

(2016) 08 BOM CK 0144
In the Bombay High Court
Case No : Writ Petition No. 9744 of 2013

Samaj Shikshan Mandal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 6

Citation : (2016) 5 ALLMR 398 : (2016) 6 BCR 349

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri V.D. Sapkal, Advocate, for the Management; Shri N.T. Bhagat, AGP, for the Respondents/State; Shri P.R. Patil, Advocate, for the Employee-Meena

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner in the first petition is the Educational Institution. Respondent No. 4 is the Employee of the said Educational Institution, working as an Assistant Teacher. The second petition has been preferred by the same Employee against the same Educational Institution/ Employer. As such, for the sake of brevity, the litigating sides in these two petitions will be referred to as "the Management" and "the Employee-Meena".

3. The learned Advocates for the respective sides have contend that both these petitions are interconnected and be taken up for decision together.

4. The Management in its petition has prayed in prayer clause (B) as under:

"(B) To quash and set aside the impugned order dated 12.11.2013 annexed at Exhibit I, passed by the Education Officer (Secondary), Zilla Parishad, Dhule by

issuing appropriate writ, order or directions, as the case may be.

In the alternative,

To quash and set aside the impugned order dated 12.11.2013 to the extent of Para B of the operative part of the order annexed at Exhibit I, passed by the Education Officer (Secondary), Zilla Parishad, Dhule by issuing appropriate writ, order or directions, as the case may be."

5. The Employee-Meena in her petition has prayed in prayer clauses (A) and (B) as under:"

(A) By a writ of certiorari, orders or directions in the nature of certiorari, impugned order dated 06.11.2013 issued by the respondent No. 4 Education Officer (Secondary), Zilla Parishad, Dhule (Exhibit A, page 17) be quashed and set to the extent of granting payscale from 15.10.2001 and it be further directed that the petitioner be granted trained graduate pay scale from 05.06.1989.

(B) Pending hearing and final disposal of this petition, respondent No. 5 and respondent No. 6 be directed to deposit the arrears of pay from 15.10.2001 to 30.10.2013 within a period of four weeks."

6. The Employee-Meena has wrongly mentioned the impugned order as dated 06.11.2013 in her prayer clause (A). The impugned order, as have been rightly stated by the Management in its petition, is dated 12.11.2013. In short, the Management as well as the Employee-Meena have challenged the same order passed by the Education Officer (Secondary) dated 12.11.2013.

7. By the impugned order, the Employee-Meena has been granted all benefits as a Trained Graduate Teacher and has been placed in Category C under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "the MEPS Rules, 1981") w.e.f. 15.10.2001. The monetary benefits, however, have been granted w.e.f. 01.11.2013 as there was no vacancy of a Trained Graduate Teacher in between 15.10.2001 and October, 2013.

8. For the sake of brevity, the operative part of the impugned order is reproduced as under:

"Hkfu.kZ;

1- Jherh ikVhG ;kauk fnukad 15-10-2001 iklqu izf"kf{kr inoh/kj osruJs.kh o&d izoxkZr lsok ts Brk eatqj dj.;kr ;sr vkgs0

2- "kkGsus osGksosGh eatqj dsGsY;k inkaiz.kkes osGksosGh fu;qDr deZpk&;kaP;k use.kqdhl fu;ekuqlkj ekU;rk ?ksrGsGh vkgs0 ;k deZpk&;kapk use.kqd o use.kqd ekU;rk vkns"kkR cnG dj.ks ;ksX; Bj.kkj ukgh0 R;keqGs uohu ikVhG ;kaph fnukad 15-10-2001 iklqu iz0 inoh/kj osruJs.khr osrufuf"prh d:u R;kauk izR;{k osruvuqnkukpk Qk;nk fnukad 01-11-2013 iklqu ,d iz0 inoh/kj f"K{k d ekU;rk uY;keqGs ns.;kr ;kok0

3- Jherh ikVhG ;kaP;k fnukad 15-10-2001 rs 31-10-2013 v[ksjP;k osrukpk Qjd

O;oLFkkiukus fu;ekuqlkj dk;Zokgh dsGsGh uLY;keqGs O;oLFkkiukP;k fu/khrqu
O;oLFkkiukus vnk djkok0

4- Jherh ikVhG ;kaph Isokts Brk d izoxkZr fnukad 15-10-2001 iklqu fuf"pr
dj.;kr ;kohmijksDr izek.ks Jherh ikVhG ;kaps fnukad 03-04-2013 jksthps fuosnu
vafrer% fudkGh dk<.;kr ;sr vkgs0"

9. The contentions of Shri Sapkal, learned Advocate for the Management, can be summarised as under:

(a) The Employee-Meena has acquired qualifications of B.A., B.Ed. in Geography and have been granted the scale of D.Ed..

(b) She was appointed on the D.Ed. scale to impart education to the students studying in the 5th to 7th standards.

(c) As there was one post in D.Ed. scale vacant, she was so appointed by order dated 15.07.1988.

(d) There was no vacancy in the trained graduate category at the relevant time.

(e) The Employee-Meena accepted the D.Ed. scale appointment and started discharging her duties.

(f) The approval was granted to her appointment by the Education Officer on 19.02.1990.

(g) The Management is aggrieved only to the extent of grant of benefits to the Employee-Meena to be paid by the Management though the School is grantinaid.

(h) The Management cannot be faulted for not granting the trained graduate scale to the Employee-Meena since at the relevant time, there was no vacancy available in the trained graduate category and in the absence of such vacancy, the Employee-Meena could not have been appointed.

(i) The staffing schedule/pattern dated 13.10.1989 indicates that the school was imparting education from 05th to 12th standards and there was no vacancy of a trained graduate teacher.

(j) As the Employee-Meena accepted her appointment order by which she was granted D.Ed. scale, she is precluded from raising any dispute and much less after about two decades.

(k) The Government Resolution dated 11.11.2011 applies to the teachers working in schools which impart education from 1st to 7th standards.

(l) The Employee-Meena herein is not covered by the said Government Resolution as the school imparts education from 5th to 12th standards and is, therefore, a secondary and higher secondary school.

(m) Subsequently the Management followed the staffing schedule/pattern and placed the Employee-Meena in the trained graduate scale only after the post in

the said category was available.

(n) The Government Resolution dated 11.11.2011 cannot be granted a retrospective effect and by virtue of clause (2) of the said Government, a teacher having B.A. B.Ed. qualifications and teaching in a primary school, would be considered as a trained graduate teacher.

(o) By the said Government Resolution, those graduate teachers, who have acquired B.Ed. qualification and are still teaching the primary school students from 1st to 7th standards for which D.Ed. qualification is prescribed, would be treated as trained graduate teachers and would be entitled for the pay scale for the said category.

(p) As the school operated by the Management is upto 12th standards, by no stretch of imagination could it be contend that the said school is primary school. Therefore, the Government Resolution dated 11.11.2011 would not be applicable.

(q) This is not an adversarial litigation in between the Management and the Employee-Meena, though the Management is aggrieved by the direction of the Education Officer that the benefits of the trained graduate teachers pay scale should be paid from the coffers of the Management.

10. In support of his above contentions, Shri Sapkal has relied upon the following judgments:

(a) Ashok Venkatrao Bajgir v. The State of Maharashtra, 2016(4) ALL MR 391.

(b) Ramrao Jaimal Bacchav and others v. The State of Maharashtra, in Writ Petition No. 478/2011 (Aurangabad Bench) dated 11th October, 2012.

(c) Sunil Kisanrao Jadhav v. The State of Maharashtra, in Writ Petition No. 5997/2014 (Aurangabad Bench) dated 17th December, 2015.

11. The contentions of Shri Patil, learned Advocate for the Employee-Meena, can be summarised as under:

(a) The Employee-Meena is aggrieved by the direction of the Education Officer to give effect of the trained graduate teachers pay scale from 15.10.2001, when the same ought to have been given to the Employee-Meena from 05.06.1989.

(b) A reference have been made to paragraphs 3 and 4 of the order of the learned Division Bench of this Court dated 07.03.2013 passed in Writ Petition No.8818/2011 which was filed by the Employee-Meena.

(c) A reference is also made to the seniority list which indicates that the Employee-Meena is placed at Sr.No.13.

(d) Though the Employee-Meena is paid proper scale as per clause (b) of the Government Resolution dated 11.11.2011, the same is to be given effect to from 05.06.1989.

(e) The Management has wrongly appointed the Employee-Meena in the D.Ed. scale.

(f) Since Mr. Vinayak Yashwant Patil was not B.P.Ed. qualified when he was appointed on 25.07.1987, the Employee Meena needs to be placed higher in seniority list than Mr. Vinayak Yashwant Patil.

(g) Since other employees like Mr. J.B. Jain and Mr. A.B. Bagal have been given the trained graduate scale, the Education Officer has rightly ordered that the Employee-Meena should be placed in C Category and she deserves to be paid her trained graduate pay scale.

(h) The learned Division Bench of this Court, by order dated 07.03.2013 in Writ Petition No.8818/2011 filed by the Employee-Meena, had directed the Education Officer to decide the claim of seniority of the Employee-Meena as well as her entitlement to receive the trained graduate pay scale.

(i) Though the Education Officer has allowed the claim of the Employee-Meena, he has wrongly granted benefits w.e.f. 15.10.2001 instead of applying the pay scale from 05.06.1989 when the Employee-Meena had joined the employment.

(j) The Employee-Meena was appointed as an Assistant Teacher in D.Ed. scale on 14.09.1987, when she actually was B.A.B.Ed. and hence, she is legally entitled for a trained graduate pay scale.

(k) Even if it is assumed that the Management did not have a vacancy on 14.09.1987 in the trained graduate pay scale, the Employee-Meena was entitled to such scale immediately after the vacancy in the said pay scale was available.

(l) Mr. Vinayak Yashwant Patil was appointed on 05.06.1989 and other employees mentioned above were appointed in between 2001 to 2011.

(m) The law laid down in the matter of Ms. Lakhwinder Kaur Gurai v. Garison Children Education Society and others, (2006) 5 BCR 612 and in the matter of the State of Maharashtra v. Tukaram Trimbak Choudhari, (2007) 9 SCC 201, would become squarely applicable to the case of the Employee-Meena.

(n) Though the Employee-Meena was initially teaching the students in 5th to 7th standards for which the D.Ed. scale is applicable, considering the effect of the Government Resolution dated 11.11.2011, the Employee-Meena would be entitled for the pay scale of a trained graduate category.

(o) The affidavit filed by the Education Officer is of no assistance and the same deserves to be ignored.

12. The learned AGP appearing on behalf of the State Authorities has defended the impugned order. On the basis of the affidavit filed by the Education Officer, it is contended that though the Employee-Meena was holding B.A., B.Ed. qualification, she accepted the appointment in D.Ed. scale as there was no vacancy in the trained graduate category. After she voluntarily accepted her appointment in the

D.Ed. scale, she continued as such. Mr.Vinayak Yashwant Patil, though was initially appointed as an untrained teacher, he was given the trained graduate scale in 1989 as he had acquired the specialised qualification of B.P.Ed. and one post for trained graduate teacher in Physical Education was available. Hence, he was appointed in a completely different category.

13. The learned AGP further submitted that the Employee-Meena would stand entitled for the trained graduate pay scale from 15.10.2001 when Mr. J.B. Jain was appointed for the first time on 15.10.2001 in the trained graduate category pay scale. Considering the seniority of the Employee-Meena, she should have been first accommodated in the trained graduate scale on 15.10.2001 when two employees, namely, Mr. J.B. Jain and Mr.A.B.Bagal were appointed for the first time in the trained graduate pay scale. Since the Employee Meena was not accommodated in the said scale, though she was entitled to the said scale by natural growth of the school and a vacancy in the trained graduate pay scale was available, the Education Officer has rightly directed the Management to pay the benefits of the trained graduate pay scale to the Employee-Meena.

14. The learned AGP further submitted that had the Management rightly assessed the situation and would have done justice to the Employee-Meena, this situation and this dispute would not have arisen. Since on account of the unlawful act of the Management the Employee-Meena is made to suffer, the Education Officer has directed the Management to pay the difference in the pay scale from their own pockets as the State exchequer should not be unnecessarily taxed on account of illegalities committed by the Management. The Management cannot be permitted to get away with this illegality and the State exchequer should not be made to suffer the burden of payment of the difference in the pay scale, though the Management shall have to shoulder the said burden.

15. I have considered the submissions of the learned Advocates as have been recorded herein above.

16. The service details of the Employee-Meena and all other employees at issue, are not in dispute. The issues before this Court are with regard to : (A) Whether, the Employee-Meena is justified in seeking benefits of the trained graduate pay scale from the date of her joining 05.06.1989? (B) Whether, the Education Officer has rightly granted the Employee-Meena the benefits of the trained graduate pay scale from 15.10.2001? and Whether, the Management is required to shoulder the burden of payment of difference in the pay scale?

17. It is an undisputed position that the Employee-Meena was appointed in the untrained teachers category despite being a trained graduate teacher right from the date of her first appointment, as the post of a trained graduate teacher was not available. The said post, principally could be said to be available only on 05.06.1989 when Mr. Vinayak Yashwant Patil, B.A. B.P.Ed. was appointed in the trained graduate category. However, this would not cause any legal injury to the Employee-Meena as she was a teacher in the general category and Mr. Vinayak

Yashwant Patil, who had the degree of B.P.Ed. was appointed against the available vacancy in Physical Education. The Employee-Meena, therefore, could not have been appointed to a post for which a trained graduate in Physical Education was required. The first issue framed by me as above, therefore, stands answered. The Employee-Meena, therefore, cannot be held to be entitled for the trained graduate pay scale from 05.06.1989 when Mr. Vinayak Yashwant Patil was appointed.

18. It is not in dispute that other employees, namely, J.B. Jain (15.10.2001), A.B. Bagal (15.10.2001), B.N. Patil (18.06.2009), M.H. Mali (03.08.2010) and R.S. Rathod (01.08.2011) were all teachers in general category and were appointed in the trained graduate pay scale. It cannot be accepted that the Management could have lost sight of the Employee-Meena, who was senior to the immediate junior employee Mr. J.B. Jain by about 14 years.

19. There can be no dispute that the Employee-Meena accepted her appointment for the first time on 14.09.1987 as an Assistant Teacher in the D.Ed. pay scale since there was no vacancy available in the trained graduate pay scale. This, therefore, would not mean that she deserved to be continued in the D.Ed. scale in perpetuity. The Management has specifically come forward with the case that as there was no vacancy in the trained graduate pay scale, the Employee-Meena was appointed in the D.Ed. scale. This argument could be sustained only till the first vacancy arose on 15.10.2001 when, instead of accommodating the Employee-Meena, the Management chose to appoint Mr. J.B. Jain in the trained graduate pay scale. I, therefore, answer the second issue by concluding that the Employee-Meena was entitled to the trained graduate pay scale from 15.10.2001.

20. In the above backdrop, it is apparent that it was the handiwork of the Management in recruiting fresh employees in the trained graduate pay scale, by completely ignoring the legal right of the Employee-Meena. As concluded above, her acceptance of the D.Ed. pay scale was out of compulsion, both for the Management as well as for herself, as there was no vacancy in the trained graduate pay scale at the time of her appointment. In my view, the Management, therefore, should have absorbed the Employee-Meena in the trained graduate pay scale at the first available opportunity which was on 15.10.2001 when the Management engaged two fresh teachers, namely, Mr. J.B. Jain and Mr. A.B. Bagal. This illegality committed by the Management and injustice caused to the Employee-Meena, deserves to be undone by ensuring that the Employee-Meena gets her legal dues. The Education Officer has, therefore, rightly held that she was entitled to the Trained Graduate Pay Scale from 15.10.2001.

21. In the above backdrop, the issue is as to whether, the State exchequer should be penalised by making the State pay the difference in the pay scale to which the Employee-Meena is entitled to from 15.10.2001. The Management is a grant-in-aid institution. If the State exchequer is unduly taxed for the unlawful act committed by the Management, it would amount to allowing the Management

to get away with the illegality that it has committed. It is necessary that the entity which commits an illegality deserves to be penalised and must realise the effect of its unlawful act. As such, in my view, the Education Officer has rightly concluded that the Management shall pay the difference in the pay scale from its own coffers.

22. Insofar as the Government Resolution dated 11.11.2011 is concerned, I do not think that this case could be vexed with the effect of the said Government Resolution. Firstly, the Government Resolution will have to be given effect to prospectively and not retrospectively as it is likely to disturb the seniority of hundreds of teachers in hundreds of schools. Secondly, the said Government Resolution is applicable to primary schools. Admittedly, the Management school at issue is upto 12th standard and therefore, is a secondary and higher secondary school. Hence, the said Government Resolution would not be applicable to this case.

23. As such, I do not find that the impugned order of the Education Officer dated 12.11.2013 could be termed as being perverse or erroneous. The Honourable Apex Court has settled the law in the matters of Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477 and Surya Dev Rai v. Ram Chander Rai, AIR 2003 SC 3044 that merely because a second view is possible, the impugned order ought not to be set aside. Unless the impugned order appears to be perverse, erroneous and likely to cause grave injustice, no interference is called for.

24. In the light of the above, both these Writ Petitions are dismissed. Rule is discharged.

25. No costs.