

(2001) 09 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 2657 of 1989

Anandrao Deshmukh and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 ALLMR 326 : (2002) 2 BomCR 655

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.S. Choudhary, for the Appellant; P.M. Shinde, A.G.P., for Respondent Nos. 1 to 3 and A.H. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Dabholkar, J.—By this writ petition under Article 226 of the Constitution, petitioners seek a writ of mandamus against the respondent directing them to place petitioners in the payscale of Rs. 145-250 with effect from 1-4-1966 (the date on which recommendations of Badkas Commission were given effect) to 31-3-1976 and in the payscale of Rs. 335-680 with effect from 1-4-1976 (the date on which recommendations of Bhole Pay Commissioner were given effect), and for payment of consequent arrears. It is also prayed that respondent may be directed to consider petitioners for promotion as Head Masters of Primary Schools.

2. The petitioners base their claims on pleadings as under :

Both petitioners by now have surpassed the age of superannuation and at the time of filing the petition, they were serving as Assistant Teachers. Both of them have passed higher secondary school certificate examination in or about 1954. Petitioner No. 1 has undergone junior primary teachers training for one year in 1962-63 from Government Training College, Neknoor taluka & District Beed. Petitioner No. 2 has undergone senior primary teachers certificate training of two

years between 1961 to 1963. The two petitioners were appointed on 16-7-1955 and 16-8-1954 respectively.

At that time, primary teachers were divided into three categories---

(i) having passed 7th Std. examination; (ii) those who were non-metric (not having passed HSSC/SSC) and (iii) who had passed HSSC/SSC examination. The teachers who had not passed higher secondary certificate examination, including only 7th Std. passed, were required to undergo junior primary teachers certificate training for two years. HSSC or SSC teachers were required to undergo junior or senior primary teachers training.

In Marathwada region, subject English was being taught from 5th Std. onwards and HSSC/SSC teachers having undergone Jr. PTC/Sr. PTC were required to teach English for the students studying in 5th to 7th Stds. Untrained teachers were appointed on fixed pay of Rs. 40/-. HSSC/SSC with Jr. PTC training for one year, were put in the payscale of Rs. 50-90. Teachers having passed 7th Std. and Jr. PTC were also placed in the same scale. Teachers with HSSC/SSC and Sr. PTC were given payscale of Rs. 56-100.

The teachers, who came to be appointed on or before 1-11-1959 to teach English subject to the students studying in 5th to 7th Stds. having requisite qualification as above, were given payscale of Rs. 81-130 as an award in accordance with their seniority in the District. These teachers were, therefore, called as awardee teachers, petitioner No. 1 is President and petitioner No. 2 is member of Kruti Samiti of awardee teachers and petition is pursued in the representative character for all awardee teachers. The teachers who used to teach English but were not awarded payscale of Rs. 81-130 in the year 1959, were given payscale of Rs. 61-140 in or about 1960-61.

Teachers with HSSC/SSC and Jr./Sr. PTC, who were in the payscales of Rs. 50-90, 56-100, 81-130 and 61-140, all were awarded payscale of Rs. 70-150 with effect from 1-7-1962 vide orders issued by respondent No. 4 on 5-12-1966 and such teachers came to be posted in the primary schools to teach English to the students studying in 5th to 7th Stds. At that time, untrained 7th Std. passed teachers were given payscale of Rs. 90-110, untrained matriculates 105-125, trained 7th Std. were put in the payscale of Rs. 110-185, matriculates with Jr. PTC were given payscale of Rs. 115-210 and Sr. PTC were given payscale of Rs. 130-220.

Above payscales were implemented as a result of recommendations of Badkas Commission by Government resolution dated 19-6-1969.

Posts of Head Masters (upgraded payscale 145-250) were created for primary school upto 7th Std. or primary schools upto 4th Std. but having student strength of 200. These posts were filled in by ignoring the awardee teachers without any reason. Seniority list of primary teachers was drawn and awardee teachers were not included in the same.

The Chief Executive Officer, Zilla Parishad, Beed, prepared seniority list of awardee teachers on 28-12-1985 showing the position as on 31-3-1985.

As a result of recommendations of Bhole Commission in the year 1976, trained matriculates were given payscale of Rs. 290-540 from their existing payscales of Rs. 115-210 or 130-220. Head Masters were given payscale of Rs. 335-680 instead of Rs. 145-250. Petitioners and other awardee teachers were put in the payscale of Rs. 325-600 instead of Rs. 130-220.

By orders issued on 29-10-1987, the Chief Executive Officer, Zilla Parishad, Beed, declared that petitioners and other awardee teachers are primary teachers.

In the light of these details, petitioners have claimed relief as described above.

3. Reply is filed by Accounts Officer in the office of the Deputy Director of Education, Aurangabad, on behalf of respondent No. 3. There are no replies filed on behalf of respondent Nos. 1, 2, 4 and 5.

In brief, reply points out that all the teachers were not awarded payscale of Rs. 70-150 pursuant to the GR dated 29-8-1963. Number of teachers equivalent to number of divisions in Stds. 5th to 7th, only were awarded this special payscale.

According to reply, it appears that some time in the year 1971, payscale awarded to awardee teachers being that of secondary teachers; options were called from them, either to continue with the payscale and status of secondary teachers or to revert as and in the payscales of primary teachers. Those who exercised options to revert were also liable for recovery, but only thereafter they were entitled and eligible to be considered for promotion as Head Masters of primary schools. Those who did not exercise any option before prescribed date were to be treated as having elected to continue in the payscale of awardee teachers and thus as Assistant Teachers of secondary school.

4. Present writ petition was filed in November, 1988 and even by mere glance at the prayers, it cannot be ignored that the legal action is commenced at quite a belated stage. As can be seen from prayer clause, petitioners demand to be placed in the payscale of Rs. 145-250 with effect from 1-4-1966 and in the payscale of Rs. 335-680 with effect from 1-4-1976. There is also a demand of preparation of common seniority list alongwith other primary teachers and thereafter for being considered for promotion to the posts of Head Masters. Although it is pleaded in para 6 of the petition that a common seniority list of primary teachers was prepared by excluding the awardee teachers, the pleadings do not indicate as to when such common seniority list was prepared. From further part in the said para 6 of the petition, it appears that separate seniority list of awardee teachers was prepared in December 1985. If at all, the common seniority list excluding the awardee teachers was prepared some time prior to 1985, even then grievance in the form of present petition against the same has come after lapse of nearly four years.

In view of this, the petition suffers from the vice of laches and therefore, taking

pragmatic view of the matter, they are not entitled to reopen the issue after lapse of years.

5. As will be evident during the course of discussion regarding reasons for denial to the petitioners for being considered for promotion to the posts of Head Masters, the petitioners to some extent have also indulged in suppression. There is no dispute that recommendations of Badkas Commission and Bhole Commission were given effect in April, 1966 and April, 1976 respectively. Prior to this, by virtue of Government Resolution dated 29-8-1963, teachers working in Marathwada were considered and granted payscale of Rs. 70-150 on the basis of number of posts equivalent to the number of divisions in Stds. 5th to 7th as on 1-11-1959. It is obvious that matriculates with Jr./Sr. PTC who were teaching subject English to these middle school standards, were upgraded, when other teachers continued to be in the payscale of Rs. 50-90 or 56-100 in accordance with qualification i.e. Jr. PTC or Sr. PTC.

The posts of Head Masters in the upgraded payscale were created by Government Resolution dated 22-10-1970. Although petitioners have relied upon some orders issued by Chief Executive Officers, Zilla Parishad, Beed, on 29-10-1987, wherein it is discussed that awardee teachers are primary teachers, these orders cannot be read independent of Government orders and Government orders, earlier in time, ought to prevail over the orders of Chief Executive Officers.

As can be seen from para 6 of the reply, the status of awardee teachers, who were granted payscale of 81-130 and 61-140 in accordance with the fact they were teaching English or they were not, was considered in the year 1977 and Under Secretary to the Government of Maharashtra in the Education and Youth Service Department; Mantralaya, vide his letter dated 22-7-1977 had pointed out and the Deputy Director of Education, Aurangabad that awardee teachers were given option to revert to the status of primary teachers in accordance with the orders contained in the Government resolution dated 8-9-1971 and those, who did not opt to revert to the status of primary teachers, would not be considered for promotion to the posts of Head Master in the upgraded payscale of Rs. 145-250.

Copy of Government Resolution dated 8-9-1971 and part of form of option annexed to the same is produced alongwith reply. It is evident that awardee teachers were given option, which was to be exercised on or before 15-11-1971. They were to elect either to revert to the payscales of primary teachers and face recovery of excess paid to them, while placing them in the payscales of awardee teachers or to continue to be in the awardee teachers. In that case, they were to forfeit the benefit of being considered for promotion as Head Masters of primary schools in the upgraded payscales. Those, who did not exercise any option before the prescribed date, were to be treated to have elected not to revert to the status of primary teachers.

As already stated earlier, the petition makes no reference to these events in the year 1977. Petitioners have not disclosed whether they were offered such option and if yes, whether they had elected to continue in the paycales of awardee teachers or elected reversion to the status of primary teachers. If petitioners had elected so to continue or were deemed to have elected so to continue by not having exercised option, now it is not open for them to claim eligibility for promotion to the posts of primary school Head Masters. In all probability, they must have elected to continue in the higher paycale of awardee teachers, which was equivalent to paycale of secondary teachers and, therefore, they were excluded from the common seniority list of primary teachers, as also from zone of consideration for promotion as Head Masters of primary schools.

6. For the reasons discussed above, apart from laches and suppression, the petitioners do not have any case on merits and the writ petition deserves to be dismissed.

The writ petition is dismissed. Rule discharged with no order as to costs.