

(2001) 06 BOM CK 0073

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 562 of 1987

Namdeo Dyanoba Garad

APPELLANT

Vs

Superintendent, Pay Distribution
Unit and Others

RESPONDENT

Date of Decision: June 12, 2001

Citation: (2001) 4 ALLMR 791 : (2001) 4 BomCR 380 : (2002) 4 BOMLR 252 : (2002) 92 FLR 186 : (2002) 3 MhLj 431

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

Bench: Division Bench

Advocate: K.G. Patil, Assistant Government Pleader, V.G. Sakolkar, for the Appellant; N.H. Patil, for the Respondent

Final Decision: Allowed

Judgement

B.H. Marlapalle, J.

This petition filed under Article 226 of the Constitution, assails the instructions issued by the Auditor in the Department of respondent No. 5, reducing the pay scale of the petitioner from Rs. 600-1030 to Rs. 500-900 on 31-1-1986.

2. The petitioner was initially appointed under the respondent No. 3 with effect from 1-7-1968 on the basis of his SSC qualification, though he was, at the relevant time, prosecuting his studies in III year of B.Sc. course. He was brought in regular pay scale of Rs. 105-4-125 with effect from 1-1-1970 and he completed his Diploma in Education (2 year's course) in June, 1975. He passed his B.A. examination in 1976 and therefore, he was given the pay scale as applicable to the graduate trained teacher with effect from 13-6-1977. In May, 1978 the petitioner passed M.A. examination and as soon as the academic year 1978-79 commenced, he was called upon to teach in the Secondary School and he was subsequently promoted as a Lecturer in the Jr. College, run by the respondent No. 3, in the pay scale of Rs. 500-900, by the order dated 8-6-1981.

3. The Government of Maharashtra issued a Government Resolution on 10-11-1982 and the pay scales of qualified Jr. College Teachers were revised from 500-900 to 600-1030 with effect from 1-6-1982. The benefit of this resolution was given to the petitioner. In due course, the petitioner has passed his B.Ed. degree in 1986. The Auditor in the office of the respondent No. 5 is of the view that the petitioner was not entitled for revised pay scale as he did not possess the graduate degree in Education and therefore, his pay scale was reduced and recovery was directed. It is also contended that the petitioner was entitled for revision in the pay scale only from the time he has passed his B.Ed. examination and for the intervening about four years period, he was not entitled for the revised pay scale i.e. w.e.f. 1-6-1982.

4. The Deputy Director of Education, Aurangabad Region has filed the affidavit in reply and has contended that the revised pay scale of Rs. 600-1030 was not payable to the petitioner till he acquired his B.Ed. degree, as he was not entitled for appointment as a Lecturer in the Jr. College on the basis of his qualification, namely, post graduation degree plus Diploma in Education and therefore, the order passed by the Head Master on the basis of the audit report was correct.

5. Annexed to the Government Resolution dated 10-11-1982, there is Appendix "A", which sets out the qualifications for the teachers in non Government Jr. Colleges (Higher Secondary classes), attached to the Secondary Schools for granting revision in pay scales and in Clause (1) therein, it is specifically stated that the revised pay scale is available to the teachers with post graduate degree in second class plus B.Ed. or the Diploma or Certificate in teaching approved by the Government. As per this qualification prescribed, it is clear that the teacher without post graduation degree in second class with diploma or certificate in teaching approved by the Government is also entitled for revision in the pay scale at par with the teachers with post graduate degree in second class plus B.Ed. There is no distinction made out for the purposes of pay scale between the teachers, who hold the post graduation degree plus degree in Bachelor of Education and the teacher holding post graduation degree plus diploma or certificate in teaching, approved by the Government.

6. There is no dispute that the petitioner obtained his M.A. degree in 1978 in II division and passed his Diploma in Education in 1975. This Diploma in Education, as obtained by the petitioner, is two year's duration course, as is clear from the marks memo that has been shown to us. It is well settled position in law, by catena of decisions of this Court, that the course of Diploma in Education is equivalent to the Diploma in Teaching, as approved by the State Government. In addition, the M.E.P.S. Rules, 1981 set out the requisite qualifications for teachers in Jr. Colleges in Schedule B(iii) and one of the qualifications is, Master's Degree of statutory University in II Class plus B.Ed. or Diploma or Certificate in Teaching approved by the Government. There is nothing on record to show that the Diploma in Education (two years duration) as completed by the petitioner, is not equivalent to the Diploma

or Certificate in Teaching approved by the Government. In fact, if we peruse the contents of Schedule "F" to the M.E.P.S. Rules, 1981 it is clear that the Diploma in Education is also one of the recognized qualifications for appointment as a trained graduate teacher and such teachers fall in category "C" or "D" as the case may be. The petitioner was admittedly given pay scale as applicable to trained graduate teachers with effect from 13-6-1977 on the basis of his B.A. plus B.Ed. qualifications and no fault was found with the same. On completion of his M.A. degree in II class, the petitioner was duly qualified for being promoted as a Lecturer in Jr. College run by the same school, where he was working earlier. The contentions of the respondent No. 5 in support of the impugned order cannot be sustained, in view of the Government Resolution dated 10-11-1982, as well as the qualifications prescribed for appointment of teachers in the Jr. Colleges under MEPS Rules, 1981. The impugned order, directing reduction in the pay scale of the petitioner is, therefore, illegal and void ab initio and resultantly, the petition must succeed.

7. The Writ Petition is, therefore, allowed. It is directed that the petitioner's revised pay scale, namely; Rs. 600-13-750-40-1030 shall be restored with effect from 1-6-1982 and the arrears, if any, on account of this revised pay scale shall be paid to the petitioner within the period of two months from today.

8. Rule is made absolute in terms of above order, with no order as to costs.