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**(2007) 11 BOM CK 0068**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1696 of 2007**

Atmaram Shirsat

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 22-11-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2008) 3 BomCR 764 : (2008) 2 MhLj 237

**Hon'ble Judges :** S.P. Kukday, J;P.V. Hardas, J

**Bench :** Division Bench

**Advocate :** R.R. Mantri, holding for P.N. Kutti, for the Appellant; S.B. Wadmare, A.G.P. for respondent Nos. 1 and 2 and P.B. Patil, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.P. Kukday, J.—This petition under Articles 226 and 227 of the Constitution of India seeks issuance of a writ directing respondent Nos. 2 to 5 for making payment of the dues towards the salary of the petitioner for the years 1995 to 2004, along with interest.

2. After completing his matriculation the petitioner joined school at Wavade on 28th August, 1984, as Assistant Teacher (Untrained). In the year 1989 petitioner completed Sahitya Sudhakar Course which is treated as equivalent to Graduation. Thereafter, he also completed In-service Teaching Course. As the petitioner had acquired a degree, which is equivalent to graduation, he was promoted and placed in the cadre of Graduate Teacher in the year 1995, in pursuance to the Government Resolution dated 14th November, 1979. As per the conditions incorporated in the Government Resolution, it was incumbent upon the petitioner to complete his B.Ed. Course within five years from his placement in the cadre of Trained Teacher. On his failure, the petitioner was not entitled to further increments and was to stagnate at the same pay scale. Though the petitioner was placed in the cadre of Trained Graduate Teacher, salary admissible to him was not paid and the payment of salary was made as per the old pay

scale. Increments within the five years were also not given to the petitioner. The petitioner, therefore, approached respondent No. 4 with his grievance. Accepting the representation of the petitioner, respondent No. 4 passed an order dated 29-6-2004, directing respondent No. 5 to make payment of the salary to the petitioner as per his entitlement. In spite of this, the respondent No. 5 did not comply with the order.

Unfortunately, the petitioner could not complete his B.Ed, course within the stipulated period of five years. The authorities, therefore, did not fix his pay scale in the Trained Graduate category and did not make payment to him as per his entitlement.

3. The petitioner approached various authorities, including Lok Ayukta, for redressal of his grievance. Respondent No. 3 also did not accept the representation of the petitioner on the spurious ground that the petitioner had not passed B.Ed. Course. Finally, the petitioner retired from service in the year 2004. Thereafter, payment of Rs. 46,269/- was made to him towards satisfaction of the dues. The payment was not made as per the pay scale admissible to the petitioner. The petitioner, therefore, approached Pension Adalat but his grievance was not redressed. As his grievance was not redressed by the concerned authority, the petitioner has finally approached this Court by filing present writ petition seeking direction to the respondents for payment of his dues towards the salary for the period 1995 to 2004 with interest.

4. Respondent Nos. 3 to 5 have filed affidavits-in-reply. According to these respondents, apart from the delay in filing the petition, the petitioner is not entitled to the relief sought for as the initial placement of the petitioner in the cadre of Trained Graduate Teacher was due to inadvertent mistake. According to these respondents, the petitioner was not Trained Graduate in the year 1995 and could not have been placed in the cadre of Trained Graduate Teacher. The mistake was later on rectified and salary is paid to the petitioner as per his old scale and entitlement. The petitioner has neither completed D.Ed, or B.Ed, course and is, therefore, not entitled to the benefit of the Government Resolution dated 14th November, 1979. On this premise, the respondents claimed dismissal of the petition with costs.

5. Shri R. R. Mantri, learned Counsel for the petitioner, has rightly pointed out that the crux of the matter is the interpretation of the Government Resolution. According to the learned Counsel, the case of the petitioner is covered by Clause (c) of paragraph 5 of the Government Resolution dated 14th November, 1979. As the petitioner has not completed B.Ed. Course within the stipulated period of five years, though he is not entitled to further increments, the petitioner is entitled to be continued in the same pay scale till retirement. This interpretation is controverted by the learned Counsel for the respondents. According to learned Counsel Shri P. B. Patil for respondent Nos. 3 to 5, only the trained graduate teachers are entitled to this pay scale. As the petitioner is not a trained graduate Teacher and as the initial appointment was made by mistake, that mistake has

been rectified by the respondents. Learned Counsel contends that the petitioner is not entitled to the relief sought for.

6. There is no controversy in respect of the factual aspect in the present petition. The controversy is only in respect of interpretation of the Government Resolution dated 14th November, 1979. We may refer to the object of this Government Resolution. There was disparity between the Trained Graduate Teachers from the higher cadre and from the cadre of teachers of Secondary School (Vth to VIIth Standards). The Government decided to do away with this disparity for ensuring that Trained Graduate Teacher working in Secondary School would be treated on par with other trained graduate teachers. There was an impediment in implementing this scheme as some of the teachers from Secondary School were not trained graduates, though they were - graduates. To overcome this difficulty, provision was made to absorb these untrained teachers who were working in the cadre at the time of implementation of the scheme. This interpretation is substantiated by the conditions prescribed by paragraph No. 5 of the Government Resolution. The first condition is in respect of the trained teachers. There was no difficulty so far as this category is concerned. Therefore, these teachers were straightway given the pay scale of Rs. 1000-11-79. The second category covered by paragraph 5(B) is of the Teachers who were graduate and trained but graduation is not in the subject they are teaching in the school. The third category mentioned in paragraph No. 5 covers those teachers who are graduate and have neither obtained degree in the required subject nor are trained. The case of the petitioner falls under this clause. For the teachers from both the categories, five years are given for completing the B.Ed, course. Those who complete the B.Ed. Course within the stipulated period are placed in the pay scale of Trained Graduate Teachers and increments are given to them. Those who fail to comply with the condition, are to stagnate at the same stage obtaining after five years but are to continue in the same cadre. The Government Resolution, therefore, covers the cases of the un-trained teachers who are working in the cadre of Graduate Teachers in Secondary schools, teaching Vth to VIIth Standards. In the light of these facts, it is not possible for us to sustain contention of learned Counsel for the respondent Nos. 3 to 5 that only the Graduate Teachers are covered by the said Government Resolution. Learned Counsel for the petitioner has rightly pointed out that the petitioner is entitled to be placed in the category of Trained Graduate Teacher, however, as he has not completed B.Ed, within five years, he has to stagnate at that stage and will not get any increments after five years. The petitioner would be entitled to the salary as per the stipulations found in paragraph 5(C) of the said Government Resolution. The respondent No. 5 had already paid Rs. 46,269/- to the petitioner. The dues of the petitioner be calculated as per the scheme explained by us earlier. After computation the arrears, an amount of Rs. 46,269/- be deducted and the rest of the amount be paid to the petitioner.

7. In the light of this discussion, the petition deserves to be allowed. Rule is, therefore, made absolute in conformity with prayer Clause B in the aforesaid

terms. However, in the facts of the present case, there shall be no order as to costs.