

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

WRIT PETITION NO. 4987 OF 2015

Smt. Khan Rizwana Begum D/o
Mahemoodullah Khan

... Petitioner

VERSUS

Al Faaraan Education & Welfare Society & Ors.

... Respondents

.....
Mr Ajay S. Deshpande, Advocate for the petitioner
Mr A. S. Shinde, AGP for respondent/State
Mr V. G. Salgare, Advocate for respondents no. 1 and 3
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 06TH FEBRUARY, 2018.

ORDER:

1. The grievance of the petitioner is that, the petitioner is not being paid the pay scale of a Trained Graduate Teacher since July-1996. The second grievance of the petitioner is that, the respondents have withheld the increments on the ground that there are pending criminal cases against the petitioner. According to the learned counsel for the petitioner, not a single criminal case is pending against the petitioner. The third prayer is with regard to release of special pay of Rs. 250/- attached with the post of Headmaster for a period from 01.01.96 to 31.12.2005 as per 5th Pay Commission.

2. According to the learned counsel for the respondents No. 1 and 3, there is no provision of a special pay of Rs. 250/- per month to the post of Headmaster of a private school. The said provision of a special pay of Rs. 250/- per month is only to the Headmaster of the Central School. The learned advocate further submits that, the previous management had withheld the increments on the ground that the criminal case is pending. It is for the petitioner to prove that no criminal case is pending. Learned counsel further submits that, the petitioner was working as a Headmistress from 1995 to 2010. The pay scale of Headmistress and Trained Graduate Teacher is same. The petitioner was not submitting the original documents, as such the proposal could not be submitted earlier. The proposal of the petitioner is submitted in July-2017 for payment of Trained Graduate Teacher scale.

3. We have considered the submissions. It is not disputed that pursuant to our orders dt. 30.01.2018, the petitioner has submitted the original B.Ed. certificate to the respondent-Management.

4. It also appears that the petitioner had completed B.Ed. way back in the year 1995. However, at the relevant time, the petitioner was working as a Headmistress and was being paid the pay scale

which is admissible to a Trained Graduate Teacher upto to the year 2010.

5. Pursuant to our orders dt. 30.01.2018, the respondent has produced the seniority list maintained by it. As per the said list, the petitioner appears at sr. no. 3 and the petitioner is the only person who has B.Ed. qualification. The school is from 1st to 7th std. Even as per the judgment of the Apex Court in a case of **State of Maharashtra and others v. Tukaram Tryambak Chaudhari and others** reported in (2007) 9 SCC 201, 25% teachers of a school having 1st to 7th std. can be considered as Trained Graduate Teacher. It would appear that the petitioner is the only teacher who possesses B.Ed. qualification and can be considered as a Trained Graduate Teacher.

6. If the increments are withheld on the ground that the criminal case is pending, then it is for the management to show pendency of the criminal cases. There cannot be a negative evidence. A person who alleges a particular fact has to prove it.

7. As far as the special pay is concerned, the petitioner is not in a position to show that Headmistress of a private school was

entitled to special pay of Rs. 250/- per month under 5th Pay Commission.

8. Considering the above, we pass the following order.

- (i) The respondent-Management shall submit the proposal of the petitioner for a Trained Graduate Teacher for a period since the petitioner has acquired B.Ed. qualification till date.
- (ii) The petitioner is already paid the pay scale of a Headmistress upto 2010/2013, so the period the petitioner is paid salary which is admissible to the Headmistress, certainly the petitioner would not be entitled for the actual payment of the said pay scale. The same would be only notional from the earlier period.
- (iii) The proposal shall be submitted by the management within a period of six weeks from today and on receipt of the proposal of the payment of trained graduate teacher, the Education Officer shall decide the same expeditiously, preferably within three months from the date of receipt of the same.
- (iv) The petitioner would be paid arrears of the pay scale of Trained Graduate Teacher as would be decided by the Education Officer, expeditiously.

- (v) As far as increments are concerned, the respondents are bound to give increments in favour of the petitioner as may be admissible. The respondent is not in a position to show pendency of any criminal case against the petitioner. It may verify and satisfy itself about the pendency of criminal case, if any, and within a month if it is not in a position to find out any criminal case pending against the petitioner, shall also forward proposal of admissible increments of the petitioner to the Education Officer.
- (vi) As far as the special pay is concerned, if it is admissible, petitioner may take up appropriate proceedings before the appropriate authority.
9. With these observations, the writ petition stands disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde