

(1989) 01 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 252 of 1987

Mr. Dominic Arauje

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 27-01-1989

Acts Referred:

Goa, Daman and Diu School Education Act, 1984 — Section 29

Citation : (1989) 91 BOMLR 156 : (1989) MhLj 538

Hon'ble Judges : Kurdukar, J;Kamat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kamat, J.—The controversy in this petition centers round Note II incorporated under Sub-rule (5) of Rule 80 of the Goa, Daman and Diu School Education Rules, 1986 for short the Education Rules made u/s 29 of the Goa, Daman and Diu School Education Act, 1984. According to the petitioner Trained Graduate teachers is a distinct and separate category from other categories and the post of a Supervisor in a School can only be filled by drawing a Teacher from that category and he being senior to respondent No. 5 was entitled to be considered for the post of a Supervisor and since he has been left out of the consideration he seeks a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ for quashing and setting aside the appointment of respondent No. 5 as a Supervisor and to consider himself for such appointment.

2. This controversy arises from the following facts:

3. The Missionary Society of St. Francis Xavier also known as Society of Pillar conducts and imparts education in secondary education known as Fr. Agnelo High School which is a Government aided School. This Society is the fourth respondent in this petition, respondent No. 3 being its Principal. The respondent No. 5 a graduate trained teacher is presently holding the post of Supervisor in the same school. The petitioner joined the School as an Under-graduate Teacher

in the year 1965 and improved upon his qualifications by obtaining Diploma Education (Dip. Ed.) in the year 1970. During the course of his employment the petitioner became a graduate in the year 1974 but however was placed in the graduate scale in the year 1977. The respondent No. 5 joined Fr. Agnelo High School as a teacher in the graduate scale in the year 1972 and improved upon his qualification as a trained teacher on having passed B.Ed. in the year 1978.

4. In April, 1986 a senior teacher by name Paixao Rodrigucs holding the post of a Supervisor retired. The respondent No. 5 was elevated to the post of Supervisor by the School authorities duly approved by the Director of Education (Respondent No. 2). The petitioner made a communication dated June 29, 1987 to the Director of Education, laying a claim to the post of Supervisor on retirement of Shri Paixao Rodrigues . Having had no reply to this representation he made second representation on July 7, 1987 followed by another one dated July 14, 1987. By the letter dated August 3, 1987 Assistant Director of Education informed the petitioner that his claim for the post of Supervisor could not be considered on the ground that the petitioner is not the seniormost teacher in the graduate category in terms of Note II to Rule 80(5) of the Education Rules. After having learnt that Respondent No. 5 was appointed as Supervisor in the School the petitioner wrote to the third respondent, to furnish copies of the correspondence exchanged between the Principal and Director of Education on the subject. The petitioner repeated such request but without success. By his letter dated October 7, 1987 the Principal informed the petitioner regarding appointment of fifth respondent as Supervisor. It is this appointment of respondent No. 5 that is now challenged in this petition.

5. Mr. M.B. D'Costa, learned Counsel for the petitioner on placing reliance on Sub-rule (5) of Rule 80 of the Education Rules, 1986 contended that the Supervisor can only be drawn from the category of "Trained Graduate Teacher" based on seniority however subject to fitness and this according to him is clear from the Note incorporated below that rule. Sub-rule (5) of Rule 80 reads thus:--

(5) ...

(b) one post of supervisor, in the same pay scale of Trained Graduate Teacher, when the number of classes are more than 10 but not exceeding 30 classes.

Note: The supervisors shall be appointed on the basis of seniority in the trained graduate category, subject to fitness and they shall have a teaching workload of 24 periods per week, in addition to the work assigned to them by the Headmaster.

6. On an elaboration it is his contention that the expression "Trained Graduate Category" found in the Note under Clause (b) of Sub-clause (5) of Rule 80 is not meaningless and it clearly shows the intention that a Supervisor must come from the special category of Trained Graduate Teachers. He therefore says that in a given School there must be four categories of Teachers, namely (i) Trained Graduate Teachers; (ii) Untrained Graduate Teachers; (iii) Trained Under-

graduate Teachers; and (iv) Under-graduate Teachers. His next submission is that regard being had to the four categories of teachers there must be and it is in the contemplation that there must be four seniority lists in each of the above categories and when a question arises with regard to the appointment of a Supervisor or filling the vacancy caused in the post of a Supervisor only the seniormost subject to fitness in the Trained Graduate category can alone be appointed to that post.

7. He now says that for determining the seniority in the category of Trained Graduate Teachers, regard must be had not to the graduation of a teacher alone but also the qualification of training and therefore a teacher who satisfies both the qualifications at the earlier point of time must be considered senior. The petitioner became a graduate in the year 1974 and was placed in the graduate scale in the year 1977. The petitioner having passed Dip. Ed. in the year 1970 according to Shri D"Costa the petitioner became a Trained Graduate Teacher in the year 1977 whereas the 5th respondent though senior to him in the graduate scale when appointed in 1972 but having completed his training qualification namely B.Ed. in the year 1978 must come below and rank junior in the Trained Graduate category. According to him the respondent No. 5 was not a complete teacher as a Trained Graduate Teacher when appointed in the School as Assistant Teacher in the year 1972 and came into that category only in the year 1978. That way the petitioner was a complete teacher being Trained Graduate in 1974 and placed in graduate scale in 1977. This much is enough for the seniority of the petitioner says Mr. D"Costa.

8. It is true that insofar as the case of the respondent No. 5 and petitioner are concerned in point of time the petitioner was holding the two qualifications at one time in the year 1977 and the petitioner though a graduate in 1972 obtained his B. Ed. only in 1978. Therefore in point of time the petitioner had both the qualifications before respondent No. 5.

9. On behalf of respondents No. 1 and 2 a counter has been filed by the Director of Education, Government of Goa, opposing the petition. It is averred by him that prior to coming into force of the Education Act of 1984 and the Education Rules, 1986 the Secondary Schools were governed by the Grant-in-Aid Code and that Code provided for two categories of teachers namely (i) Graduate Teachers and (ii) Under-graduate Teachers depending upon their qualifications. Relying upon the seniority list of graduate and under-graduate categories of Teachers as furnished by the Head of School which is annexed to his affidavit as Exh. R-1 the Director says that, since the respondent No. 5 was appointed in the School in the graduate category in the year 1972 must be rated senior to the petitioner who did his graduation in the year 1974 but was placed in the graduate scale in the year 1977. In other words to reckon the seniority the date of appointment in the category of Graduate teachers is decisive and the training qualification is of no assistance says the Director of Education for any teacher appointed in any of the two categories can obtain training qualification within a period of five years from

the date of his appointment or within the further extended time in terms of Rule 65 of the Grant-in-Aid Code. The counter on behalf of the Director further suggests that seniority of the teachers in each category can only be determined by order of merit in which they were selected for appointment to the concerned post and those selected on an earlier occasion must be ranked senior to those selected later. And this principle according to him is incorporated in Rule 87(1) of the Education Rules. He also banks upon the guidelines issued in the matter of seniority in various categories laid down in Government Order No. DE/Acad. I/ Misc/1122/83-84/2339 dated August 17, 1983 issued for granting Selection Grade to teachers in each of the two categories in Government aided Schools. Going by those Guidelines he says that respondent No. 5 is admittedly much senior to the petitioner and therefore ranked at serial No. 2 in the seniority list and the petitioner at sr. No. 6 in the category of Graduate Teachers.

10. Mr. H.R. Bharne, Addl. Government Advocate made submissions supporting the order of appointment of respondent No. 5 as Supervisor in the light of the counter filed by the Director of Education and further contended that when the Grant-in-Aid Code was in the field before the Education Act, 1984 and Rules of 1986 were brought into force in November, 1986 only two categories namely (i) Graduate teachers and (ii) Under-graduate Teachers were in force and what is mere have remained in the field, even after the extension of the Education Act 1984 and the Rules of 1986. There is no category like Trained Graduate Teachers or the four categories as mentioned on behalf of the petitioner. Fr. P.H. D'Costa who is the Principal of Fr. Agnelo High School appeared in person and supported the order of appointment of the respondent as Supervisor by maintaining that respondent No. 5 ranks senior in the seniority list of Graduate category teachers as he was appointed in the year 1972 in the graduate scale against a regular vacancy. He further pointed out that admittedly the petitioner became graduate in the year 1974 and he could be taken into graduate category only in 1977 when the regular vacancy was available and merely because the petitioner had the training qualification i.e. Dip. Ed. sometime in the year 1970 that by itself cannot put the petitioner higher in seniority to respondent No. 5 as there are only two categories in the School.

11. Mr. Rebello, learned Counsel appearing for respondent No. 5 reiterated various submissions made on behalf of the Director of Education and the Principal of Fr. Agnel School. He further contended that the whole controversy with regard to the seniority can be resolved by reference to Rule 63 r/w Rule 65 of the Grant-in-Aid Code which was in force right from the year 1963 r/w Rules 78, 80, 81 and 83 of the Education Rules, 1986. Placing reliance on these rules Mr. Rebello contends that no professional qualification of training either in Degrees, or Diplomas or Certificates like S.T., T.D., Dip. Ed., B.T. or B.Ed. are insisted upon for initial appointment in the category of either graduate teachers or under-graduate teachers and the fact that the professional qualifications can be obtained within five years from the date of appointment or within such extended period as may be permitted, the real test for seniority is the

appointment in any one of the two categories namely the graduate or under-graduate category. In the second place it is his contention that neither the G.I.A. Code nor the Rules framed under the Education Act, 1984 suggest a distinct category known as Trained Graduate Teachers and the expression found in Sub-rule (5) of Rule 80 of the Rules of 1986 and Note there under would include in it the broad category of teachers known as Assistant Teachers which are set out in the Table annexed to Rule 78. He therefore ends in saying that there can be no dispute that the respondent No. 5 was appointed in the graduate scale much prior to the petitioner and though he obtained training qualification one year after the petitioner his seniority is not affected and relates back to the date of his appointment.

12. There is great merit in the submissions of Shri Rebello for respondent No. 5 and Shri Bharne, learned Addl. Government Advocate.

13. Rule 63 of the Grant-in-Aid Code refers to qualifications of Trained Teachers. Rule 63 reads thus:-

A teacher will be considered as trained if he possesses any of the following professional qualifications:

A -- For Graduate Teachers:

1. The B.T. degree of the statutory Universities situated in any State of India.
2. The T.D. of any of the statutory Universities situated in India.
3. The S.T. Certificate of any State Education Department.
4. The Diploma in Education given by Graduates Basic Training Centres.
5. Any other degree, diploma or certificate which Government may sanction as equivalent to the above.

B -- For Under-graduate Teachers:

1. The teaching diploma of any of the statutory Universities situated in any State of India.
2. The S.T. Certificate of any State Department of Education.
3. The Primary Teacher's Training Certificate.
4. Any other equivalent Diploma or Certificate approved of by the Department.

What emerges from this Rule is that there are various categories of teachers under Letters A to E. Category A relates to Graduate Teachers and Category E to Under-graduate Teachers. Other categories are totally different with which we are not presently concerned. It also says that the Teachers will be considered trained if they possess any of the qualifications and makes a reference to the professional degrees, diplomas or certificates as indicated therein.

14. Rule 65 while making a reference to categories of teachers permanent and non-permanent however says that the Government for reasons to be recorded in writing exempt any teacher from undergoing training on completion of five years. It is therefore clear that professional qualification (training) is not insisted upon at the initial appointment and a teacher would be placed either in the graduate category or under-graduate category depending upon basic qualification under Rule 63. He can however obtain professional qualification within five years and the rule further empowers the Government to exempt from obtaining such trained qualification even beyond the period of five years. This category of teachers is recognised and again maintained in the Education Rules, 1986 and that is clear from reading Rule 78 thereof. It reads as under:--

78. Minimum qualifications for the appointment of teaching staff. - The qualifications for the recruitment/promotion of the teaching staff in the recognised schools, whether aided or not shall be as prescribed in the following table which is subject to change in future on the recommendation of the Advisory Board or the directives of the Central Government to fall in line with the National Educational Policy.

The table appended to this rule refers to Asst. Trs./Jr. Instructors (i.e. Trained graduate Trs.) -- at serial No. 6. In column 4 qualifications required are a degree from a recognised University. In column 5 channel for promotion provided is to Under-graduate teachers working in the secondary schools having 3 yrs. service in the grade and possessing qualifications prescribed for direct recruits as in column 4, failing which an Under-graduate teacher possessing a Degree from a recognised university and a Diploma in Education (2 yrs. course) and having 5 yrs. experience out of which at least 3 years experience after obtaining Diploma in education.

15. At sr. No. 7 of the table are included Higher Secondary S.C., D.Ed. Teachers Matriculate D.Ed. Trs. The qualifications insisted in column 4 as against them is that they must possess Hr. Secondary School certificate with Diploma in Education (2 years course) failing which S.S.C. with Diploma in Education (2 years course). On a combined reading of Rules 63 and 65 of the Grant-in-Aid Code with Rules 78, 80, 81 and 83 of the Education Rules of 1986 it clearly emerges that there can be only two categories of teachers namely graduate teachers and undergraduate teachers and there are no four categories as contended by the learned Counsel for the petitioner. The relaxation of 5 yrs. period for any teacher to obtain professional qualifications available in Rule 65 of the Grant-in-Aid Code is also made available under Rule 81 of the Education Rules, 1986. It says that the Director of Education may in case of non-availability of trained and qualified teachers in particular subjects relax minimum qualifications prescribed for such a period as the Director may think fit. Rule 83 which speaks of probation also provides that a teacher-employee shall on initial appointment be on probation for a period of 2 years which may be extended by another one year. But however he cannot be confirmed unless he or she is

trained and completes two years post training service and his/her probation period shall be extended for a further period till he or she gets himself/herself trained, however provided no untrained teacher shall be retained in service for a period more than five years unless he or she joins the training college before the completion of five years untrained, service and the Director of Education is further empowered in his discretion to grant extension by two more years i.e. upto completion of seven years so as to enable a teacher to complete his or her training and on failure to do so the management is entitled to terminate the services after giving one month's notice.

16. It must be seen that the Grant-in-Aid Code was in force in this territory for a very long time and it provided for such contingency probably in the absence of availability of trained teachers that a teacher appointed in any of the two categories graduate or undergraduate was entitled to complete his training within a period of five years. When the Grant-in-Aid Code had been replaced by the Goa, Daman and Diu School Education Act, 1984 and Rules, 1986 the same position has been reiterated as shown above and therefore it is abundantly clear that the professional qualification of training is not a sine qua non for initial appointment. It therefore stands to reason that if a teacher is permitted to obtain his training qualification within a period of five years or within the extended period thereafter the teacher cannot lose his seniority and the seniority will have to be reckoned from the date of his appointment in the particular category, and that appears to be the correct position. We are confirmed in the view we are taking on perusal of Sub-rule (2) of Rule 80 of Rules of 1986. It speaks of two categories of teachers setting out the ratio of 70% Graduate to 30% Under-graduate to be appointed in an aided School. It is no doubt true that the petitioner was a qualified teacher having obtained graduation in the year 1974 and already possessed Dip. Ed. and was brought in the graduate category in the year 1977. Respondent No. 5 was a graduate and therefore appointed in the graduate scale in the year 1972 and though he obtained his training qualification by passing the professional course of B.Ed. in the year 1978, inasmuch as he obtained it within the extended period it is not possible to rate the petitioner lower in seniority than that of the petitioner. Once the respondent No. 5 obtained his training qualification his seniority will be reckoned from the date of his appointment in the graduate category and the petitioner having come in that category only in the year 1977 must rank junior to respondent No. 5. The petition therefore will have to be rejected on this score.

17. It is indeed urged by Shri Rebello, learned Counsel that even if we were to accept the challenge on behalf of the petitioner in the matter of seniority no relief could have been granted in favour of the petitioner as it would have affected some other teachers who are ranked senior to him in the seniority list for two good reasons, namely, that the petitioner failed to challenge the seniority list of the teachers as approved by the Director of Education and secondly those teachers who have not been impleaded in the petition were likely to be affected in the event we were to grant writ as prayed for. In our view once we have held

the petitioner is not senior to respondent No. 5 the question of going into this contention of Shri Rebello does not arise at all.

18. The petition therefore is dismissed. Rule discharged. In the circumstances parties are directed to bear their own costs.