
(2005) 10 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No's. 4772, 5193 and 5229 of 2004

Vitthal Madavi and Others

APPELLANT

Vs

Zilla Parishad and Others

RESPONDENT

Date of Decision : 21-10-2005

Acts Referred:

Citation : (2006) 3 BomCR 348 : (2006) 2 MhLj 124

Hon'ble Judges : P.S. Brahme, J;B.R. Gavai, J

Bench : Division Bench

Advocate : Neeta Jog, V.P. Marpakwar and U.A. Patil, for the Appellant; M.M. Sudame and R.G. Agrawal, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith.

Mr. Sudame, the Learned Counsel, waives notice on behalf of the respondent-Zilla Parishad. Mr. Agrawal, A.G.P., waives notice on behalf of the respondent-State.

By consent, heard finally.

2. All these three petitions involve a common question as to whether B.Ed, is a necessary qualification for grant of higher pay scale to Primary Teachers as per Government Resolution dated 11-8-1999 (hereinafter referred to as the said resolution).

3. In Writ Petition No. 4772/2004, the two petitioners are possessing B.Ed, qualifications, whereas two petitioners are possessing graduate qualification only. All these four petitioners were granted higher pay scale, but vide impugned order dated 20th September, 2004, they have been reverted back.

4. Writ petition No. 5193/2004 has been filed by a Primary Teacher who was appointed on 15-10-1981. He acquired B.Ed. qualifications in the year 1998. He was granted higher pay scale on 30th December, 2003. However, he was

reverted back to the original pay scale on 20th September, 2004.

5. Writ Petition No. 5229/2004 is filed by one Caste Tribe Karmachari Mahasangh. The petitioner has challenged the orders issued by the respondent-Zilla Parishad dated 20th September, 2004 vide which the benefit of higher pay scale has been granted to the Primary Teachers working in the Zilla Parishad, purely on the basis of seniority, without taking into consideration the B.Ed. qualification.

6. This is a second round of litigation. Earlier, the petitioner in Writ Petition No. 5229/2004 had approached this Court by way of Writ Petition No. 5048/2003 challenging the order passed by the Zilla Parishad, Chandrapur, dated 11th August, 2003, vide which higher pay scales were granted in favour of 100 Teachers. It was the contention of the petitioner therein that many Teachers who were entitled to the benefit of Government Resolution dated 11th August, 1999, were not granted benefit of the said Government Resolution and such Teachers who were not entitled to the benefit of the said Government Resolution, were granted the benefit of the said resolution. However, this Court granted liberty to the petitioner to withdraw the petition so as to make representation to the respondent No. 1 therein. This Court further directed the respondent No. 1 to decide the representation within stipulated time. In pursuance to the said directions, the respondent-Zilla Parishad has revised its decision on 20th September, 2004 and published a list of Teachers who, according to the Zilla Parishad, are entitled to the benefit of the said Government Resolution.

7. The entire issue revolves around interpretation of the said Government Resolution. The said Government Resolution superseded all other Government Resolutions for providing higher pay scale to the Teachers who are teaching to Standard V to VII attached to Primary Schools run by the local bodies. The ratio which is fixed for the Teachers teaching in Standard V to VII attached to the Primary School in relation to other Teachers is 1 :3. It is not in dispute that all the Teachers who are imparting teaching to Standard I to IV or standard V to VII, are necessarily required to have B.Ed, qualification. However, the Teachers who are imparting teaching standard V to VII, only are necessarily required to have degree in graduation and also B.Ed, qualification. In that view of the matter, Government Resolution provides that 25% of posts available in such Private Schools managed by local bodies be converted into post of trained Graduate Teachers in the upgraded pay scale of Rs. 365-15-500-20-660-EB-20-760 (unrevised). It is further clear that only the said 25% Teachers are given higher pay scale. In that view of the matter, the said Government Resolution would have to be considered.

8. The respondent-Zilla Parishad, on the basis of the interpretation of clause 3 and clause 5 of the said Government Resolution, has taken a stand that it is only the seniority prepared on the basis of the date of entry in the service, which is the relevant consideration for grant of higher scale. It is the contention of the Zilla Parishad that the only condition is that the Teacher who have been granted

higher pay scale, should acquire B.Ed, qualification within five years from the date of granting higher pay scale. In case such Teacher fails to acquire required qualification within a period of five years, his further increments should be withheld and only after fulfilling the condition of qualification, his increment should be released.

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 B.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 degree holder 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.

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. The seniority list of the Teachers entitled to higher pay scale of graduate Teachers published by the Zilla Parishad on 20th September, 2004 is quashed and set aside. The respondent-Zilla Parishad is directed to publish fresh provisional seniority list in accordance with the observations made hereinabove within a period of two months from today. The Zilla Parishad shall give two months to the employees to raise objections to the said provisional seniority list and thereafter publish final list within a period of one month from the last date for taking objections. It is needless to state that the respondent-Zilla Parishad, after working out the seniority as directed herein above, shall immediately issue the orders to the eligible persons of placing them in higher pay scale graduate Teachers. It is made clear that since the earlier two seniority lists were bonafidely published by the Zilla Parishad on the basis of the interpretation of the said Government Resolution, though erroneous, the

payment of higher pay scale would be applicable to the Teachers from the date on which the orders are passed by the respondent-Zilla Parishad. It is further made clear that there will be no recovery from such of the employees who were granted higher pay scale earlier and are found not to be eligible in accordance with the new seniority list.

16. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.