

(2023) 08 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 506, 507 Of 2011

Chitra Nitin Pendharkar And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-08-2023

Acts Referred:

Citation : (2023) 08 BOM CK 0059

Hon'ble Judges : G. S. Patel, J; Neela Gokhale, J

Bench : Division Bench

Advocate : NV Bandiwadkar, Vinayak Kumbahr, NC Walimbe, Neel G Helekar

Judgement

Neela Gokhale, J

1. Rule. Rule made returnable forthwith. The Respondent-State has filed its Affidavit in Reply. Heard finally with consent of the parties.

2. The issue involved in both the Petitions and the reliefs sought in the Petitions are identical. Hence, these two Petitions are disposed of by this common judgment and order.

3. Simply put, the grievance of the Petitioners is that they have been working as 'Assistant Teachers' in the hearing and speech impaired units of their respective schools in pursuance of an Integrated Handicapped Education Scheme implemented by the Central Government in the State of Maharashtra. The special teachers employed on such units were paid salary from the 100% grant received from the Central Government. The scheme was discontinued from February 2009 and the special teachers were absorbed by the State Government to work as special teachers in Government Schools in the State. However, the Government Resolution ("GR") of 15th September 2010, which declared the decision to absorb the special teachers, specified the pay-scales of the teachers depending upon their qualifications. The Petitioners initially challenged the GR of 15th September 2010 to the extent that the GR limited their salary to the basic pay-scale of a primary teacher without any benefit of the previous pay-scale. During

the proceedings, the Petitioners by way of an additional Affidavit sought modification of the prayers and sought substituted relief as follows:

"a] Payment of salary from 1.11.2009 till 28.6.2011,

b] Payment of salary from 25.8.2011 to 5.1.2012, when their services were discontinued during the pendency of this Writ Petition; (in case of the Petitioner in Writ Petition No. 507 of 2011)

c] To apply the provisions of the old pension scheme and Provident Fund scheme, as per the provisions of the M.C.S. [Pension] Rules, 1982 and the Maharashtra Provident Fund Scheme.

d] To pay salary as a trained teacher in the pay scale of Rs.5,200-20,200 GP Rs.2,800/- from the date of their absorption in the Municipal School of the Respondent No. 5 School Board and to pay the difference in salary, by deducting the salary already paid as an untrained teachers in the pay scale of Rs.5,200-20,200 GP Rs.2,000/- from the aforesaid date and till date.

e] To direct the Respondents to pay the current monthly salary in the aforesaid pay scale of trained teacher, followed by payment of retirement pension and the other retirement benefits as a trained teacher in appropriate pay scale revised under the 6th and 7th Pay Commission."

4. The Petitioners are Assistant Teachers working in the 4th Respondent respective schools in the hearing and speech impaired units. The Respondents No. 2 and 3 are the Deputy Director of Education and Education Officer (Secondary) Pune region of the 1st Respondent, State of Maharashtra. The 5th Respondent is the Administrative Officer of the Pune Municipal Corporation running the 4th Respondent schools.

5. Both Petitioners were working in the Central Government scheme as stated above. After completing their probation periods, approval was given by the Education Officer and their services were made permanent. Till such time that the Central Government was running the scheme, the salary was being paid from the Central Government grant. After the scheme was taken over by the State Government, the State issued an order directing the seniority of the teachers who were absorbed to be counted from the date of absorption without benefit of their past services. A further direction was to recover salary if already paid to the teachers after March 2009 and to deposit the same in the Government treasury. Accordingly, the schools issued letters calling upon the teachers to deposit the purported over-payment. The Petitioners thus filed the present Petitions initially challenging the GR dated 15th September 2010 and the consequent order of the school dated 4th November 2010. We had directed status-quo in respect of recovery of salary.

6. In the meantime, the Petitioner in Writ Petition No.507 of 2011 was terminated, but pursuant to an order of 28th October 2011 issued by this Court in an earlier Writ Petition, she was reinstated as primary teacher in the

concerned Municipal School. However, the complaint is that reinstatement was made as an untrained teacher in the related pay-scale. The Petitioner in the Writ Petition No.506 of 2011 was also given the status of an untrained teacher in the same pay-scale. Furthermore, their seniority was fixed only from the date of their absorption in the Municipal Schools of the State and hence the new pension scheme was being applied to them. It is this action of the State which is assailed by the Petitioners.

7. Mr Bandiwadkar, learned Senior Counsel appearing for the Petitioners, says that both the Petitioners have been working prior to their absorption in the State Government schools. Thus, treating them as untrained teachers instead of trained teachers is illegal and contrary to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules') which provide for absorption of employees after being declared surplus in the original scheme. Consequently, there is also an impermissible and illegal reduction in their pay-scales. He also complains that the Petitioners are not being paid salary since November 2009 and the Petitioners are suffering heavy financial loss. They are entitled to benefit of their past services and eligible for retiral benefits under the old pension scheme.

8. Mr Walimbe, learned AGP, appears for the State. Admitting that the Petitioners were appointed in their respective schools right from the period when the scheme was being implemented by the Central Government, nonetheless he maintains that upon being absorbed on vacant posts of teachers at general primary schools run by the local governing bodies of the State, they are entitled to be absorbed only as untrained teachers on a minimum pay-scale. He also says that as per their GR, these teachers will not be entitled for any benefits of their previous pay-scales and their seniority will be counted from the date of their absorption in the new school. He also defends the Government decision to recover purported over-payment of salary to such teachers.

9. Mr Helekar, learned Counsel for the schools, supports the Petitioners.

10. It is an admitted position that both the Petitioners have rendered their services in the hearing and speech impaired units in the scheme implemented by the Central Government till 2009. They have continued in service upon their absorption as surplus teachers in the Municipal Corporation schools of the State Government. There is no break in service save and except a few months when the Education Officer refused to grant approval. However, the documents on record indicate that the approval has been granted in compliance with the orders of this Court in earlier proceedings.

11. The State is unable to point out any justification in law for denying the Petitioners' claim for continuity. There is no provision in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act") nor any GR which declares that a trained and qualified teacher, serving on a particular post in a State Government school itself, is to be literally

demoted upon discontinuation of a particular scheme, despite continuing in service. Both the Petitioners are qualified, eligible, and experienced in teaching students in the Speech and Hearing Impaired Units in the local schools. They are performing the same duties as they were performing prior to their absorption, with the same expertise and training. In fact, the long tenure of more than 19 years in service has enhanced their skills and experience. There is no justification for treating trained teachers as untrained teachers only on account of their absorption as surplus teachers. 'Absorption' has nothing to do with the level of training, past experience, or skill sets. The entire case is illogical: an untrained teacher may become a trained teacher, but it is inconceivable that a teacher trained in one discipline or field can ever become 'untrained' — only on account of absorption under a particular scheme. If such teachers are to be treated as 'untrained' then, at the very least, we expect to see what precisely is the 'training' required or demanded. To this obvious question there is no answer at all.

12. Mr Bandiwadekar places reliance upon a decision of a Division Bench of this Court in the matter of Sangita Maruti Pund & Ors v. State of Maharashtra & Ors. Writ Petition No.4902 of 2012. Mohit S Shah CJ, and Anoop V Mohta J. Order dated 21st November 2012. The facts in that case are identical to those in the present case. The Division Bench relied upon a decision of the Delhi High Court in the matter of Social Jurist, A Civil Rights Group v Government of NCT of Delhi & Anr, 2009 SCC OnLine Del 2939 : (2009) 163 DLT 489. in paragraph 4 of which the Delhi High Court reproduced part of an affidavit filed on behalf of the Rehabilitation Council of India. The quoted paragraph reads:

"16. It is worthwhile to mention here that in B.Ed. (SE) the successful candidates are trained in teachers training as well as special education for disabled children. In a welfare state, it is necessary that in general school the special teachers must be appointed to the physically challenged children so that they could feel themselves at par with the children of general category."

13. The Division Bench of this Court in Sangita Maruti Pund thus proceeded to hold the acts of the Government in treating such special teachers possessing the qualification of even a diploma in special education awarded by the Rehabilitation Council of India as untrained teachers was illegal and bad in law.

14. In another order in the matter of Jahida Mohd Shaikh v State of Maharashtra Writ Petition No 1855 of 2013; order dated 9th April 2013. Per Mohit S Shah CJ and MS Sanklecha J, again with identical facts, a Division Bench of this Court held that teachers having diploma in special education as trained special teachers were entitled to salaries and allowances in the pay-scale of trained teachers with effect from the date of absorption.

15. The Petitioners in the present case are in fact not only diploma holders from the Rehabilitation Council but have B.Ed and M.A. degrees, in the relevant subject, which is a higher qualification than a diploma. There is no reason for the

Education Department to belittle the qualifications, training in special education, and the experience drawn from the long years of service of the Petitioners by relegating them to the status of untrained teachers. 'Untrained' after all is only an adjective ascribed to the training of a teacher and considering the relevant attributes of the Petitioners they cannot be said to be 'untrained' at all.

16. Considering the above facts and settled legal position, we have no hesitation in holding the decision of the Department to the extent of treating the Petitioners as untrained teachers upon their absorption in the local municipal schools as arbitrary and illegal.

17. The decision to treat the Petitioners as untrained teachers is set aside and the Respondent, Education Department is directed to grant them the status of 'trained teachers'.

18. Consequently, they are also to be treated as being in continuous service from the date of their initial appointment in the Special Units in the scheme implemented by the Central Government. As such, they are entitled to seniority in service from that date. They are also eligible for retiral benefits under the old pension scheme.

19. The Petitioners have not received their salary in the related pay-scale of a trained teacher from November 2009. The Respondent Education Department is directed to release the arrears of salary within a period of four weeks from the date of this order.

20. Rule is made absolute in both Petitions in terms of prayer clause 12(a) to (e) of the Additional Affidavit dated 19th July 2023 filed in Writ Petition No.507 of 2011 and reproduced above.

21. There will be no order as to costs.