



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

WRIT PETITION NO.7890 OF 2019

Shaikh Jabbar S/o Bahadur,
Age:- 50 years, Occ. Service,
As an Assistant Teacher,
R/o. Maharangal, Tq. Chakur,
Dist. Latur.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Primary),
Zilla Parishad, Latur, Dist. Latur.
3. Indira Memorial Education Society,
Latur, Through its Secretary.
4. Shankarrao Mane Primary School,
Latur, through its Headmaster.
5. Narising S/o Raghunath Shinde,
Age: 51 years, Occu.: Service,
R/o. Pratiksha Sadan, Behind Sent Meri
English School, Gawali Nagar,
Nanded Road, Latur.

..Respondents.

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Mr. V. D. Gunale, Advocate for the Petitioner.
Mr. S. K. Shirse, AGP for Respondent No.1.
Mr. P. R. Tandale, Advocate for Respondent No.2.
Mr. V. G. Kodale, Advocate for Respondent Nos.3 and 4.
Mr. K. M. Nagarkar, Advocate for Respondent No.5.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

**JUDGMENT RESERVED ON :- 07th FEBRUARY 2024.
JUDGMENT PRONOUNCED ON :- 22nd FEBRUARY 2024.**

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India thereby assailing orders dated 13.06.2019 and 19.08.2019 passed by respondent no.2-Education Officer (Primary), Zilla Parishad, Latur and seeks to issue Writ of Mandamus against respondent nos.1 and 2 to extend him benefit of pay scale of primary graduate teacher from the date of his entitlement.

3. Mr. Gunale, learned Advocate appearing for the petitioner submits that the petitioner was appointed vide order dated 13.06.1994 against clear and vacant post with respondent no.4-School by following due process of law. He was continued in service during the subsequent academic year. The petitioner acquired D.Ed. qualification on 03.05.2002. His services were approved vide order dated 16.11.2002.

4. It is further submitted that respondent no.5 is also appointed on 13.06.1994. However, he acquired D.Ed. qualification on 31.12.2002. Considering the date of acquisition of qualification, the petitioner is senior to respondent no.5. However, respondent no.5 was treated as senior and he was granted graduate pay scale. Mr. Gunale would submit that the respondent-management was under obligation to maintain the seniority in terms of Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short 'M.E.P.S. Rules, 1981'). However, respondent no.5 was shown as senior to petitioner contrary to the provisions contained in Schedule-F. In the present case, the petitioner as well as respondent no.5 are appointed on 13.06.1994. Considering the date of birth of the

petitioner, he is senior to respondent no.5-Shri. Narsing Raghunath Shinde. However, the respondent-management recommended for grant of pay scale of trained graduate teacher to respondent no.5 against sole post in that pay scale. The Education Officer also erroneously approved the said proposal and conferred pay scale of trained graduate post to respondent no.5. Later, on representation of the petitioner, the pay scale granted in favour of respondent no.5 came to be cancelled. However, the petitioner is not given consequential benefit.

5. The petitioner had approached this Court by filing Writ Petition No.12673/2018 seeking direction against respondent nos.2 to 4 to extend benefit of pay scale of trained graduate teacher to him from the date of his appointment. This Court disposed of the writ petition directing the petitioner to make fresh comprehensive representation to the Education Officer, who shall decide entitlement of the petitioner to receive higher pay scale within a period of four months. Consequently the petitioner approached Education officer with fresh representation. Hearing was conducted. However, no further orders have been passed giving reason that already respondent no.5 is conferred with the pay scale of trained graduate primary teacher and he is discharging his duties. Consequently the claim of the petitioner is not considered. According to the petitioner, the Education Officer acted contrary to the directions issued by this Court under order dated 10.01.2019. The Education Officer failed to decide the issue pending before him regarding entitlement of the petitioner for trained graduate teachers pay scale and passed impugned order dated 13.06.2019 as well as further order dated 19.08.2019.

6. Mr. Nagarkar, learned Advocate appearing for respondent no.5 opposes the prayer in the petition. He would submit that respondent no.5 is senior most teacher. In fact, he was appointed in the

year 1992 and acquired D.Ed. qualification in the year 2002. The management has rightly fixed his seniority and forwarded the proposal for conferment graduate pay scale, which was approved by the respondent-Authority. Mr. Nagarkar would further submit that in fact there was break in service of the petitioner during academic year 1996-1997, as such, he lost his seniority. Mr. Nagarkar would further invite attention of this Court to the Circular dated 16.02.1995, which lays down guidelines for deciding seniority amongst the teachers who acquired D.Ed. qualification during the service period. He would submit that when D.Ed. qualification is acquired by teachers during one and the same Academic year, the seniority shall be decided on the basis of initial date of appointment and not as per date of acquisition of qualification.

7. We have considered submissions advanced by the learned Advocates appearing for the respective parties. It is the matter of record that the issue as regards to the seniority of the petitioner vis-a-vis respondent no.5 was considered by the Education Officer and after giving opportunity of hearing it is concluded that the date of appointment of respondent no.5 cannot be treated as 11.06.1992 as claimed by him. It can be further observed that *interse* seniority between petitioner and respondent no.5 has been considered by the Education Officer during the pendency of this petition and vide order dated 13.02.2022, the Education Officer concluded that the petitioner has to be treated as senior to respondent No. 5 considering respective dates of acquisition of D.Ed. qualification. The aforesaid order is not subjected to challenge by respondent no.5 and it has attained finality.

8. The Division Bench of this Court in case of ***Ashok Narayan Sathe Vs. The Education Officer (Secondary), Zilla Parishad and Ors.***¹ after considering relevant provision of M.E.P.S.

¹ 2007 (4) Mh.L.J. 358.

Act read with Rule 12 of M.E.P.S. Rules, 1981 and Schedule-F ruled out that seniority has to be reckoned from the date the teacher either achieves the qualifications required or improves his/her qualifications for being a trained teacher. Applying the aforesaid ratio in the facts of the case, we find that petitioner as well as respondent no.5 were appointed on 13.06.1994 with respondent no.4 school, the petitioner acquired his D.Ed. qualification on 03.05.2002, whereas respondent no.5 acquired such qualification on 31.12.2002. Apparently, the petitioner will have to be treated as senior on the basis of date of acquisition of qualification prescribed under Rule 2 (k) of the M.E.P.S. Rules, 1981. Therefore the order dated 13.07.2022 passed by the Education Officer fixing seniority, which is placed before us along with affidavit-in-reply appears to be in consonance with the aforesaid provisions and same has attained finality.

9. The next contention advanced on behalf of respondent no.5 is that the petitioner lost his seniority because of break in service during the academic year 1996-1997. However, the said contention holds no water in view of the fact that the Competent Authority has already condoned the break in service of the petitioner vide order dated 04.01.2017, which is placed before us during the course of hearing and not controverted on behalf of respondent no.5.

10. So far as contention of respondent no.3 based on Circular dated 16.02.1995 it can be observed that the petitioner obtained qualification of D.Ed. in pursuance of the examination conducted in March-2002, whereas respondent no.5 acquired similar qualification in pursuance of examination conducted in October-2002. Apparently, it cannot be inferred that both have acquired qualification in same academic year. Therefore instruction in circular would not support respondent No. 5 to carry forward his claim. The aforesaid discussion

leads us to the conclusion that the petitioner is senior and entitled for conferment graduate teachers pay scale from the date of acquisition of qualification or from the date of availability of the post in the said pay scale with respondent no.4-School. Hence, we proceed to pass following order:-

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned orders dated 13.06.2019 and 19.08.2019 passed by respondent no.2-Education Officer (Primary), Zilla Prishad, Latur are hereby quashed and set aside.
- c. The respondent nos.1 and 2 are directed to confer the pay scale of primary graduate teachers on petitioner in pursuance of the proposal dated 13.02.2019 submitted by the Management and release consequential benefits and also issue appropriate approval in his favour as trained graduate teacher.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE