

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 2201 OF 2016.

Mr.Thagan Pandurang Pawar

.. Petitioner

Vs

The State of Maharashtra,

Through the Secretary,

School Education Department and others

.. Respondents

Mr.N.V.Bandiadekar i/b Mr.M.G.Bagkar, for the Petitioner.

Ms.Nisha Mehra - Additional Government Pleader, for Respondent
Nos.1 to 3.

Mr.C.G.Gavnekar a/w Mr.Suhas Deokar a/w Mr.G.S.Hiranandani,
for Respondent Nos.4 & 5.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M.JAMDAR, J.***

Date : 14 June, 2019.

P.C. :

1. Heard learned counsel for the Petitioner and Respondent
No.2, the Education Officer (Secondary) Zilla Parishad Nashik.
Though representation is made from the side of Respondent Nos.4
and 5, no counter affidavit has been filed.

2. After hearing learned counsel for the Petitioner and Respondent No.3, as finally prayed for by learned counsel for the Petitioner, the Writ Petition is being disposed of directing the Respondent No.3 to ensure that said Respondent issues a notice to Respondent No.4 and upon seeking requisite information and after hearing the Petitioner pass the necessary order.

3. In paragraph 4 of the counter affidavit filed by the Respondent No.3 it is pleaded as under -

'I say and submit that, as per record forwarded by the management i.e. Respondent No.4 to the present Respondent , the question arises is, as to why the respondent management has not granted B.Ed. scale to the petitioner w.e.f. 1-8-1994 from D.Ed Scale who have acquired the qualification as graduate with professional qualification as B.Ed during service period as claim raised in the Petition. As such Respondent No.3 is of the opinion that all the concerned parties should be heard before respondent No.3 so as to arrive at the proper decision.'

4. To understand the stand taken by the Respondent No.4, relevant facts to be noted are that Respondent No.4 Trust, established Respondent No.5-School. On 29 November 1989 Respondent No.5, which is an aided Secondary School, granted employment to the Petitioner as an untrained teacher in the S.S.C, D.Ed. Scale because the Petitioner was then holding degree of S.S.C and a Diploma in Education. He was placed in the Trained Under Graduate scale of ₹ 290 – 540. The appointment was given approval to by Respondent No.3 on 24 July 1992. While in service, Petitioner acquired a B.Com. Degree in the year 1990 and a B.Ed.(Physical) Degree in the year 1992. The Bachelor's degree in Commerce and Education entitled the Petitioner to be upgraded in the scale of a Trained Graduate Teacher and for which he made a request to Respondent No.4 as also Respondent No.5 to upgrade him as a Trained Graduate Teacher. The request had to be processed. Fact which needed to be determined was whether there was a vacant post in the Trained Graduate Teacher scale either in Respondent No.5 or any other School established by Respondent No.4. It is the case of the Petitioner that on 1 August

1994 a post in the Trained Graduate Teacher scale became available under management of Respondent No.5 but it was offered to one Nikam Vasant Popat. Petitioner continued to make representations and ultimately Respondent No.4 passed a Resolution on 14 June 2006 upgrading the Petitioner in the Trained Graduate Teacher scale noting that vacancy was available in the K.B.H.Vidyalaya, Aarai, Nashik established by Respondent No.4. The Resolution was given effect to when an order was passed on 29 July 2006 giving employment to the Petitioner in the Trained Graduate scale with effect from the said date. Grievance of the Petitioner is that entitlement to be placed in the Trained Graduate Teacher scale accrued in the year 1994.

5. This explains the stand taken by Respondent No.3 in its counter affidavit, which paragraph we have reproduced hereinabove.

6. Suffice it to state that a fact needs to be adjudicated. Whether there was a vacant post of Trained Graduate Teacher in any school established by Respondent No.4 to which post the

Petitioner could be appointed.

7. Aforesaid would require a decision to be taken and since the Counsel for the Petitioner concedes, which concession is accepted by Counsel for Respondent No.4, the exercise be conducted by the third Respondent, we dispose of the Petition directing the Petitioner and the representative of Respondent No.4 to appear in the office of the third Respondent, on 1 July 2019. Respondent No.4 shall produce such documents or record which the third Respondent requires to adjudicate the claim of the Petitioner. Said documents would be supplied to the Petitioner. The Petitioner would also be permitted to file such documents upon which the Petitioner relies. Said documents would be supplied to Respondent No.4. The response of the parties on the documents supplied by the parties would be obtained by Respondent No.3 from the opposite party and a reasoned decision would be taken. The exercise shall be completed within six months from today. Granting liberty to either party to challenge the decision if it is not agreeable to, we terminate our order.

Petition is disposed of in above terms.

N.M.JAMDAR, J.

CHIEF JUSTICE