
(2021) 09 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 10264 Of 2012

Shamrao Tayappa Dhavare	Vs	APPELLANT
Education Officer And Others		RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 BOM CK 0053

Hon'ble Judges : R.D. Dhanuka, J;Abhay Ahuja, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Abhay Ahuja, J

1. Rule. Rule made returnable forthwith. By consent of counsel for the parties, the petition is heard finally.
2. By this Petition filed under Article 226 of the Constitution of India, 1950, Petitioner is seeking a direction of this Court to the first Respondent-Education Officer to grant approval to the proposal of the Petitioner for higher pay-scale pursuant to his direction to Respondent No.2, Management/Respondent No.3 vide his letter dated 11th December 2009.
3. The relevant facts are that the Petitioner having qualification of S.S.C., D.Ed. was appointed as Assistant Teacher in Respondent No. 3-School run by Respondent No. 2- Management in the year 1984. Petitioner obtained BA degree in the year 2001. After acquiring such degree, Petitioner expecting higher pay-scale as well as seniority, after such requests to school made a complaint to the Respondent No.1-Education Officer in respect of the same. Respondent No.1-Education Officer after issuing notices to the Respondent-Management and after hearing the concerned, directed the second Respondent-Management vide order dated 11th December 2009 to submit proposal in respect of Petitioner for higher pay-scale from the date of acquiring BA qualification. As submitted earlier,

Petitioner acquired B.Ed. qualification on 23rd December 2010. Thereafter, on 4th August 2011, Respondents No. 3 and 4 passed resolution to appoint teachers in the 25% category. On 10th August 2011, the Petitioner was appointed in 25% category and assumed charge. On the same day, Respondent No.3 management forwarded a proposal for up-gradation of pay-scale of Petitioner. On 21st July 2012, Petitioner also wrote a letter to the first Respondent-Education officer to grant approval to the said proposal dated 10th August 2011.

4. Since there was no favourable response from the Respondents, the present Petition came to be filed on 6th August 2012.

5. Learned counsel for the Petitioner submits that during the pendency of the Petition, Respondent No.1-Education Officer has vide communication dated 29th October 2012 granted approval for higher pay-scale to the Petitioner with effect from 28th October 2012 and that Petitioner had been receiving such higher pay-scale till his superannuation in 2020-21.

6. It is, however, submitted that since Petitioner has obtained Bachelor of Arts (BA) degree in 2001 and the Education Officer has based on the earlier proposal given a decision dated 11th December 2009 directing the Management to give a higher pay-scale, the higher pay-scale should be given with effect from 14th December 2009.

7. On the other hand, learned counsel for Respondents admits that pursuant to order dated 29th October 2012 passed by the first Respondent, Petitioner is receiving higher pay-scale equivalent to Bachelor of Education (B.Ed.) scale and continued to do so till his superannuation in 2020-2021. It is also submitted that Petitioner acquired B. Ed. Degree on 23rd December 2010.

8. Learned counsel for Respondents also draws the attention of this Court to two decisions (i) Supreme Court in the case of State of Maharashtra and Ors. Vs. Tukaram Tryambak Chaudhary and Ors, (2007) 9 SCC 201 and (ii) this Court in the case of Vitthal Fakruji Madavi and Ors. Vs. Zilla Parishad, Chandrapur and Ors., 2006 (2) Mh. L.J. in support of the submission that where the appointment is in the 25% category post then only those 25% teachers are given higher pay-scale who have degree in graduation and also B. Ed. qualification.

9. We have heard learned counsel Mr. Bhosale for Petitioner and Mr. Patel, learned Addl. GP for Respondents No. 1 and 4 and Mr. Joshi, learned counsel for Respondents No. 2 and 3 and with their able assistance we have perused the papers and proceedings in the matter.

10. Facts not being in dispute and the issue of Petitioner's eligibility to higher pay-scale having been resolved during the pendency of this petition, the only issue that remains for our consideration is the date from which Petitioner is entitled to the higher pay-scale, whether it is 29th October 2012 or would it be the date on which Petitioner acquired B. Ed. Qualification viz. 23rd December 2010.

11. It would be pertinent therefore to refer to settled law on the subject. We

have perused the two decisions cited by the learned counsel for the Respondents. In the case of Tukaram Tryambak Chaudhary(Supra), the Hon'ble Supreme Court while dealing with the case of teachers similarly placed as the Petitioner who were upgraded to higher scale in the 25% category of the posts, observed that the writ petitioners therein were entitled to be appointed and continued as trained teachers in B. Ed scale and refused to interfere in the decision of this Court holding that to avail of the upgraded higher scale in the 25% of the post, the teachers would have to have obtained the degree in education namely B.Ed in addition to the degree in Arts or Science. The relevant paragraph-21 of the said decision reads thus :-

"21. Conscious of such disparity in respect of teachers who are similarly situated but were treated differently on account of their being attached to primary schools and/or secondary schools, the State Government resolved to eliminate such differences and to make provisions for trained graduate teachers to be upgraded to a higher scale to the extent of 25% of the posts. The said resolution consciously refers to in-service graduation primary teachers who were eligible for appointment to the posts in the increased pay scale. In fact, one of the conditions for appointment of in-service graduate primary teachers to the converted post carrying the higher pay scale was that such teachers should have obtained a degree in Arts or Science and have also obtained a degree in education, namely, B.Ed. While adopting the aforesaid resolution, the Government was, therefore, fully aware of the fact that there were graduate teachers teaching in standards 5 to 7 in the primary schools. This fact was also referred to by the Division Bench of the high Court in its judgment under appeal. It has been mentioned that one of the contentions raised on behalf of the writ petitioners was that in terms of government resolution dated 26-10-1982, the petitioners were entitled to be appointed and continued as trained teachers in B.Ed scale."

12. With respect to the decision of this court in the case of Vitthal Fakruji Madavi (Supra), this Court while considering the interpretation of the Government Resolution providing 25% of posts available in private schools managed by local bodies to be converted into trained graduate teachers in the upgraded pay-scale, observing that only the said 25% teachers are given higher pay-scale, held that the stand of the State Government that seniority cum obtaining of B.Ed qualification is the criteria for grant of higher pay-scale in view of the Government Resolution is just and proper. Paragraphs no. 9 to 14 of the said decision are relevant and read thus :-

"9. Since we found certain ambiguity in the said Government Resolution and since prima facie we were not satisfied with the stand taken by the Zilla Parishad, we had directed the Secretary of School Education Department of State of Maharashtra, to file affidavit so as to explain the stand of the State Government on the interpretation of the said Government Resolution. Accordingly, the Secretary of the School Education Department has filed his

affidavit in reply dated 26th September, 2005. Said affidavit, in unequivocal terms, states that the seniority-cum-obtaining of B.Ed. qualifications is the criteria for grant of higher pay scale in view of the Government Resolution.

10. We find that the stand taken by the State Government is just and proper. As already stated hereinabove, higher pay scale is granted for conversion of 25% posts of Primary School Teachers who are imparting education to V to VII standards in the cadre of trained Graduate Teachers. We, therefore, find that since the conversion is to the post of trained Graduate Teachers, B.Ed. qualifications would be a relevant criteria for grant of higher pay scale. We find that if the interpretation of the Zilla Parishad is accepted, it will lead to an anomalous situation inasmuch as a person who is only D.Ed. and matriculate and has entered in the service earlier in point of time, would be given higher pay scale as compared to the person who is graduate and B.Ed. and has entered in the service subsequent in point of time. The very purpose of Government Resolution to provide higher pay scale to trained graduate Teacher would be defeated by such an interpretation.

11. Even otherwise the stand taken by the State Government is in consonance with the said Government Resolution. Clause 3 of the said Government Resolution reads thus :

"(3) The posts of the Primary Teachers thus converted into higher pay scale of Rs. 365-760 should be from the category of Primary Teachers only. On such converted posts the Local Self Governing Bodies should appoint the Primary Teachers working full time in their bodies and holding educational qualification mentioned elsewhere in this order. These appointments should be made according to the seniority of the concerned teachers from the category of Primary Teachers. Such appointments shall not be the appointments by promotion."

It can, thus, be seen from the said clause that the local bodies should make the appointments to higher scale of the Teachers possessing the requisite qualifications mentioned elsewhere in the said G.R.

12. The relevant portion of Clause (5) of the said Government Resolution reads thus :

"(5) On the posts of Primary Teachers converted into higher pay scale of Rs. 365-760, the Primary Teachers falling in the undermentioned categories of the Graduate Primary Teachers in service (Graduate Teachers having completed the training course prescribed for Primary Teachers) be appointed on the following conditions:

(1) Trained Primary Teachers who have done graduation in Arts, Science offering at least one subject taught in the Primary Schools and also who hold B.Ed, degree in education or (Primary Teachers) of Commerce faculty.

(2) Trained Primary Teachers who have not offered any of the subject taught in Primary Schools, but who have done graduation in other subject. The Primary

Teachers under this category be given the new higher pay scale on the condition that within 5 years of their appointment on the post of this higher pay scale of Rs. 365-760 (unrevised) they should, at their own expense, acquire degree offering at least one subject taught in the primary schools. If this condition is not followed the increments in the new pay scale be withheld for next five years till they acquire this degree.

(3) To the Primary Teachers under the category of trained Primary Teachers who have done graduation in other subject, without offering a subject taught in the Primary Schools, and who have not acquired degree in education i.e. B.Ed, be given the new higher pay scale on the condition that they should, at their own expense, acquire a degree offering at least one subject taught in the Primary Schools within 5 years from the date of their appointment. Similarly, they should acquire degree in education i.e. B.Ed. also. If this condition is not followed, the next increment of such teachers in the new pay scale be withheld till they acquire these degrees.

(4) If the other graduate Primary Teachers holding other equivalent degrees working in the Primary Schools, fulfil other terms and conditions as above, they are also entitled to be appointed as eligible degree holder teachers.

(5) The Primary Teachers from the Primary Schools on the pattern of 5th to 7th standard from the Secondary Schools who were in service prior to 1-10-1970 and who held university degree prior to 17-4-1979, (such teachers) are not required to acquire B.Ed, degree within 5 years for being appointed in the trained graduate pay scale (eligible degree holders).

As above, to the graduate Primary Teachers who have been appointed on the post of eligible degreeholder on the condition that they shall acquire B.Ed, degree within 5 years from the date of their appointment and who have not acquired B.Ed, degree within the extended period i.e. till 30th June, 1994, withheld regular increments be released from the month next to the month in which they have actually acquired B.Ed, degree after 30th June, 1994."

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."

13. Admittedly, in the case at-hand, approval in the Petitioner's case has been granted for appointment in the 25% post of in service primary school teachers, who are imparting education to V to VII standard in the cadre of trained graduate teachers. Therefore, as per the settled law, the date of acquisition of B. Ed. qualification becomes relevant, which qualification in the case of Petitioner was acquired on 23rd December 2010.

14. In this view of the matter, we have no hesitation in holding that Petitioner is entitled to higher pay-scale with effect from the date of acquiring of B. Ed qualification viz. from 23rd December 2010. We accordingly direct the Respondent No. 1 to modify his order dated 29th October 2012 in respect of the Petitioner, within a period of four weeks from the pronouncement of this decision.

15. Consequently, the Respondents are directed to make payment of the arrears to Petitioner on the basis of the above discussion.

16. Rule is made absolute in the above terms. Writ Petition stands disposed off. There shall, however, be no order as to costs.