

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

WRIT PETITION NO. 4339 OF 2016

Sanjay Yashwantrao Nannaware .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

WITH

WRIT PETITION NO. 4338 OF 2016

Dnyaneshwar Ramdas Patil .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

WITH

WRIT PETITION NO. 4341 OF 2016

Vinay Annasaheb Gaikwad .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri. A. S. Shelke, Advocate for Petitioners.

Shri. S. K. Tambe, A.G.P. for Respondent/State.

Shri. Syed Azizoddin R., Advocate for Respondent No. 5.

Shri. Naseem R. Shaikh, Advocate for Respondent No. 6.

**CORAM : S.V. GANGAPURWALA
ARUN M. DHAVAL, JJ.**

DATED : 10th January, 2019

PER COURT:

. The limited grievance made in these petitions is about the pay scale of these petitioners. The petitioners were working in the Secondary School run by the Respondent No. 5 - Society. These petitioners were transferred to the Junior College of Education. The transfer of the petitioners from the Secondary School to Junior College of Education are approved by the concerned Deputy Director of Education in the year 2007. However, the petitioners are granted the minimum scale of pay in the Junior College of Education. The same is assailed in the present writ petitions.

2. Mr. Shelke, the learned counsel for petitioners submits that after transfer of petitioners to Junior College of Education, pay of petitioners and the stage of pay of petitioners as on the date of transfer was protected and the same was granted. Now under the impugned communication same is cancelled and recovery is claimed. The pay now is being restricted at the minimum of the scale of pay in the Junior College of Education. According to the learned counsel the same is not in consonance with Rule 41 (5) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules 1981 (for short M.E.P.S.

Rules).

3. Mr. Tambe, the learned Assistant Government Pleader for the Respondent Nos. 1 to 4 submits that, petitioners are transferred from Secondary School to Junior College of Education and the transfers are not from the Higher School to the Junior College. Service in the College of Education is totally distinct and separate. In view of that, earlier pay protection can not be granted. The petitioners demand for the Grade Pay of Rs. 5400/- in the pay band of Rs. 15600 - 39100. It is applicable only after completion of twelve years service in the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4600/-. The person from one service receiving senior scale upon transfer to the other service, will get the scale of the pay attached to the new service. He will have to serve for twelve more years.

4. Mr. Shaikh, the learned counsel appears for the Respondent No. 6 and submits that, petitioners did not have requisite qualification. They have already availed the pay scale.

5. Mr. Sayyed, the learned counsel for the Respondent No. 5 submits that transfers of petitioners from Secondary School to Junior College of Education are illegal. They did not possess the necessary qualification.

6. It now can not lie in the mouth of Respondent Nos. 5 and 6 to contend that transfers of petitioners are not legal and valid. It is Respondent Nos. 5 and 6 who have transferred petitioners from Secondary School to Junior College of Education. By change of management the respondents can not take different stands as per their whims, fancies and will.

7. Whether a particular candidate possesses the necessary qualification has to be looked into by the Deputy Director of Education. The proposal was sent seeking approval to transfers from the Secondary School to Junior College of Education. The Deputy Director of Education upon receipt of the proposals has approved the same. Said transfers from Secondary School to the Junior College of Education are made in the year 2007 itself. It is contended by the petitioners that even their stage of pay on the date of transfer was protected, however, vide the impugned communication it is cancelled.

8. Rule 41 (5) (b) of the M. E. P. S. Rules provides that, teachers in the Secondary School shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made, if they are at the employees' own request subject to the three conditions enumerated therein i. e. (i) vacancies should be available in the Junior College of Education, (ii) the concerned employee shall retain in the same place in

the common seniority list and (iii) their pay in the Junior College of Education shall be fixed at the same stage of pay as their existing pay or at the minimum of the scale of pay in the Junior College of Education whichever is higher.

9. It is contended by petitioners that they were receiving the senior scale of pay while serving in the secondary school on the date of their transfers to the Junior College of Education. Rule 41(5)(b)(iii) of the M. E. P. S. Rules is unambiguous. The stage of the pay as existing on the date of transfer or the minimum of the scale of pay in the Junior College of Education whichever is higher is to be awarded. If the petitioners were getting better pay scale and grade pay while serving as Secondary Teachers on the date of their transfers then the same would be protected. The rules provide for transfer from Secondary School to the Junior College of Education, even their seniority is retained at the same place in the common seniority list. In light of that, it is erroneous on the part of Deputy Director of Education to contend that service in the Junior College of Education would be distinct and different from the service rendered by the petitioners as Secondary School Teachers.

10. In light of the above, the impugned communication is quashed and

set aside to the extent of petitioners. The Deputy Director of Education shall grant pay scale and grade pay to petitioners which they were getting as a Secondary School Teachers on the date of transfers or the minimum of the scale of pay of the Junior College of Education whichever is higher. If, the stage of pay of the petitioners as Secondary School Teachers on the date of transfer to the Junior College of Education was higher than the minimum scale of pay of a Assistant Teacher in the Junior College of Education, then the petitioners pay as a Secondary School Teachers would be protected and they will be entitled for the same. The said decision shall be taken within a period of three months from today. The consequential benefits shall also follow.

11. After the decision is taken if the recovery is made and the same is not in consonance with the decision taken, the same shall be refunded to the petitioners. The writ petitions are disposed of. No costs.

[ARUN M. DHAVAL, J]

[S. V. GANGAPURWALA, J.]