

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

WRIT PETITION NO. 15261 OF 2019

1. Shashikumar s/o. Venkatrao Kulkarni
Age : 76 years, Occu. Retired,
R/o. Kasaba, Juna Jalna, Tq. Dist. Jalna.
2. Ramchandra s/o. Digamber Nand
Age : 74 years, Occu. Retired,
R/o. N-6, Avishkar Colony, House no.116,
CIDCO, Aurangabad,
Tq. Dist. Aurangabad.

...Petitioners.

Versus

1. The State of Maharashtra
through the Secretary, Primary Education,
Government of Maharashtra at
Mantralaya, Mumbai -32.
2. The Deputy Director of Education,
Aurangabad Region, Aurangabad.
3. The Education Officer (Primary),
Jalna Zilla Parishad, Jalna.
4. The Chief Executive Officer,
Zilla Parishad, Jalna, Dist. Jalna.

...Respondents.

...

Mr. M.R. Sonawane, Advocate for petitioners.

Mr. S.R. Yadav-Lonikar, AGP for respondent nos. 1 and 2.

Mr. B.B. Kulkarni, Advocate for respondent nos. 3 & 4.

...

**CORAM : DIPANKAR DATTA, C.J. &
N.B. SURYAWANSHI, J.
DATED : 14/02/2022.**

ORDER :

1. In this writ petition dated 7th December 2019, an order dated 13th June 2019 passed by the Chief Executive Officer, Zilla Parishad, Jalna is under challenge at the instance of the petitioners, who are Primary Teachers in schools under the Zilla Parishad. Such order was passed by the Chief Executive Officer in purported compliance with the order dated 8th August 2018 passed by a co-ordinate Bench of this Court while disposing of Writ Petition No. 9160/2018, being a previous writ petition of the present petitioners.

2. Since the order dated 8th August 2018 refers to the cause of action for the petitioners to invoke the writ jurisdiction of this Court, we refrain from referring to the pleadings in detail. Suffice it to note, the petitioners were claiming selection grade scale of pay on account of rendering 18 years continuous service as on 1st January 1986 and had to invoke the writ jurisdiction since they were denied such pay. On behalf of the respondents, the claim of the petitioners was sought to be resisted by contending that not only were the petitioners required to establish that they have put in 18 years of continuous service as on 1st January, 1986, such service must

also be a 'qualified service' in the sense that the petitioners must have possessed requisite qualifications all through these 18 years; hence, continuous service of 18 years has to be construed by taking within its ambit the qualifications that the petitioners possessed. If they did not possess the requisite qualifications on the dates they were appointed, they would not be entitled to selection grade scale of pay irrespective of the number of years (18 years) of service put in by them as on 1st January 1986. In other words, it is the date of acquisition of the requisite qualifications, post appointment, that had to be reckoned for counting 18 years.

3. The Division Bench in its order dated 8th August 2018 observed that the issue raised in the writ petition was no longer *res-integra*. While so observing, Their Lordships referred to an earlier judgment of another co-ordinate Bench of this Court dated 8th October 2013 in Writ Petition No. 4685/2012. There, it was held that the petitioners who had completed 18 years of service as on 1st January 1986 despite not having requisite educational qualifications, would be eligible for grant of selection grade. Taking note of the judgment dated 8th October 2013 in Writ Petition No. 4685/2012, the co-ordinate Bench proceeded to pass the following order: -

- i) The respondents shall consider the petitioners eligible for grant of Selection Grade pay after satisfying themselves about the petitioners having completed 18 years continuous service on 01.01.1986 and if found eligible, shall grant them pecuniary benefits and arrears arising therefrom as early as possible and preferably within a period of six months from today.
- ii) Rule is made absolute in the above terms. The writ petition accordingly stands disposed of. No Costs."

(emphasis supplied)

4. In terms of the aforesaid order, what the Chief Executive Officer was required to ascertain was whether the petitioners had, in fact, put in 18 years of continuous service as on 1st January 1986. The impugned order dated 13th June 2019 (English translation whereof has been provided by the learned advocate for the petitioners and which is not disputed by the learned advocate for the Zilla Parishad) reads as under: -

"In the present case, you have completed the professional qualification after 01/01/1968, therefore, as on 01/01/1986 you have not completed 18 years continuous qualified service after obtaining educational and professional qualification and, therefore, as mentioned in clause No. (2) of the above mentioned Government Resolution you are not entitled for getting benefit of selection grade. Therefore, as per the orders passed by the Hon'ble High

Court, it is informed to you and case has been closed.”

5. A bare perusal of the aforesaid extract would reveal that the Chief Executive Officer has spurned the petitioners' claim by addition of the word 'qualified' in between 'continuous' and 'service'. In our considered opinion, such addition is clearly in the teeth of the order dated 8th August, 2018. The issue as regards qualifications that the petitioners were required to possess had been examined by the co-ordinate Bench in the earlier round of litigation and it was held, in no uncertain terms, that possession of requisite qualifications was not a condition precedent for conferment of the selection grade of pay. The Chief Executive Officer having accepted the order dated 8th August, 2018, could not have reopened the issue and decline relief to the petitioners by observing that the petitioners had not put in 'continuous qualified service', when possession of qualifications was not required to be a pre-condition for grant of selection grade pay in terms of the Government Resolution dated 18th June, 2008, as interpreted by the co-ordinate Bench while considering Writ Petition No. 4685/2012. The Chief Executive Officer acted beyond his jurisdiction, as if he were sitting in appeal over the order dated

8th August 2018. The impugned order dated 13th June 2019 is, thus, indefensible and stands quashed. The petitioners are entitled to selection grade scale of pay with effect from the respective dates on which they completed 18 years of continuous service. Financial benefits to which the petitioners are entitled as a result of this order shall be released in accordance with law as early as possible, but positively within four months from the date of receipt thereof.

6. The writ petition stands allowed. No costs.

[N.B. SURYAWANSHI, J.]

[CHIEF JUSTICE]