

**(2001) 11 SC CK 0036**  
**In the Supreme Court Of India**  
**Case No : Civil Appeal No:1706 of 1999**

K. Vasudevan

APPELLANT

Vs

Mohan N. Mali and Others

RESPONDENT

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**Date of Decision :** 07-11-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2002)10 SCC 117 : (2003) SCC (L&S) 90

**Hon'ble Judges :** S. Rajendra Babu, J;Ruma Pal, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

S. Rajendra Babu J.-Respondent 1 claimed benefit of the circular dated 12-8-1987 on the ground that he had passed his BA examination in 1972 and later completed his MA in Hindi in 1974, he was placed in the selection grade as trained graduate teacher with effect from 19-11-1979 and had completed 12 years of service in selection grade scale on 18-11-1991 and, therefore, he was entitled to emoluments in the selection grade scale. But the authority concerned did not accept his claim. It was stated by the authority that appellant before us who was working as a trained graduate teacher in the same school and who was senior to Respondent 1 has become eligible for selection scale and, therefore, rejected his claim. Respondent 1 filed a writ petition challenging the said order.

2. The High Court proceeded to examine the various contentions and inter alia noticed that the circular dated 12-8-1987 has been relaxed so as to allow, on completion of 18 years of total service and not necessarily in the senior scale, a teacher to be entitled to selection scale; that the said clarification seeks to make a trained teacher not possessing postgraduate degree eligible for selection scale; that such relaxation of deficiency of qualification is irrational; that such a teacher cannot be treated in selection scale waiving the condition of qualification by an order of relaxation; that such an approach is neither sound nor reasonable. On that basis the High Court allowed the writ petition and granted relief sought for

by Respondent 1. Hence this appeal by special leave.

3. Mr Dhruv Mehta, learned counsel appearing on behalf of the appellant contended that the relaxation granted by the Government was a matter of policy to extend the selection scale to the teachers in question and, therefore, when the Government found that it would be appropriate to grant such a relaxation to a particular class of teachers, namely, who had put in 18 years of service, having put in long years of service gained sufficient experience, afforded a reasonable basis for the Government to have granted the relaxation. The High Court ought not to have held that the relaxation was in any way bad.

4. Mr E.M.S. Anam, learned counsel appearing for the respondent has supported the order made by the High Court.

5. It is clear that before the High Court there was no challenge to the relaxation as such. What was contended was that the appellant before us had not put in 18 years of service in the senior scale and, therefore, he would not be entitled to the benefit of the relaxation. But the High Court went on further to examine the validity of the circular itself. In our view, such a course was not permissible for the High Court particularly when there is no challenge to the circular relaxing conditions, as was stipulated in the circular dated 12-8-1987. The basis set forth in the circular itself is that those who have completed 18 years of service need not be insisted upon to possess postgraduate qualification for being considered to extend the selection scale. Such relaxation is a matter of policy with the Government and cannot be treated to be irrational inasmuch as in the view of the Government such teachers possess experience and need to be given due recognition. In the circumstances, we allow this appeal, set aside the order made by the High Court and restore that of the Director of Education, Government of Goa, Panaji, Goa dated 10-8-1993. It is, however, made clear that if any extra payments have been made to the first respondent pursuant to the order made by the High Court, the same shall not be recovered. The appeal is allowed accordingly.