
(2023) 03 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 1626 Of 2021

Dasaram Gonduji Atkari And Others

APPELLANT

Vs

Zilla Parishad Bhandara And Others

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Citation : (2023) 03 BOM CK 0048

Hon'ble Judges : A.S.Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : Sachin Khandekar, Ratnakar Khobragade

Final Decision : Disposed Of

Judgement

A. S. Chandurkar, J

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.
2. The challenge raised in this Writ Petition is to the order dated 29th June 2020 passed by the Chief Executive Officer, Zilla Parishad, Bhandara, thereby refusing to grant necessary monetary and pensionary benefits to the petitioners, which they claim to be entitled to.
3. The facts in brief are that each petitioner came to be appointed as a Primary Teacher with the schools run by the Zilla Parishad. When the petitioners were appointed, they were holding the requisite educational training qualifications. As per the Government Resolution dated 14th November 1979, it was the policy to upgrade 25% posts of Primary Teachers and grant them graduate pay scale in accordance with their seniority. By a subsequent Government Resolution dated 2nd September 1989, the pay scales were revised and benefit of the recommendations of the Fourth Pay Commission were made applicable from 1st January 1986. Accordingly, the petitioners were receiving salary in the Pay Scale of Rs.1,400-2,600 and thereafter Rs.1,640-2900 as Senior Grade. On 4th October 2016, the respondent no.1-Chief Executive Officer passed an order in

the matter of grant of benefit on completion of 12/24 years of service. As per that order, the period of 12/24 years was taken into consideration from the date the Senior Grade Pay or Selection Grade Pay was made applicable to the petitioners. The petitioners were aggrieved by the said order and hence challenged the same by filing an appeal, being Z.P. Appeal No.45/2016-17, before the Additional Commissioner, Nagpur Division, Nagpur. The Additional Commissioner dismissed the said appeal on 7th September 2017. Being aggrieved, the petitioners approached this Court by filing Writ Petition No.4581 of 2018. By the judgment dated 13th August 2019 this Court held that the petitioners were entitled to the benefit of Senior Scale as well as Selection Grade Scale as per the Government Resolution dated 20th July 2004. It was further held that, for the purposes of entitlement to higher pay scale or selection grade scale, the educational qualifications, as obtained from the date of the initial appointment, should be treated as relevant.

Accordingly, the order passed by the Additional Commissioner confirming the order passed by the respondent no.1-Chief Executive Officer was set aside. Based on this adjudication, the petitioners sought implementation of the same. A legal notice was issued by them on 16th June 2020. The respondent no.1-Chief Executive Officer however on 29th June 2020 did not grant the petitioners the relief in accordance with the aforesaid adjudication, but instead, he sought guidance from the State Government. Being aggrieved by the aforesaid action, the petitioners have challenged the same in the present Writ Petition.

4. The learned counsel for the petitioners submitted that pursuant to the adjudication of the petitioners' claim, that was decided in Writ Petition No.4581 of 2018, it was clear that the petitioners were found entitled to the benefit of Senior Scale as well as Selection Grade Scale in terms of the Government Resolution dated 20th July 2004. While doing so, the initial date of appointment of each petitioner was found to be relevant. Undisputedly, after the petitioners improved the educational qualifications, they had the status of Trained Graduate Primary Teachers. The petitioners received salary in the pay-scale of Rs.1,400-2,600 as initial pay and Rs.1,640-2,900 as Senior Grade Pay Scale. Despite the earlier judgment of this Court in the writ petition preferred by the petitioners, the impugned communication dated 29th June 2020 was issued by the Zilla Parishad, thereby granting them pay scales of teachers with S.S.C. qualification. The fact that the petitioners were Trained Graduate Primary Teachers was never disputed by the Zilla Parishad. Despite that, while undertaking the pay fixation pursuant to the judgment dated 13th August 2019, the Zilla Parishad proceeded to sanction the lower pay scale that was prescribed for teachers with S.S.C. qualification. As a result, the petitioners were deprived of the adjudication in their favour. The pay fixation of the petitioners ought to be on the basis of the pay scales as Trained Graduate Primary Teachers, which the petitioners were actually receiving during their service period. It was thus submitted that the Zilla Parishad ought to be directed to grant actual benefit of pay fixation in accordance with the earlier adjudication.

5. The learned counsel for the Zilla Parishad opposed the aforesaid submissions. According to him, since the petitioners had not acquired training qualification from the date of their initial appointment, they were not entitled to the pay scale of Rs.1,400-2,600 from the initial date of appointment. The petitioners were not trained Teachers when they were so appointed. It is only after the petitioners improved their educational qualification that they became entitled to such pay scale that was admissible to trained Graduate Primary Teachers. Referring to the affidavit-in-reply, dated 23rd March 2022, filed on behalf of the Education Officer (Primary), it was submitted that by the impugned communication dated 29th June 2020, the pay fixation of the petitioners had been rightly undertaken. The same had been issued in the light of the judgment of this Court that was delivered in Writ Petition No.4581 of 2018. Hence, no interference with the impugned communication was liable to be made.

6. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that in the initial round of litigation, this Court considered the effect of the petitioners improving their educational qualification after entering into service. The question that was considered therein was whether the initial entry in service was required to be given importance or whether the date on which the educational qualification was improved was required to be taken into consideration. It was held that the initial date of appointment of such Primary Teachers, who subsequently improved their educational qualification, was required to be taken into consideration. On that premise, it was held that the petitioners were entitled to the benefit of Senior Scale as well as Selection Grade in terms of the Government Resolution dated 20th July 2004. A direction was accordingly issued to grant such benefit in terms of the letter of the Zilla Parishad dated 24th February 2010, as had been done by the Zilla Parishad with regard to other Primary School Teachers, who were junior to the petitioners. It is thus clear from the aforesaid adjudication that the initial date of appointment of each petitioner was found to be relevant in the context of improving their educational qualification after entering service. It is to be noted that the petitioners received salary in the pay scale of Rs.1,400-2,600 as their initial pay and Rs.1,640-2,900 as Senior Grade Pay Scale. The period of twelve years for grant of Senior Grade Pay Scale was required to be taken from the date of initial appointment in the light of the earlier adjudication by this Court. As a result of the petitioners enhancing their education qualification, Graduate Pay Scale of Rs.1,400-2,600 was granted to them. Ignoring these facts, the Chief Executive Officer, Zilla Parishad, Bhandara, by the impugned communication, has again sought to obtain guidance of the State Government in this regard. In paragraph 12 of the impugned communication dated 29th June 2020, a doubt is sought to be raised whether the entitlement to Higher Pay Scale and Selection Grade Pay Scale should be from the date of initial appointment or from the date when the educational qualification was improved. We find that there is no justification on the part of the Zilla Parishad to re-open the said issue after the judgment of this Court in Writ Petition No.4581 of 2018 attained finality. After

having granted such higher pay scales, the Zilla Parishad was not justified in lowering their pay scales again, as has been done by the impugned communication.

7. For aforesaid reasons, therefore, we find that the Zilla Parishad was not entitled to go behind the orders passed by this Court in Writ Petition No.4581 of 2018. Despite having succeeded in the earlier round of litigation, the petitioners cannot be deprived of the fruits of such adjudication. Hence, for the aforesaid reasons, the order dated 29th June 2020 passed by the Chief Executive Officer, Zilla Parishad, Bhandara is quashed and set aside. It is directed that Zilla Parishad, Bhandara shall undertake the pay fixation of the petitioners by granting them the pay scale of trained Graduate Primary Teachers, which pay scales they were actually receiving during the period they were in service, within a period of four months from receiving a copy of this judgment. The petitioners are entitled to consequential monetary and pensionary benefits.

8. Rule is made absolute in the aforesaid terms with no order as to costs. Writ Petition is disposed of.