
(1998) 07 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 306 of 1994

Shri Suresh D. Naik

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Goa, Daman and Diu School Education Rules, 1986 — Rule 78

Citation : (1998) 4 BomCR 365 : (1999) 81 FLR 744

Hon'ble Judges : R.K. Batta, J;A.A. Desai, J

Bench : Division Bench

Advocate : A.N.S. Nadkarni, for the Appellant; H.R. Bharne, G.A., for the Respondent

Judgement

R.K. Batta, J.—The petitioner was appointed as Grade I Teacher for a temporary period of one Academic Year with effect from 30th June, 1981. At the time of the said appointment the petitioner had only a Master's Degree in Pass Class and did not have any Degree in Education/Teaching. He, however, obtained second class Master's Degree in the year 1982 and was appointed on regular basis on probation with effect from 16th March, 1982. He obtained training qualification, as prescribed under Rule 78 of the Rules framed under the Goa Education Act, 1984, on 1st May, 1983.

2. The petitioner's case is that he has already completed 12 years of service as Grade I Teacher as on 1st July, 1993 and is entitled to senior scale with effect from 1st July, 1993. This claim of the petitioner was not accepted by the Government and, in fact, the stand taken by Director of Education in affidavit dated 30th August, 1994, is that the petitioner would be entitled to senior scale after completion of 12 years of service with effect from the date of acquisition of training qualification, that is to say from 1st May, 1983. Thus, the stand of the Department is that the petitioner would be entitled to senior scale with effect from 1st May, 1995 and not from 1st July, 1993, as claimed by the petitioner.

3. We have heard learned Counsel on either side. Our attention has been drawn to Rule 78 of the Goa, Daman and Diu School Education Rules, 1986; Notification No. F-5-180/86-U.T.I. dated 12th August, 1987 which has been issued by the Ministry of Human Resource Development (Deptt. of Education), New Delhi; the Order No. DE/GIA/ Hg-section 19/90-91/Part 1/2619 dated 3rd January, 1991, issued by the Directorate of Education, as well as the judgment of the Division Bench in the case of Domnic Araujo v. State of Goa and others, reported in 1989 M.L.J. 538, wherein the scope of various provisions of the said Rules and of the Grant-in-Aid Code has been examined.

4. In so far as the claim of the petitioner with effect from 1st July, 1993 for senior scale is concerned, we, of course, do not find any merit, since when the petitioner was first appointed on temporary basis for one Academic Year with effect from 30th June, 1981, he did not even fulfil the essential qualifications which are required for appointment as prescribed under Rule 78 of the said Rules. The petitioner did obtain a Second Class Master's Degree in 1982. It is the contention of the learned advocate Shri A.N.S. Nadkarni, appearing on behalf of the petitioner, that on attainment of the Second Class Master's Degree he was duly qualified to be appointed as Grade I Teacher and, as such, he was regularly appointed on 16th March, 1982, on probation against the post of Teacher Grade I. He further pointed out that the relevant rule itself provides that an incumbent can obtain training qualifications within a period of five years which is further extendable by another two years. Relying upon Notification dated 12th August, 1987 of the Department of Education, Government of India, it is submitted by him that the incumbent would be entitled to senior scale after 12 years of his appointment irrespective of when the training is completed. On the other hand, learned Government Advocate Shri Bharne, after placing reliance on order dated 3rd January, 1991, of the Director of Education, Government of Goa, has pointed out that the question of extension of benefit of senior scale of pay to Grade I Teachers was examined and in view of the recommendations of the Chattopadhyaya Commission it was decided that Grade I Teachers appointed from the year 1980-81 onwards should be considered as trained only from the date they acquired the training qualification and teachers appointed prior to 1980-81 with at least Second Class in Post Graduate Degree, when training qualification, was not prescribed and acquired training qualification subsequently, should be considered as trained from the date of appointment itself. But, according to the learned Government Advocate, Shri Bharne, the petitioner was appointed after 1980-81 and, as such, the period of 12 years has to be considered only from the date on which he had acquired training qualification under the said order. The said order was issued on the basis that Chattopadhyaya Commission scales and the benefits are made applicable to trained teachers. It is admitted fact that subsequently it was clarified by the Government that Chattopadhyaya Commission scales had not been implemented, though some of the recommendations of the Chattopadhyaya Commission had been accepted. The decision which the Government had taken vide order dated

3rd January, 1991, was thus on the basis of the position stated therein that the Chattopadhyaya Commission scales had been implemented which in fact is not correct state of affairs. Therefore, we are of the opinion that the order dated 3rd January, 1991, would not in any manner help the respondents for the purpose of interpreting the qualifying service of 12 years for the purpose of grant of senior scale. It may also be pointed out that in the Notification dated 12th August, 1987 of the Government of India which was issued during the pendency of decision on Chattopadhyaya Commission and in view of the Fourth Pay Commission in case of Primary School Teachers as well as trained Graduate Teachers, there is a specific reference made in relation to selection scale that the selection scale shall be available to the said categories of Teachers after 12 years in senior scale and attainment of qualifications laid down for trained Graduate Teachers/Post-Graduate Teachers. The case of the petitioner in fact falls under category (c) of the said Notification dated 12th August, 1987, wherein there is no such restriction, as has been put in case of categories (a) and (b) relating to attainment of qualifications laid down for trained Graduate Teachers and Post-Graduate Teachers. The Division Bench decision of this Court to which our attention has been drawn, had in fact, taken the view that the seniority of a Teacher who subsequently obtained training qualification is to be counted from the date of initial regular appointment. The same principle has to be extended and applied for the purpose of construing 12 years service for grant of senior scale.

5. Taking an overall view of the matter, we are of the opinion that the petitioner would be entitled to senior scale on completion of 12 years of service with effect from the date of regular appointment. The petition to that extent is allowed. Rule made absolute accordingly. In the facts and circumstances, there shall be no order as to costs.

6. Petition allowed partly.