.

11. The claim of interest as is raised by the learned counsel for the applicant / petitioner is negatived in view of the fact that bonafide dispute existed between the parties and in fact this Court initially had accepted the contentions

of the respondents while dismissing the writ petition.

12. The Review Application accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

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