

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

934 WRIT PETITION NO. 3923 OF 2017

MOHD ALIM MOOSA AHMED  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Pawar Ajay D.  
AGP for Respondent Nos 1 to 3 : Mr. S.G.Karlekar  
Advocate for Respondent Nos 4 & 5 : Mr. P.V. Barde

...

**CORAM : S.V.GANGAPURWALA**  
**AND**  
**SUNIL K.KOTWAL, JJ.**

**DATE : JULY 5, 2018**

**O R D E R :**

Mr. Pawar, learned counsel submits that the petitioner is graduate in Geography subject and post graduate in Urdu language. The petitioner was appointed on 1.10.1998. The qualification of the petitioner is M.A., B.Ed. The petitioner is teaching junior college. The proposal is refused for approval on the pay scale applicable to the junior college teacher on the ground that the workload is not available. The petitioner is teaching 12 periods of Urdu subject and 16 periods of Geography in a week. The same would be sufficient as per Note 2 to Rule 21 (2) of the Maharashtra Employees of Private

Schools(Conditions of Service) Rules, 1981. Learned counsel refers to the Circular, dated 1.1.1988 and the judgment of Division Bench of this Court in Writ Petition No. 7421 of 2004, dated 21.9.2005.

2. Mr. Karlekar, learned AGP submits that the petitioner would be governed by the Government Resolution, dated 1.12.2005. The petitioner should at least take 50 per cent lectures of the subject in which he has obtained post graduation. In absence thereof, the pay scale cannot be awarded to the petitioner of a full time teacher. The Government Resolution, dated 1.12.2005 is abundantly clear.

3. We have considered the submissions of the learned counsel for the respective parties.

4. Rule 21 (1 and 2) Note 1 and 2 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 read thus : -

" **21. Work load.** - (1) A full-time teacher shall be present on the school premises during the working hours of the school upto

30 hours a week exclusive of daily recess according to the requirement of the school.

(2) A full-time teacher in a Secondary School or Junior College or Junior College of Education who is teaching in classes with an average enrolment of 30 or less number of pupils shall do actual teaching work for 19 hours per week. A teacher who is teaching in classes with an average enrolment from 31 to 50 pupils shall do actual teaching work for 18 hours per week. A teacher who is teaching in classes with an average enrolment of more than 50 pupils shall do actual teaching work for 17 hours per week.

**Note 1 :** All work provided in the time table should be spread over within the respective hours of work specified in this sub-rule.

**Note 2 :** A teacher shall, as far as possible, be given full load of 17 to 19 hours of teaching work according to the enrolment of the classes in the time table of the Secondary School or Junior College or Junior College of Education, but in case full load cannot be given for genuine reasons, it shall not affect adversely the payment of salary to such teacher.

..... " "

5. The Division Bench of this Court had an occasion to consider similar contention in Writ Petition No. 7421 of 2004, dated 21.9.2005. This Court has observed thus :-

"5. The appointment of the petitioner is of the year 1995. It is the case of the petitioner that he has been repeatedly requesting for grant of approval as a full

time trained Teacher in Junior College but the same has been denied. It is then contended that similarly situated lecturers working else where have been granted approval as a Full Time Trained Teacher. Learned counsel for the petitioner heavily relies on a Circular which was in force on the date on which the petitioner was appointed and the said Circular dated 1.1.1988 which is placed on record at page No. 23 Exh.E. We have perused the said Government Circular, which deals with grant of approval in the event of want of enough workload at Junior College level and where a teacher is called upon to engage classes in the subject other than the one in which the candidate is eligible to teach at Junior College level. Para no. 4 of the Circular lays down that where junior college classes are attached to the secondary school and the teacher is teaching the subject wherein he possesses qualification of post graduate level so also he is teaching the subject which he had offered at graduation level, in junior college and if the workload of these subjects taken together constitute  $\frac{3}{4}$ <sup>th</sup> of the total workload of 17 of 18 clock hours, then such teachers need to be granted the scale admissible to an Assistant Teacher teaching in junior college meaning thereby the scale admissible to a trained teacher/ lecturer in Junior College. The petitioners case is squarely covered by clause 4 of the Circular dated 1.1.1988.

6. The circular of the year 2000 makes a deviation from the policy decision of the State reflected in the Circular dated 1.1.1988. The Circular dated 24.11.2000 postulates  $\frac{3}{4}$ <sup>th</sup> of workload at junior college level in a subject wherein the candidate is eligible to teach meaning thereby possessing second class at post graduation level in the given subject. The petitioner's case can not be regulated by the Government Circular dated 24.11.2000 as the

appointment of the petitioner is of the year 1995. As the petitioner's case is covered by clauses 4 of 1.1.1986 Circular, we are of the view that the petitioner is entitled to be granted approval as a Trained Teacher in junior college.

7. ....

“The crux of the rule is if for genuine reason, full workload is not available to a teacher, then also such a teacher could be granted the scale. In the present case, the petitioner is having workload of 17 periods for which he has requisite educational and teaching qualification whereas the workload of 10 periods which has been assigned to the petitioner was then permissible under clauses 4 of the Circular dated 1.1.1988. In this view of the matter, we are satisfied that the petitioner could not have been assigned requisite workload for genuine reasons and hence, the petitioner could be treated to be a person covered by Clause 4 of Circular dated 1.1.1988 r/w Rule 21 (2) Note 2 of the MEPS Rules”. ”

6. It would be clear that the subsequent Government Resolution dated 1.12.2005 would not apply to the petitioner. The Circular of 1.1.1988 will have to be considered while considering the case of the petitioner. The petitioner is taking 28 periods, 12 of Urdu and 16 of Geography in a week.

7. In the light of above, we pass following order.

(i) The impugned order is quashed and set aside.

(ii) The Deputy Director of Education shall consider the proposal afresh considering the Circular dated 1.1.1988 and the judgment of Division Bench of this Court in Writ Petition No. 7421 of 2004 (supra), so also considering Note 2 Rule 21 (2) of M.E.P.S. Rules.

(iii) The decision shall be taken within three months.

(iv) The petitioner may represent before the authorities.

(v) Writ Petition is disposed of. No costs.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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