

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

WRIT PETITION NO. 11867 OF 2016

Dhondiram s/o. Limbaji Sonawane, .. Petitioner
Age. Major, Occ. Retired Teacher,
Shahunagar, Tq. Majalgaon,
Dist. Beed.

Versus

1. The Secretary to the .. Respondents
Government of Maharashtra,
Education Department,
Mantralaya, Mumbai – 32.
2. The Chief Executive Officer,
Zilla Parishad, Beed.
3. The Education Officer (Primary),
Zilla Parishad, Beed.

Mr.S.D. Dhongade, Advocate for the petitioner.

Mr.S.S. Dande, AGP for respondent No.1.

Mr.K.B. Jadhavar, Advocate for respondent Nos. 2 and 3.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

RESERVED ON : 24.01.2018

PRONOUNCED ON : 22.03.2018

JUDGMENT [PER : S.M.GAVHANE, J.] :-

1. Rule. Rule made returnable forthwith and with
the consent of parties heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner has claimed following substantive reliefs:-

"(C) By a Writ of mandamus or any other appropriate writ, order or directions, the respondents be directed to grant selection grade pay scale to the petitioner since 1.1.2004 with all consequential benefits including payment of arrears of difference of pay and allowances, re-fixation of pay and pensionary benefits etc.

(D) By a Writ of mandamus or any other appropriate writ, order or directions, the respondents be directed to pay costs of the litigation.

(E) By a writ of mandamus or any other appropriate writ, order or directions regarding set aside the order which is passed by Zilla Parishad Beed on dated 20.06.2016 Sr.No.24, and grant selection grade pay scale to the petitioner since 2004."

3. According to the petitioner, he joined service with respondent No.2, Zilla Parishad as a Primary Teacher. He is granted the post of Assistant Teacher by the passage of time considering his performance, eligibility and qualification. Fourth Pay Commission was

made applicable to the employees of the State Government since 01.01.1986 and in accordance with the same he has been granted higher grade pay scale since 01.01.1986. As per Government Resolution dated 18.06.2008, the Government has granted selection grade pay scale to the primary teachers on certain terms and conditions. For grant of such selection grade, one of the conditions laid down is that, the teacher should have completed 24 years continuous service. Prior to 01.01.1986, the petitioner has completed 12 years service and since 01.01.1986, he has been granted higher grade. Considering this date, the petitioner is entitled to get selection grade on completion of 12 years i.e. on 01.01.1998. The other condition prescribed is that the teacher concerned should have undergone in-service training prescribed by the Government. The petitioner has undergone and completed successfully such training during 18.01.1984 to 14.02.1984 and there is entry to that effect taken in service book. The petitioner has also undergone and successfully completed two days' training prescribed by

the Zilla Parishad in respect of taluka level quality determination from 30.12.2004 to 31.12.2004. He has also undergone five days' training under Sarv Shikshan Scheme.

4. Further it is contended that it is also expected from a teacher desirous of grant of selection grade, on completion of 12 years continuous service as Higher Grade teacher to improve his educational qualification. However, the relaxation is given to such condition, if a teacher completes 18 years service as Higher Grade teacher, as mentioned in para 7, page No.3 of the Government Resolution dated 04.04.1990 issued by the Rural Development Department of the Government of Maharashtra. So also, considering the writ petition filed before this Court in 2002, the Government of Maharashtra accepted to reckon the services rendered as primary teacher for grant of selection grade on the same terms and conditions which were imposed while granting three tier pay scales (Chatopadhyay Commission Recommendations). The petitioner is permitted to cross

efficiency bar in the pay-scale after he reached at the stage at Rs.1650/- and also after reaching the stage of Rs.1950/-, which are the facts indicative of his satisfactory performance exhibited in service tenure.

5. According to the petitioner, thus, he fulfills all the terms and conditions incorporated in the Government Resolution granting Chattopadhyay Commission to the teachers. Same terms and conditions are applicable for grant of selection grade to the teachers except additional condition of improvisation in educational eligibility. This condition is also given relaxation vide Government Resolution dated 04.04.1990. The respondents have issued orders declaring 74 teachers out of 240 teachers eligible for grant of selection grade on 20.06.2016, thereby declining grant of such benefits to 166 teachers including the petitioner. He has not been granted such pay-scale of selection grade. He submitted number of applications to the respondents on 28.06.2016, 30.06.2016, 20.07.2016, 03.09.2016 to grant

him selection grade as he is fulfilling criteria for grant of said pay-scale but of no avail. He has retired on attaining the age of superannuation on 31.01.2006. Therefore, this petition to grant him selection grade pay-scale since 01.01.2004 i.e. on the date of completion of 18 years continuous service as higher grade teacher with all consequential benefits, as claimed.

6. Respondent Nos.2 and 3 have filed affidavit-in-reply of Askari Shaikh, Dy. Education Officer (Primary), Zilla Parishad, Beed. In para Nos.3 and 4, it is stated thus :-

"3. I say and submit that, person who have completed 12 years service is entitled for selection grade and senior pay scale, but who are completing the conditions as per the Government Resolutions are entitled to get the selection grade person who are not fulfilling criteria as per Government Resolution are not entitled to get the selection grade and all powers to conditions for the selection are with the Government and the petitioner is not fulfilling criteria as per Government Resolution.

4. I further say and submit that, as per the Government Resolution dated 04.07.1990 the

service of the petitioners is less than the criteria for the selection grade pay scale and therefore the petitioner is not entitled to get the selection grade pay scale."

. Further, it is stated that out of 240 primary teachers only 74 teachers have fulfilled criteria as per Government Resolution guidelines and other 166 primary teachers have not fulfilled the criteria laid down by the Government i.e. they have not completed 18 years of service on 01.01.1986 and therefore those primary teachers are not entitled to get senior grade pay scale. It is stated that there is no merit in the petition and it deserves to be dismissed.

7. After filing of the aforesaid reply-affidavit, the petitioner has filed rejoinder dated 22.01.2018, reiterating almost all the contentions raised in the petition. Additional contentions raised in this rejoinder in short are that in the impugned order, the name of the petitioner is shown at Sr.No.24 and the reason for rejection of his claim for selection grade is shown as,

"no qualifying services for 18 years prior to 01.01.1986 and higher qualification, hence ineligible". At Sr.No.26, name of one Mr. Radkar Dashrath Tukaram is shown. He is also shown ineligible but he is granted selection grade on 12.06.2009. It is pertinent to submit that, he has been granted selection grade on 18.03.2017 though shown to be ineligible and though he is shown junior to the petitioner in that list. The petitioner further submits that prior to 01.07.1972 many teachers were appointed on the basis of their SSC qualification and were not trained teachers. Some of them acquired qualification of D.Ed. during their service period and some had undergone training of allied courses and the training prescribed by the department. In order to grant them benefits of higher grade pay scale and selection grade pay scale, as per the recommendations of Chattopadhyay Commission, as a special case, the Government resolved to make applicable the selection grade on certain terms and conditions.

8. Further it is stated that the petitioner completed 12 years of service in 1985. However, three tier pay scales were made applicable since 1986. Hence, he got first benefit as on 01.01.1986 though he was due to get such benefit in 1985 itself. On 04.04.1990, the Government issued resolution making applicable to the primary and secondary teachers working in Zilla Parishad, the three tier pay scales i.e. original pay-scale, higher grade and selection grade. The higher grade pay scale would be made applicable on completion of 12 years qualifying service. Certain terms and conditions are prescribed for grant of such pay scales in the said Government Resolution. Clause-7 of the said Government Resolution prescribes that primary and secondary teachers are eligible to get selection grade on completion of qualifying service for 12 years, on acquiring qualification as per clause 5-C of the said resolution. However, condition of acquiring qualification as per clause 5-C is relaxed in case of those teachers who have completed continuous service for 18 years or more in

order to grant them selection grade. However, those who have not completed 18 years continuous service, would be required to acquire qualification for grant of selection grade. The petitioner joined service in 1973. He has completed 18 years continuous service in August, 1991. Therefore, the contention of passing or acquiring of qualification in accordance with clause 5-C of the Government Resolution is not applicable to him or in other words he has already exempted from acquiring said qualification. Therefore, there was no reason for the respondents to reject grant of selection grade to him on the false ground that he is not eligible for want of continuous service for 18 years or possessing qualification.

9. Moreover, it is stated that on 20.07.2004 the Government has issued another Resolution by which primary teachers completing continuous service for 24 years were granted selection grade. Clause-1 of the said resolution prescribes that for grant of selection grade services

rendered earlier would be taken into consideration. However, actual monetary benefits would be made applicable since 01.04.2004 onwards. Prior to it, the teacher concerned would be given notional increments on fixation of his pay in the selection grade pay-scale. It is contended that the petitioner, who completed 18 years service in the year 1991 would be eligible to get selection grade since then by fixing his pay in the selection grade and giving him notional increments since then. However, he would be entitled to monetary benefits only after 01.04.2004.

10. We have heard learned advocate appearing for the petitioner, learned AGP appearing for respondent No.1 and learned Advocate appearing for respondent Nos.2 & 3. We have perused the pleadings made in the petition, affidavit-in-reply, rejoinder, Government Resolutions relied upon by the petitioner, impugned order (Exh. "E") and all other documents produced by the petitioner.

11. There is no dispute that the petitioner joined service with respondent No.2 as a primary teacher on 20.08.1973. He has been granted higher grade pay scale since 01.01.1986. He retired on attaining the age of superannuation on 31.01.2006.

12. The grievance of the petitioner is that he has not been granted selection grade in the light of Government Resolutions dated 04.04.1990 and 18.06.2008, though he has completed continuous service of 18 years and condition of passing or acquiring of qualification in accordance with Clause 5-C of the resolution dated 04.04.1990 is not applicable to him.

13. On perusal of the Government Resolution dated 04.04.1990 (Exh. "D"), it appears that it is in respect of applying higher grade/selection grade to the teachers in the Zilla Parishad Schools. The eligibility to get selection grade is as per sub-clauses "A", "B" and "C" of Clause-5 of this Government Resolution. As per sub-clause

(A) the candidate must have completed 12 years continuous service in the higher grade. As per sub-clause (B), the candidate should have completed in service training. As per sub-clause (C) for primary teachers, they should have acquired qualification of trained graduate. So also, as per Clause-7 of this Government Resolution, primary teachers who have served in higher grade for more than 12 years are eligible to get selection grade on obtaining educational qualification as per Clause-5(C) of the Government Resolution. This clause further says that the teachers those who have completed 18 years continuous service or more, would be granted exemption from acquiring said educational qualification and those who have not completed 18 years service will have to acquire said educational qualification, otherwise they would not be considered for further grade.

14. The petitioner was appointed on 20.08.1973 as a primary teacher. There is no dispute that he was granted first benefit of higher grade on 01.01.1986. Considering

the said date of giving higher grade benefit to the petitioner, it cannot be said that on the date of Government Resolution i.e. 04.04.1990 he served continuously for 12 years in the higher grade. So also, it cannot be said that on the date of said Government Resolution, he completed continuous service of 18 years from the date of his appointment i.e. 20.08.1973, so as to say that he is entitled to get exemption from acquiring educational qualification as per Clause-5(C) of the said Government Resolution. Therefore, when the petitioner does not fulfill requirements as per Clause-5 and Clause-7 of the Government Resolution dated 04.04.1990, it cannot be said that he is entitled to selection grade, on the basis of Government Resolution dated 04.04.1990.

15. The Government Resolution dated 18.06.2008 gives exemption to the primary teachers to obtain educational qualification for eligibility to get selection grade in case teacher is having continuous service of 18 years or

more on 01.01.1986 and in case on the said date, such teacher is having less than 18 years service, said teacher is not eligible to get said exemption, otherwise he would not be treated as eligible for selection grade. As said above, the petitioner was appointed on 20.08.1973. Therefore, as petitioner is not having continuous service of 18 years on 01.01.1986 from his appointment, he cannot get benefit of this Government Resolution to get exemption from obtaining higher educational qualification, to get selection grade as per above Government Resolution.

16. As per rejoinder, petitioner's case is that since he has completed 24 years continuous service, he is entitled to selection grade as per Government Resolution dated 20.07.2004 and therefore, the respondents be directed to grant selection grade pay scale to him since 01.01.2004 with all consequential benefits including payment of arrears of difference of pay and allowance, re-fixation of pay and pensionary benefit etc. After

rejoinder, the respondents have not filed any reply. There is no dispute that the petitioner joined service as primary teacher on 20.08.1973. He has been granted higher grade pay scale since 01.01.1986. He has retired on 31.01.2006. The Government Resolution dated 20.07.2004 is regarding applying selection grade to primary teachers who have completed 24 years continuous service. The decision of the Government as per the said Government Resolution is thus :-

शासन निर्णय : दिनांक १-१-१९८६ पासून वरिष्ठ वेतनश्रेणीतील वेतन घेणा-या व दिनांक १-१-१९८६ किंवा त्यानंतर सलग २४ वर्षांच्या अर्हताकारी सेवा पूर्ण झालेल्या राज्यातील स्थानीक स्वराज्य संस्थांच्या प्राथमिक शाळा व मान्यताप्राप्त खाजगी प्राथमिक शाळांतील वरिष्ठ वेतनश्रेणीत वेतन घेणा-या व निवडश्रेणीसाठी विहीत केलेल्या अटीची पूर्तता करणा-या शिक्षकांना दि. १-१-१९८६ पासून खालील अटीच्या अधीन राहून निवडश्रेणी देण्यास शासनाची मान्यती देण्यात येत आहे -

(९) निवडश्रेणीसाठी प्राथमिक शिक्षकांची पूर्वीची अर्हताकारी सेवा ग्राह्य धरण्यात येईल. मात्र, प्रत्यक्ष आर्थिक फायदा दि. १-४-२००४ पासून मिळेल.

17. Thus Government Resolution dated 20.07.2004 shows that the teachers in primary schools who are getting higher grade pay-scale since 01.01.1986 and those who have completed continuous service of 24 years on

01.01.1986 or thereafter in the primary schools of local bodies or any recognized private primary schools and those who are satisfying conditions of obtaining selection grade would get selection grade from 01.01.1986. Earlier service of such primary teachers would be counted for selection grade, but actual financial benefit would be given from 01.04.2004. Thus, as per Government Resolution dated 20.07.2004, petitioner's continuous service from 01.01.1986 i.e. from obtaining higher grade pay-scale till date of retirement on 31.01.2006 comes to 20 years and one month and as such his continuous service is less than 24 years after 01.01.1986. So also, he is not having 24 years continuous service on 01.01.1986 from his appointment on 20.08.1973. Therefore, even as per Government Resolution dated 20.07.2004, the petitioner is not entitled to selection grade and financial benefit from 01.04.2004.

18. On perusal of the impugned order dated 20.06.2016 (Exh. "E" with list) it appears that benefit

of selection grade pay-scale was not granted to 166 primary teachers including the petitioner, on the ground that they are not having 18 years continuous service prior to 01.01.1986 and higher educational qualification. In the above said list name of the petitioner is at Sr. No.24. It specifically shows that he was disqualified for getting selection grade pay-scale for the above said reasons.

19. According to the petitioner one Shri Radkar Dashrath Tukaram, who is at Sr.No.26 in above referred list with Exh. "E" and who is below the petitioner in seniority was also disqualified for selection grade as per the impugned order. However, subsequently, he has been granted selection grade. It appears that Shri Radkar was granted selection grade pay scale from 01.04.2004 and accordingly selection grade pay was fixed by the Block Education Officer, Panchayat Samiti, Majalgaon (page 86). It appears from list with the impugned order that the petitioner's name is shown at Sr.No.24 and the name of

Shri Radkar Dashrath Tukaram is shown at Sr.No.26 and both were held ineligible for selection grade. Said list of teachers who were held ineligible for selection grade shows that birth date of Shri Radkar is 08.10.1940 and he has joined service as Assistant Teacher on 19.06.1963 and he retired on 28.02.1999, whereas date of birth of the petitioner is 07.01.1948. He joined service as Assistant Teacher on 20.08.1973 and he has retired on 31.01.2006. Thus, it appears that from joining his service on 19.06.1963 till retirement Shri Radkar has served for about 36 years and completed 24 years service after 01.01.1986 as per Government Resolution dated 20.07.2004. As noted above, the petitioner has not completed 24 years service either on 01.01.1986 or thereafter from the date of joining service on 20.08.1973. Therefore, case of Radkar is different. Therefore, it cannot be said that the petitioner is entitled to claim selection grade pay scale, since Shri Radkar is granted selection grade as per pay fixation made by the Block Education Officer, Panchayat Samiti, Majalgaon.

20. On considering the Government Resolutions dated 04.04.1990, 20.07.2004 and 18.06.2008 referred to above, we find no fault in the impugned order, denying the selection grade pay scale to the petitioner from 01.01.2004 as claimed by him.

21. For the reasons discussed hereinabove, we hold that no directions can be issued to the respondents to grant selection grade pay scale to the petitioner since 01.01.2004 and there is no reason to set aside the impugned order dated 20.06.2016, passed by respondent No.3, denying selection grade pay-scale to the petitioner. Therefore, as there is no merit in the writ petition, we dismiss the same. Rule is discharged. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]