

(2000) 11 BOM CK 0008
In the Bombay High Court
Case No : W. P. No. 4036 of 1999

Sahebrao Dagadu Sangale

APPELLANT

Vs

Head Master, Adarsha Vidyalaya, Brahmni and others

RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

Citation : (2000) 11 BOM CK 0008

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.D, Kulkarni, for the Appellant; E.P. Sawant, Government Pleader for Respondents Nos. 2 to 4, for the Respondent

Judgement

N.V. Dabholkar, J.—Heard Shri S.D. Kulkarni, learned Counsel for Petitioner and Shri E. P. Sawant, learned Government Pleader, for Respondent Nos. 2 to 4.

By this writ petition, Petitioner prays for directions to Respondent Nos. 2 to 4 asking them to fix the pay of Petitioner in the selection grade with effect from 13-6-1991 as per the Government resolution dated 8-12-1995. Further directions are also sought to fix and finalise the pension case of Petitioner on the basis of such revised pay.

2. Petitioner joined service as a teacher in the secondary school on 13-6-1967 and is working in the scale prescribed for trained graduates (B. Ed.). Since 18-9-1970, he is working at Shivaji Shikshan Prasarak Mandal, Shivajinagar Tq. Rahuri. From 3-4-1987 to 31-6-1997, he also worked as Supervisor in different schools run by Shivaji Shikshan Prasarak Mandal, Rahuri. From 1-7-1997, he was working as Assistant Head Master at Adarsha Vidyalaya Brahmni till the date of retirement on superannuation i.e. 28-2-1999.

Respondent No. 4 - State issued resolution dated 8-12-1995 regarding conferment of selection grade upon different teachers on certain terms and conditions. As per the said Government resolution, teachers having completed 24 years service on or after 1-1-1986 are eligible for selection grade. Before

conferment of selection grade, such teachers are also required to undergo prescribed training. The teachers who have completed age of 55 years on 1-1-1995 are exempted from the condition of training.

As a result of promotion as Assistant Head Master, Petitioner is being paid in the scale of Rs. 2000-3200 with effect from 1-7-1997.

In the meeting of board of trustees of Shivaji Shikshan Prasarak Mandal dated 24-9-1997, it was resolved to recommend 7 teachers having completed 24 years of service for conferment of selection grade as per Government resolution dated 8-12-1995. The Petitioner was senior most and, therefore, at sr. No. 1 in this list. Thus, according to Petitioner, Respondent No. 1 has accepted that Petitioner is qualified for conferment of selection grade.

Petitioner has completed 24 years service on 13-6-1991. The management resolved to confer selection grade upon him and although Government resolution obliges the teacher to undergo training of 21 days for the purpose of securing selection grade, it is contended that Respondent No. 4 failed to arrange for such training from the date of resolution till the date of retirement of the Petitioner. Hence, Petitioner could not undergo training, although ready and willing to do so.

It is the claim of the Petitioner that Respondent No. 3 - Senior Auditor had approved the proposal of conferment of selection grade upon the Petitioner and sanctioned the difference. Pay unit also fixed the pay of Petitioner accordingly and he was getting revised pay till the date of his retirement.

By representation dated 30-4-1998, Petitioner has drawn attention of Respondent No. 2 to all these details. In spite of it, Respondent No. 2 has not fixed the pay of Petitioner. It was brought to the notice of Respondent No. 2 that other six teachers junior to the Petitioner included in the same list were conferred selection grade.

By letters dated 6-4-1999 and 5-5-1999 sent by Respondent No. 1 to the Petitioner, it is brought to the notice of the Petitioner that pay of the Petitioner is not fixed and hence it is not possible to submit his pension papers to appropriate authority. It was also stated that since his pay is not fixed in the scale for selection grade, the pension will have to be fixed in the pay scale of Rs. 1640-2900. His consent was enquired whether his pension should be fixed considering his salary in the pay scale of Rs. 1640-2900.

The directions to fix his pay in the scale prescribed for selection grade with effect from 13-6-1991 and then fix his pension on the basis of such revised pay are sought in the light of above facts and circumstances.

In this matter, Rule was issued on 28-4-2000 and only Accounts Officer of Audit Squad has filed reply on 26-4-2000 in response to notice. Respondent No. 3 admits that Accounts Officer, Audit Squad is statutory authority to verify the pay fixed by Respondent but it is not the authority to verify correctness of pension and other benefits given to the Petitioner.

Contents of Government resolution dated 8-12-1995 are not disputed. It is pointed out that option regarding acceptance of scale is required to be submitted by concerned teacher within 3 months from the date of resolution of the management. Only 20% of the teachers can be conferred selection grade. The teacher is required to submit either an undertaking to complete the training as per Education Department resolution dated 8-3-1996 or to submit a certified copy of certificate regarding completion of training. In spite of communication dated 16-2-1999 by Respondent No. 3, Petitioner retired without submitting documents in compliance of requirements as above. Since Petitioner never submitted requisite documents, it was not possible for Respondent No. 3 to verify the pay fixed by Respondent No. 1 for the Petitioner.

Thus, according to Respondent No. 3, the pay fixation is withheld due to non-compliance on the part of Petitioner in spite of communications to him and to Respondent No. 1.

3-4. On 29-9-2000, when the matter came before us, the learned Counsel for the Petitioner produced a copy of decision dated 15-8-1999 in Writ Petition No. 3363/1999 and claimed that case of the Petitioner is identical to the Petitioners in that matter.

On reference to Exhibit C to present petition, we find that Writ Petition No. 3363/1999 was by remaining 6 teachers incorporated in the list, resolved to be conferred selection grade by resolution dated 24-9-1997 by the board of trustees. From the copy of the order passed in that writ petition and produced for reference, it appears that the Education Officer, Zilla Parishad, and Accounts Officer, respectively Respondent Nos. 3 and 4 in that petition had by their affidavits conceded that except Petitioner Nos. 2 and 6 therein, others complied requisite conditions for entitlement of selection grade pay-scale. Consequently, the Rule was made absolute so far as Petitioner Nos. 1 and 3 to 5 and permission was sought to withdraw the petition as far as Petitioner Nos. 2 and 6. This withdrawal was permitted with liberty to file fresh petition and by leaving the question regarding entitlement to the benefit of selection grade, open for consideration so far as Petitioner Nos. 2 and 6 were concerned.

All six Petitioners therein were paid salary in the selection grade for couple of months and thereafter the same was stayed by Accounts Officer by raising an objection regarding Petitioners not having undergone 21 days "in-service training" as required by G.R. dated 8-12-1995. It was claimed by the Petitioners that under Government Resolution dated 8-12-1995, teachers eligible for selection grade could get the benefit by submitting an undertaking in the prescribed form that they will complete the training before 1-1-2000 and that Petitioners had tendered such undertakings.

It appears that the petition was mainly disposed of on the basis of concessions by the parties and there was nothing to indicate whether Petitioners were held eligible for conferment of selection grade on the basis of undertaking or because

of completion of training.

5. On reference to Government resolution dated 8-12-1995, annexed as Exhibit A to present petition, there appear such relaxation about the condition of undergoing the training. However, there is further condition that in case the teacher does not undergo the training in spite of opportunity, the benefits conferred should be recovered.

6. As far as case of the Petitioner is concerned, he does not claim exemption from the training by virtue of having attained age of 55 years as on 1-1-1995, obviously because he was 54 years at that time (having completed 58 years in February, 1998). It is not his case that he has undergone the prescribed training of 21 days nor it is his contention that he has tendered an undertaking.

As far as this undertaking is concerned, case of the Petitioner is peculiar and distinct as compared to the case of Petitioners in Writ Petition No. 3363/1999. This is because Petitioner attained the age of superannuation on 28-2-1999. Consequently, he could not have tendered an undertaking that he would complete in-service training on or before 1-1-2000.

7. Having found that case of present Petitioner was not identical with the Petitioners in Writ Petition No. 3363/1999, on the contrary it was peculiar, we directed Respondent Nos. 1 to 3 to file reply, specifically enlightening us on following aspects:

(1) Whether such an undertaking was obtained from the Petitioner;

(2) Whether Petitioner was provided with an opportunity to undergo the training by necessary arrangements, irrespective of undertaking as above;

(3) The Petitioner could not have tendered an undertaking that he will complete the training on or before 1-1-2000, since his date of superannuation is 28-2-1999. How do Respondents propose to deal with such a peculiar case, especially when Petitioner is senior most amongst 7 teachers proposed to be conferred upon selection grade by Shri Shivaji Shikshan Prasarak Mandal and is otherwise qualified except the condition of undergoing the in-service training?

8. In response to our directions dated 6-9-2000, only Respondent No. 3-the Accounts Officer (Audit Squad), Education Department, Ahmednagar, has submitted additional affidavit. Consequently, there is no reply on record on behalf of Respondent Nos. 1, 2 and 4 either before or pursuant to our directions dated 6-9-2000.

By his reply, the Auditor states that on 16-2-1999, he had invited Respondent No. 1 to submit option regarding acceptance of pay-scale if exercised by the Petitioner as required by Government resolution dated 8-12-1995, to submit list of 20% of the teachers eligible for selection grade scale duly approved by Education Officer and to submit undertaking to complete in-service training on or before 1-1-1998 or a certificate of completion of in-service training. However,

these documents were not submitted by Respondent No. 1.

Accounts Officer admits that Government was obliged to provide an opportunity for necessary in-service training of 21 days and the same has not been provided by the Government. Except this condition, admittedly Petitioner fulfils all other requisite conditions for conferment of selection grade such as completion of 24 years of service and necessary academic qualification. He has also pointed out that initially the teachers were required to complete in-service training on or before 1-1-1998 which time was extended upto 1-1-2000 by Government resolution dated 16-3-1998.

9. Communication dated 12-3-1999 from Shri Shivaji Shikshan Prasarak Mandal to Senior Auditor indicates that there are in all 79 teachers drawing in the higher pay-scale and, therefore, proposal of conferment of selection grade upon 7 teachers (including present Petitioner) is within limit of 20% strength of the cadre as required.

We have already indicated that it was impractical for the Petitioner to submit an undertaking that he would complete in-service training on or before 1-1-2000 obviously because he retired on superannuation with effect from 28-2-1999. The events indicate that Government has not been able to provide in-service training, otherwise there was no reason for the Government to extend the period of completion of in-service training upto 1-1-2000 from initial limit of 1-1-1998. Taking these aspects into account, we are unable to lay any blame upon the Petitioner either for not tendering an undertaking or a certificate regarding completion of in-service training of 21 days.

The teachers who had completed 24 years service and were duly qualified were expected to undergo a small in-service training of 21 days duration. It was not a case that they were to appear for some qualifying examination and failure was likely to deprive them of selection grade pay-scale. In the peculiar circumstances, every candidate, who was fulfilling all other requisite conditions, must be presumed to be willing to undergo in-service training. In fact, no written undertaking was necessary for the purpose, 21 days training being an empty formality. Moreover, when the Government itself was not able to provide the in-service training as prescribed, it would be unjust on the part of the Government to deprive a candidate of the benefit, who is otherwise eligible for conferment of selection grade by standing upon its own wrong i.e. failure to provide the in-service training. In fact, we are unable to appreciate the propriety of in-service training of a negligible duration of 21 days before conferment of selection grade on the teachers having vast experience of 24 years of service. If Government were to confer selection grade strictly on the basis of merits, it would have been justified in prescribing some qualifying test or examination. But having fixed parameter such as particular educational qualification and number of years of teaching experience, prescribing additional requirement in the form of in-service training of a short duration, was unnecessary impediment in the implementation of the scheme. Government could have elected to subject the eligible candidates

to screening by an examination. In that case, there could have been justification in depriving the Petitioner of selection grade scale because he had not appeared for the examination or had he appeared and failed. Condition of in-service training without making adequate provision for the same would be unreasonable ground to deny the benefit of selection grade scale to the Petitioner, especially when he is otherwise eligible and those who are junior to him have been conferred the benefit. Moreover, no blame can be put on the Petitioner for not having completed the in-service training.

In view of the reasons discussed, we are of the view that the Respondents are obliged to consider the case of the Petitioner as peculiar and exceptional case because the Respondents themselves have not been able to make arrangements for in-service training.

10. We, therefore, direct that the Respondents shall obtain option as required by Clause 5 from the Petitioner and confer selection grade pay-scale upon the Petitioner with effect from 13-6-1991 i.e. the date on which he completed 24 years of his service and after 1-1-1986. It is needless to express that consequently his pay in the pay-scale of Rs. 2000-3200 prescribed for Assistant Head Master will have to be refixed with effect from 1-7-1987 i.e. date of promotion as Assistant Head Master on the basis of salary he would be drawing in the selection grade scale as on that day. The pension will have to be fixed after such re-fixation of pay at two stages i.e. in the selection grade with effect from 13-6-1991 and in the pay-scale for Assistant Head Master with effect from 1-7-1997. Petitioner shall be entitled to the difference by virtue of such pay fixation.

Petitioner shall approach Respondent No. 1 for compliance on his part within a period of one month from today and the Respondents shall complete all the formalities including fixation of pension of the Petitioner within a period of six months thereafter.

Rule is made absolute accordingly.