
(2002) 07 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 2550 of 1987

Dhanaraj Lakhaji Kamble

APPELLANT

Vs

Education Officer, Zilla Parishad and Ors

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Citation : (2002) 4 ALLMR 680 : (2002) 6 BomCR 721

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : V.A. Masodkar, for the Appellant; Dhote, A.G.P. and Sudhir Moharir, for the Respondent

Judgement

V.M. Kanade, J.—The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India and is seeking an appropriate writ order and directions, directing the respondents to revise the pay scale of the petitioner in the category of High School Teacher since 1976 as per Schedule "C", Part II (sic III), Entry No. 10 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The petitioner is also seeking an appropriate writ, order and direction of quashing letter produced at Annexure No. 8 and the order produced at Annexure No. 9 passed by the Education Officer.

2. The brief facts of the present case are that the petitioner was appointed as Assistant Teacher with effect from 16-8-1976 and was given the pay scale of trained High School Teacher from the said date. The services of the petitioner were continued in the same post next year also from 1-8-1977 on the same pay scale as an Assistant Teacher in the Higher Secondary School.

3. The services of the petitioner were confirmed and he continued to work without any break as an Assistant Teacher in the Higher Secondary School as a trained High School Teacher. The petitioner had a requisite qualification of a trained High School Teacher and the petitioner had passed his M.A. in political science in second class and B.Ed. in second class. The petitioner states that

surprisingly by letter dated 28-9-1987 which was issued by the Head Master of Dr. Ambedkar High School, Gondia, the petitioner was directed to contact the Education Officer for regularising the period of promotion and in the said letter he was threatened that after November, 1987 separate pay bill would be forwarded on the basis of basic pay. It is the contention of the petitioner that in the mean time, a letter dated 8-7-1987 was issued by the Education Officer, in which the petitioner was referred to as a middle school teacher and it was mentioned therein that he had been promoted as a High School Teacher with effect from 1-7-1986. The petitioner, therefore, immediately filed this writ petition challenging the said letter dated 28-9-1987 and letter issued by the Education Officer dated 8-7-1987, in which he was allegedly promoted as a High School Teacher from 1-7-1987.

4. We have heard the learned Counsel appearing on behalf of the petitioner and learned Counsel appearing on behalf of the respondents. We have perused the writ petition as also annexure thereto in the reply filed by the respondents. It is submitted by the learned Counsel appearing on behalf of the petitioner that the petitioner was appointed initially with effect from 16-8-1976 as a High School Teacher and he was given the pay scale of a High School Teacher and he had continuously worked in the said capacity till the filing of the petition. He further submitted that the order passed by the Education Officer treating him as a Middle School Teacher from the date of his initial appointment i.e. 16-8-1976 to 1-7-1986 was clearly illegal. He submitted that in view of order passed by the High Court on 11-1-1988, he was accordingly paid the salary as a High School Teacher. Thus, only for the period between 1-7-1986 to 11-1-88, he was not paid the salary as High School Teacher. He further submitted that the petitioner has now retired. He further submitted that, therefore, the petitioner was entitled to be treated as a High School Teacher from the date of his initial appointment and the impugned orders are liable to be quashed and set aside.

5. We have heard learned Counsel appearing on behalf of the respondents. Learned Counsel appearing on behalf of the respondents was unable to point out and to justify the impugned order passed by the Education Officer dated 8-7-1987, wherein the petitioner was referred to as a Middle School Teacher up to 1-7-86 and was promoted as High School Teacher from 1-7-86.

6. In our view, the Education Officer has clearly committed an error of law which is apparent on the face of the record. Perusal of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 reveals that there is no such post of a Middle School Teacher as defined in the Act. Section 2, sub-clause (24) defines a "School" as follows:

Sub-clause (24).-"School" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including, technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational art or, as the case may be, special education or training in any faculty or discipline or

subject below the degree level;

Thus, primary school is a school where the course of study is provided from 1st standard to 4th standard.

7. Section 2, sub-clause (18) defined Primary Education, which read as follows:

Sub-clause (18).-"Primary Education" means education imparted in such subjects and upto such standards as may be determined by the State Government from time to time, located either in a primary or a secondary school;

Thus, the secondary school and High School provides course in general education leading to Secondary School Certificate Examination (S.S.C. Examination) or an equivalent examination recognised by the Government at the end of Standard X. The Secondary School Code also defined as per definition Item No. 4 of a Secondary School Code in the same manner. Thus, there is no reference to a Middle School Teacher either under the Secondary School Code which was in existence prior to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 coming into force. Thus, this Act came into force on 15-7-1981 though it was enacted on 20th March, 1977. The petitioner thus admittedly was working as a trained High School teacher from the date of his initial appointment i.e. 16-8-76 till the impugned order was passed on 8-7-87. Thus, neither on the date of his initial appointment nor on the date on which the impugned order was passed on 8-7-87, any post of a middle school teacher was in existence. The impugned order is, therefore, patently bad and liable to be quashed and set aside.

8. Even otherwise, from the documents which are annexed by the petitioner, such as appointment letters and other documents, clearly indicate that the petitioner had always worked as a High School Teacher and was paid salary of a trained graduate teacher. Thus, there was no occasion or reason for the respondent No. 1-Education Officer to pass the impugned order dated 8-7-86 treating the petitioner as a middle school teacher from 16-8-76 to 1-7-86. The impugned order dated 8-7-87 and 28-9-87

which are annexed as Annexures 8 and 9 respectively are quashed and set aside.

9. The petitioner has been paid pay scale of a High School Teacher from the date of his initial appointment i.e. from 16-8-76 which pay scale was continued by virtue of the interim order passed by this Court on 11-1-88. We, therefore, direct that the petitioner shall be paid the same pay scale till his retirement and he be entitled to get the consequential benefits including pensionary benefits on the basis of the said pay scale.

10. The rule is, therefore, made absolute in the above terms. In the circumstances, there shall be no order as to costs.