
(2015) 08 BOM CK 0245
In the Bombay High Court
Case No : Writ Petition No. 3060 of 2015

Roopali

APPELLANT

Vs

Collector, Nagpur and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Citation : (2015) 08 BOM CK 0245

Hon'ble Judges : B.R. Gavai, J; I.K. Jain, J

Bench : Division Bench

Advocate : A. Shelat, for the Appellant; S.M. Ghodeswar, AGP, Advocates for the Respondent

Judgement

B.R. Gavai, J—Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. The petitioner has approached this Court being aggrieved by the order passed by respondent No. 1 dated 26.02.2015 thereby granting stay to the resolution passed by respondent No. 3 Municipal Council dated 25.08.2014 thereby making applicable higher payscale in the Graduate Teachers' cadre to the petitioner.

3. It is the contention of the petitioner that though respondent No. 2 is senior to the petitioner insofar as entry in service is concerned, the petitioner has obtained B.A.B. Ed. qualifications much prior to the said respondent and as such she would be entitled to Graduate Pay-scale in preference to that of respondent No. 2. The learned counsel relies on the judgment of the Division Bench of this Court in the case of Vitthal Madavi and Others Vs. Zilla Parishad and Others, (2006) 3 BomCR 348 : (2006) 2 MhLj 124 .

4. The learned counsel appearing on behalf of respondent No. 2 on the contrary submits that since respondent No. 2 is senior in service to the petitioner and since she possesses the requisite qualifications on the date on which the resolution is passed by the respondent No. 3- Municipal Council, the respondent No. 3- Municipal Council erroneously granted higher pay-scale to the petitioner.

The learned counsel relying on the decision of the Apex Court in the case of *Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust*, (2014) AIRSCW 5193 , submits that since respondent No. 2 is senior to the petitioner, she would be entitled to a higher pay-scale in preference to that of the petitioner.

5. The learned counsel for respondent No. 3 supports the case of the petitioner. The learned AGP on the contrary submits that the Collector has passed the order since respondent No. 3 has overlooked the seniority of respondent No. 2.

6. The question regarding grant of higher pay-scale on acquiring B.A.B. Ed. qualifications is covered by the Government Resolution dated 11.08.1999. The Division Bench of this Court has an occasion to consider the said Government Resolution in the case of *Vitthal Fakruji Madavi (supra)*. It will be relevant to refer to the following observations of the Division Bench:

"It can, thus, be seen from the conjoint reading of clauses 3 and 5 that the seniority and possessing the requisite qualifications will be a criteria for grant of higher pay scale. Sub-clause (1) of clause 5 would show that first preference has to be given to such of the Teachers who have obtained degree of graduation in Arts or Science stream, in one of the subjects, which is taught in the School along with a degree in teaching i.e. B.Ed. It also includes a trained Teacher in Commerce faculty. Sub-clause (2) of clause 5 would show that second preference will have to be given to such of the trained graduates possessing a degree of B.Ed, but not possessing a degree in graduation in one of the subjects taught in the primary schools. However, the higher placement has to be granted to such of the Teachers on the condition that they obtain degree of graduation in one of the subjects taught in the School, within a period of five years.

13. Third preference has to be given to such of the Teachers who do not possess a graduate degree in one of the subjects taught in the School and also do not possess B.Ed, qualification. Such of the Teachers will also be granted higher pay scale on the condition that they shall obtain a degree of graduation in one of the subjects taught in the said School so also degree of B.Ed, within a period of 5 years.

14. Sub-clause (4) specifies that such of the Primary Teachers who are possessing equivalent qualifications and who also qualify the other terms and conditions, would also be entitled to be given higher pay scale of trained graduate Teachers. Sub-clause (5) of the said Government Resolution exempts such of the Teachers who were in service prior to or on 1st October, 1979 and who have obtained a graduate degree prior to 17-4-1979, from obtaining the degree of B.Ed, within a period of 5 years as provided hereinabove. The said Government Resolution further provides that such of the Teachers who have been granted graduate Teachers scale on the condition of obtaining B.Ed, degree within the prescribed period, would not be entitled to increment and then increment would be released only after they acquire the B.Ed, qualification.

15. In that view of the matter, we find that the impugned seniority list published

by the respondent-Zilla Parishad purely on the basis of the seniority worked out on the basis of entry in the service, is not sustainable in law. we, therefore, allow all the three writ petitions."

7. It would thus be clear that the Division Bench of this Court while construing the aforesaid Government Resolution dated 11.08.1999 has held that only seniority in service would not be a relevant criteria while considering the claim of the candidate for grant of Graduate Teachers" pay-scale, but seniority along with the date on which the B.A.B. Ed. qualification is acquired would also be a relevant criteria. Undisputedly in the present case though respondent No. 2 was appointed on 21.01.2004, she has acquired B.A. qualification on 02.06.2011 and B.Ed. qualification on 04.07.2014, whereas though the petitioner is appointed on 11.07.2007, she has acquired B.A. qualification on 27.11.2009 and B.Ed. qualification on 27.06.2013. It would thus be clear that though respondent No. 2 is senior to the petitioner in service, she has acquired B.A.B. Ed. qualifications much after the petitioner.

8. In that view of the matter and in view of the decision of the Division Bench of this Court in the case of Vitthal Fakruji Madavi (supra), the petitioner would be entitled to preference over respondent No. 2 insofar as grant of Graduate Teachers" pay-scale is concerned.

9. Insofar as the judgment in the case of Viman Vaman Awale (supra) relied upon by the learned counsel appearing on behalf of respondent No. 2 is concerned, in the said case the issue related to interpretation of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 with regard to promotion as Head Master. Relying upon the Rules, the Apex Court held that the person teaching in Primary School possessing B.Ed. qualification was a qualified teacher and, therefore, continuous officiation of a teacher would be a relevant criteria for determining seniority for appointment as a Head Master. In the present case, the issue is not with regard to promotion of Head Master but the issue is with regard to grant of higher pay-scale in the Graduate Teachers" category. The said issue is covered by the G.R. dated 11.08.1999. As already discussed hereinabove, the said G.R. provides for the acquisition of B.A.B. Ed. qualifications as criteria for getting higher pay-scale in Graduate Teachers Category.

10. In that view of the matter, we find that the present case is squarely covered by the judgment of the Division Bench of this Court in the case of Vitthal Fakruji Madavi (supra) and, therefore, the impugned order is not sustainable in law.

11. Rule is, therefore, made absolute in terms of prayer clause Nos. (I) and (iv). No costs.