

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.114/2022

1. Adarsha Bahuuddeshiya Mandal,
Ambedkar Ward, Bhandara,
through its President.

2. Manoj Shamrao Wadibhasme,
aged 48 years, Occ. Service,
r/o Rajguru Ward, Bhandara.

.....PETITIONERS

...V E R S U S...

1. Education Officer (Secondary),
Zilla Parishad, Bhandara.

2. Purushottam Harishchandra
Lanjewar, aged 50 years,
Occ. Service, r/o Pragati Colony,
Suyognagar, Station Road,
Bhandara.

3. Incharge Headmaster,
Nisha Vidyalaya, Ambedkar Ward,
Bhandara.

...RESPONDENTS

Mrs. Ritu Jog, Advocate for petitioners.

Mr. M. K. Pathan, A.G.P. for respondent no.1.

Mr. R. S. Parsodkar, Advocate for respondent nos.2 and 3.

AND

WRIT PETITION NO.4372/2021

Purushottam Harishchandra
Lanjewar, aged 50 years, Occ. Service
r/o Pragati Colony, Suyognagar,
Station Road, Bhandara.

.....PETITIONER

...VERSUS...

1. Education Officer (Secondary),
Zilla Parishad, Bhandara.
2. Shri Manoj Wadibhasme
aged 48 years, Occ. Assistant Teacher,
r/o Ambedkar Ward, Bhandara.
3. The Incharge Headmaster,
Nisha Vidyalaya, Ambedkar Ward,
Bhandara.
4. Adarsha Bahu Udeshiya Mandal,
Ambedkar Ward, Bhandara.

...RESPONDENTS

Mr. R. S. Parsodkar, Advocate for petitioner.
Mr. M. K. Pathan, A.G.P. for respondent no.1.
Mrs.Ritu Jog, Advocate for respondent nos.2 to 4.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 18.08.2022

JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The Writ Petition No.4372/2021, has been filed by one of the teachers namely; Purushottam Lanjewar and the other Writ Petition No.114/2022 has been filed by Education Trust with the other teacher namely; Manoj Wadibhasme. It is thus obvious that the trust is supporting the teacher Mr.Manoj Wadibhasme.

3. The petitioners have assailed the order dated 13.10.2021 passed by the respondent no.1-Education Officer (Secondary), Zilla Parishad, Bhandara by which the rival claims made by the petitioners, for the graduate pay scale have been rejected. The High Court, in the earlier round of litigations, was pleased to remand the matter back twice to the respondent no.1-Education Officer, to consider the claim of the petitioners in the light of the law laid down in the case of *Gaur Pratibha and Ors. Vs. The State of Maharashtra and Ors.*¹.

4. Respondent no.1-Education Officer continued to ignore the law laid down in *Gaur Pratibha's* case and ultimately has rejected the claims of both the petitioners. The respondent no.1-Education Officer has in the impugned order recorded the facts of the employment of both the petitions viz. their dates of joining, the educational qualifications, acquiring further qualifications, etc. Thereafter, respondent no.1 has noted that the school is run by the Trust without School Committee for last 20 years. The proposals of the petitioners have not been

approved by the School Committee. The respondent no.1- Education Officer has also recorded his doubt about the seniority inter se of the petitioner, on the ground that the signature of the petitioner no.2 in Writ Petition No.114/2022 has not been obtained on seniority list nor is there any objection recorded. It is then observed that the seniority list has not been prepared in terms of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and accordingly, rejected the claim of the petitioners.

5. We are upset with the approach of the respondent no.1. He has completely ignored the law laid down in the case of *Gaur Pratibha*. The ratio laid down in the said case is that the eligibility/seniority for the benefits of the graduate pay scale or promotion will be applicable from the date of acquisition of requisite educational qualification and not from the date of entry in the service.

6. In the present case, as could be seen from the impugned order, Mr.Purushottam Lanjewar was appointed on 11.07.1994 and Manoj Wadibhasme, was appointed on

09.07.1998. The requisite qualification for entitlement of graduate pay scale is graduate (B.Ed.). Mr.Lanjewar has acquired the said qualification in the year 2015. As against this, Mr.Wadibhasme, has acquired the said qualification on the date of appointment itself i.e. in the year 1998. Therefore, applying the ratio laid down in *Gaur Pratibha's* case, Mr. Wadibhasme will be senior to Mr. Lanjewar. There is no dispute that except for these two, no other teacher is in the zone of the consideration. In the circumstances, there appears no reason as to why the respondent no.1 could not have granted benefit of graduate pay scale to Mr.Wadibhasme. He has unnecessarily harped upon the issue of the seniority list which otherwise is decided in the case of *Gaur Pratibha* and precisely for that reason alone, the matter was remanded back to him to consider the issue afresh, but to no avail. The pathetic approach continues. Nonetheless, we have now set the issue at rest.

7. Mr. Parsodkar, learned counsel for the respondents in Writ Petition No.114/2022, then contends that Mr. Wadibhasme has, at the time of appointment, submitted an undertaking on Rs.20/- stamp paper that he is ready to work in the pay scale

applicable to the teachers of the middle school and therefore he is not entitled to graduate pay scale.

8. This argument is without any substance in view of the settled position of law that any undertaking, which is detrimental to the promotional benefits of a candidate even if willingly given, cannot be taken aid of to deprive the said candidate of promotion or promotional pay scales or other pay benefits.

9. In the light of above discussion, it is clear that Mr.Wadibhasme is entitled to graduate pay scale and not Mr.Lanjewar. In sequel, Writ Petition No.114/2022 would succeed and other Writ Petition No. 4372/2021 would not.

10. At this stage, Mr.Parsodkar, would point out that Mr.Wadibhasme is teacher and also Secretary of the Trust. He was appointed as teacher when his father was President of the Trust. He further submits that the School Committee has not been appointed for last 20 years. In other words, Mr. Parsodkar intends to point out that the Trust is not being managed, in

accordance with the norms. He has drawn our attention to the order dated 08.07.2022 passed by the learned Single Judge of this Court, in the case of **Adarsha Bahuuddeshiya Mandal .Vs. State of Maharashtra and Ors.**¹ The Trust was aggrieved by the order of appointment of administrator over the petitioner-Trust. The learned Judge, though has quashed the order but directed the respondent no.3 therein i.e. Director of Education to hold fresh inquiry into the show cause notice dated 04.09.2017. He has also directed to cause inspection of the petitioner-Trust and to consider the prevailing affairs of the school run by the petitioner trust. Thus, it appears that there are serious issues in managing the affairs of the petitioner-Trust.

11. We, therefore, deem it appropriate, in the interest of the institution, to direct the Director of Education, Pune, to comply the directions given by the learned Single Judge, within the period of three months from today.

12. In the result, we pass the following order.

(a) Writ Petition No.114/2022 is partly allowed.

(b) The petitioner no.2-Manoj Shamrao Wadibhasme is entitled to the graduate pay scale. The same be paid to him, in accordance with the rules, along with arrears, if not paid earlier.

(c) Writ Petition No.4372/2021 is dismissed.

(d) The Director of Education, Pune is directed to comply the directions given by the learned Single Judge vide order dated 08.07.2022 in Writ Petition No.1279/2024 within three months from today.

(e) Both the petitions are disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

kahale