

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

37 WRIT PETITION NO.4841 OF 2020

GYANDEO VIJINATH GUTTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Maniyar Irfan D
AGP for Respondents/State : Mr. S.R. Yadav-Lonikar
Advocate for Respondent No.4 : Mr. R.B. Dhaware

AND

38 WRIT PETITION NO.5622 OF 2020

NIVRUTTI DARYABHAN WANKHEDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Maniyar Irfan D
AGP for Respondents/State : Mr. S.R. Yadav-Lonikar
Advocate for Respondent Nos.4 to 7 : Mr. R.R. Bangar

...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 09th AUGUST, 2021

PER COURT:-

1. In the first petition, this Court (Coram: Prasanna B. Varale and Shrikant D. Kulkarni, J.J.) had passed an order on 26.05.2020 which reads thus:

“1. Heard learned counsel for the petitioners. Learned counsel, by inviting our attention to the documents placed on record, particularly the appointment order dated 27.03.1992 at Exh.A, submitted before this Court that the petitioners are appointed way back in the year 1992 as Assistant Teachers. These petitioners were continued in the services and they were also granted selection grade. Our attention was invited to the order dated 10.05.1994 and 04.07.1994 to submit that

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petitioners were continued in service. Learned counsel also invited our attention to the Government resolution dated 26.08.2019 to submit that all the petitioners were entitled for selection grade and accordingly, by communication 24.01.2020 and 28.02.2019, selection grade was granted to the petitioners.

2. Learned counsel for the petitioner, then submitted that the petitioners were surprised to receive orders dated 05.05.2020 and 06.05.2020 issued by the respondent authorities, respectively. The learned counsel for the petitioners then submitted that the Education Officer (Secondary) Zilla Parishad, Parbhani who herself granted selection grade to the petitioners, passed orders dated 05.05.2020 whereby recovery is initiated from the petitioners on the ground that additional amount of salary is granted to these petitioners.

3. Learned counsel for the petitioners vehemently submitted before this Court that the order impugned in these petitions suffers from non observance of principles of natural justice. No opportunity of hearing was granted to any of the petitioners before issuance of recovery order and as such, the orders impugned in the petition causes serious prejudice to these petitioners. Learned counsel thus pray for interim order.

4. Issue notice to the respondents, returnable after four weeks. Learned AGP waives notice for respondent Nos. 1, 2 and 3.

5. Interim relief in terms of prayer clause (D) only in respect of order of recovery initiated against the petitioners.”

2. In the second petition, by order dated 23.06.2020, interim relief to the extent of protecting the petitioners from recovery of amounts paid, was granted.

3. We have considered the strenuous submissions of the learned counsel for the respective sides. With their assistance, we have

gone through the petition paper book.

4. It is undisputed that the State of Maharashtra introduced a Government Resolution dated 02.09.1989 taking into account the fact that in various areas, there was a stagnation amongst the employees and promotional avenues were depleting. Therefore, the government introduced the policy that if an employee continued in employment for 12 years in the same grade, he would be entitled for an addition of one increment in the nature of a selection grade, after completing 12 years. When such an employee completed 12 more years, he was again granted one more selection grade. Though the nomenclature or the position description of the employee did not change, he received additional grades thereby raising his salary, to overcome the stagnation and the lack of promotional avenues. With this logic, the Education Officer, Secondary started granting such selection grades to employees who completed 12 years in the first instance and after completing another 12 years (total 24 years), they were entitled to an additional selection grade.

5. There is no dispute that these petitioners are before this Court for challenging the action of the State in cancelling the selection grades granted to them after completing 24 years in employment on the plea that those were granted without the guidance of the higher office. It is equally undisputed that the selection grades granted were cancelled for the solitary reason that the guidance from higher office was not taken. This Court had therefore directed the concerned authorities to take a decision expeditiously.

6. Today, the learned AGP has placed before us the copy of a communication dated 06.08.2021 received by the learned AGP from the Joint Director, State Education Research and Training Council, Maharashtra. The said copy is taken on record and marked as 'X-1' for identification.

7. Pursuant to the grant of such selection grade after completing 24 years, the petitioners received orders on 05.05.2020 and 06.05.2020 issued by the Education Officer (Secondary) and the Superintendent, Pay and Provident Fund Squad (Secondary), respectively. By these orders, the selection grade granted to them and which were approved, were suddenly stopped for the reason that the said authority desired to take instructions/guidance. By the document 'X-1', the Joint Director, State Education Research and Training Council has taken a stand that these petitioners would be entitled to the selection grade benefits, provided they complete 10 days training either online or offline.

8. The learned advocate for the petitioners submits that none of the petitioners can be faulted for the reason that they got the benefits in accordance with law considering the Government Resolution dated 26.08.2019 vide which the clause of training was removed and every eligible candidate was entitled to the selection grade without the said training. As these petitioners benefited from such dilution, they started earning their revised pay scales. The State Government then introduced Government Resolution dated 20.07.2021 declaring the schedule for granting training (re-introduced training) to those employee who had

completed 24 years in employment.

9. In the peculiar facts of this case, we find that none of these petitioners could really be faulted. When they had completed 12 years in employment, they had received a similar selection grade and for which they had undergone training. The condition of training that was introduced by the earlier Government Resolution, was relaxed by the Government Resolution dated 26.08.2019. Based on this government resolution, these petitioners had got their second benefits.

10. The affidavit in reply filed by the Education Officer (Secondary), Zilla Parishad, Parbhani indicates that there was no permanent cancellation of grant of senior and selection grades to the petitioners. This temporary cancellation occurred as the Education Officer desired to take guidance from the higher office. The financial burden laid on the State Government due to such grant of senior and selection grade, mandated an advice from the finance department which was not taken earlier. The Education Officer, therefore, submits that she suspended the payment of selection/senior grade only till she received guidance from the senior authorities. The Government Resolution dated 20.07.2021 indicated that after completion of the training over a period of about 10 days, such grades would be released to these petitioners.

11. Considering the above, we are of the view that the petitioners had not instrumentalized or solicited the senior/selection grade. As the State Government had introduced a policy several decades ago, the petitioners were legitimately entitled to such benefits. Yet, these

petitioners state that the benefits which were held back that led to the filing of these petitions, will have to be released and each of them would unhesitatingly participate in the training to which they had never expressed their disinclination.

12. We, therefore, find that the education department is not insisting upon the training clause as a ground for the stoppage of the payment of senior grades. Such stoppage was on account of the decision of the Education Officer as she apprehended that the excessive financial burden on the State is likely to boomerang on her.

13. In view of the above, we do not find that these petitioners are to be blamed if the Education Officer voluntarily granted them the scales when they had completed 24 years in service and were entitled to such grades. By communication 'X-1', the School Education and Sports Department of the State of Maharashtra – the State Education Research and Training Council has declared the schedule for conducting the training.

14. As such, these two petitions are partly allowed. The impugned orders dated 05.05.2020 and 06.05.2020 are quashed and set aside. All these petitioners would be entitled for their senior and selection grades. However, barring those who have already superannuated, all other petitioners and teachers would be participating in the training scheduled for December, 2021. Such payments of senior and selection grades shall be continued, subject to the participation of the petitioners in such training. If any petitioner declines to participate in the training or

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puts forth an excuse of any nature whatsoever to avoid joining the training, the concerned Education Officer (Secondary) shall suspend the payment of the senior/selection grade scales to such petitioners until they participate in such training in any future training program. After they undergo such training, their dues shall be released by the competent authorities with retrospective effect and such arrears would be paid to the petitioners after they have completed training.

15. Needless to state, as the Education Officer has recovered the payments to some extent from these petitioners, the petitioners shall be entitled to the same and the said amounts recovered shall also be released expeditiously and preferably within a period of four weeks from today.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)