

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4494 OF 2001

Sou. Geetanjali Kulkarni]
Age 59 years, Occupation : Retired,]
R/at-12B, Vrundavan Hsg. Complex,]
Durvankur Bunglow, Kothrud,]
Pune-29].....Petitioner

Versus

1. The State of Maharashtra]
Mantralaya Mumbai-20.]
]]
2. The Education Officer]
Pune Zilla Parishad, Pune-1.]
]]
3. The Head Master]
Shri. Gora Kumbhar High School,]
Pashan, Pune-21.]
]]
4. Accountant General I]
Account & Auditing Department]
Maharashtra, 101, Maharshi Karve]
Road-40020.]
]]
5. Nehru Shikshan Sanstha,]
through its Secretary,]
699/2A, Mukund Nagar,]
Pune 411037]
].....Respondents

.....

Mr. Sanjay Kshirsagar, for the Petitioner.

Mr. A. I. Patel, Addl. G. P. a/w Ms. M. S. Bane, A.G.P., for the Respondent-State.

Mr. Shailendra s. Kanetkar a/w Mr. Pranay Kothari, for the Respondent No.5

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CORAM : M. S. KARNIK &
SANDESH D.PATIL, JJ.
RESERVED ON : 10th SEPTEMBER 2026
PRONOUNCED ON : 17th SEPTEMBER 2026

JUDGMENT [PER SANDESH D. PATIL, J.] :-

1. By the present Writ Petition, the Petitioner is seeking a direction against the Respondents to fix the pension of the Petitioner on the basis of revised pay scale and pay the amount of pension with effect from 01/07/2000, with interest at the rate of 10% p.a., and also arrears of the difference in salary.

2. During the pendency of the petition, an amendment was made to the petition. Thereby, the Petitioner sought to fix the pension of the Petitioner on the basis of the revised pay scale and pay the amount of pension with effect from 01/07/2000, with interest at the rate of 10% p.a., further to pay arrears of the difference in salary, and also to quash and set aside the impugned order dated 06/12/2001 passed by the Respondent no. 2, Education Officer, Zilla Parishad, Pune.

3. The Petitioner's case is that she joined the Respondent's School as an Assistant Teacher on 01/07/1981. At the time of joining, she was qualified as S.S.C. D.Ed. She, while in services, completed her B.Ed. in the year 1994, and since then, the Petitioner was continuously working in the post of Assistant Teacher. The Petitioner was given pay scale of S.S.C. D.Ed. The services of the Petitioner were approved as an assistant teacher after completion of 19 years of continuous service. She retired with effect from 30/06/2000.

4. It is the contention of the Petitioner that she became eligible for the upper grade of scale of B.A. , B.Ed. from her present grade of scale , which she was getting, i.e., S.S.C. D.Ed., after completion of 10 years of her service. She applied to the Respondent no. 3 on several occasions asking for the senior grade and B.A. , B.Ed. scale since 1994-1995. It is the case of the Petitioner that the Respondent no. 3 deliberately avoided granting the senior scale to the Petitioner. Since the Respondent no. 3 was not paying any attention to her request, she had filed a Writ Petition No. 6299 of 1995, which was finally disposed of by an order dated 17/07/2000, whereby this Court directed the Respondents to consider the claim of the

Petitioner for revised pay scale and take appropriate decision as per the G.R. dated 15/05/1990.

5. It is the contention of the Petitioner that in spite of the aforesaid order dated 17/07/2000, the Respondents have neither fixed the revised pay scale, nor have paid any amount towards the pension, and they have committed contempt of the court. The Petitioner relied upon Rule 129-B of the Maharashtra Civil Services (Pension) Rules of 1982, which provides that the authority should decide the pension proposal within six months from the date of retirement, or else there would be a levy of interest. It is the contention of the Petitioner that, the Respondents, decided the application of the Petitioner, and finally impugned order dated 06/12/2001 was passed. It is the contention of the Petitioner that as per the G.R. dated 15/05/1990 issued by the Directorate of Education, Maharashtra State, Pune, the Petitioner was entitled to B. Ed. scale immediately after completion of 10 years of continuous service. The Petitioner has contended that the pension which was fixed by the Respondents is on the basis of senior grade scale, for which neither the signature nor the approval of the Petitioner was

taken. The action on the part of the Respondents is unilateral. The same is arbitrary, unreasonable and illegal, and therefore requires to be quashed and set aside. The Petitioner, in the circumstances mentioned above, has approached this court by way of filing the present petition.

6. The learned Counsel appearing for the Petitioner has invited our attention to the GR dated 15/05/1990, which states that after completion of 10 years from the date of obtaining the degree, she should be considered as a trained graduate. The learned Counsel appearing for the Petitioner has also invited our attention to Exhibit B of the petition, which is the order Dated 17th July, 2000, whereby this court had directed the Respondents to consider the claim of the Petitioner for revised scale in view of the fact that the Petitioner has acquired B. Ed qualification during her service and take appropriate decision regarding the revised pay scale as per the GR dated 15th May, 1990. The learned Counsel appearing for the Petitioner has taken us through the voluminous correspondence, which the Petitioner had entered into with the Respondents.

7. The learned Counsel appearing for the Petitioner has also invited our attention to the order dated 06/12/2001 which is the impugned order. The Learned Counsel appearing for the Petitioner has submitted that the said order is totally without jurisdiction, and it is a case of non-application of mind, and is therefore illegal, null and void. He submitted that the moment the Petitioner obtained the qualification of B.Ed. and within a period of 10 years thereafter, the Petitioner should have been considered a trained teacher, and accordingly the pay scale should have been fixed.

8. The learned Counsel for the Petitioner argued that The Maharashtra Employees of Private Schools Act, 1977 defines school as a primary school, secondary school, higher secondary school, junior college, or any other institution by whatever name called. He also argued that the secondary school code defines high school to be a school which provides a course in general education leading to the Secondary School Certificate Examination (SSC Examination) or an equivalent examination recognized by the Government at the end of the 10th standard. He argued that, admittedly, the Petitioner has been appointed and worked in a secondary school, apart from that,

the Petitioner actually imparted education for standard 8th and was a class teacher for standard 8th. He argued that the high school comprises of standard 5th to 8th, and the distinction made by the respondent Education Officer between standards 5th to 7th and standard 8th to 10th does not have any legal basis. He relied upon the judgment in the matter of *Saramma Varghese Vs. Secretary/President. S.I.C.E.S. Society and Ors.*,¹ in support of his contention.

9. Lastly, he contended that Rule 6 of the MEPS Rules prescribes the qualification of a teacher. He argued that the Petitioner qualifies as a trained graduate as defined in Rule 2(1)(j) of the Rules. He contended that the petition deserves to be allowed.

10. The learned Counsel appearing for the Respondent no.1 - State has invited our attention to the affidavit which was filed by the Respondents. He argued that the Petitioner obtained B.Ed. Degree in May 1994. At that time, there was no sanction to the post of the subject, Marathi. He submitted that the Government Resolution dated 15/05/1990 articulates fixing seniority in the "C" category

¹ 1989 Mh.L.J. 951

when there is an occurrence of a vacant post of the B.Ed. scale.

11. He submitted that the Head Master of the school submitted the pension papers to the office of the respondent directly, giving the B.A., B.Ed. scale. In the said school, the sanctioned posts for the B.Ed scale are as follows.

Year	No. of Sanction Posts in B.Ed. Scale
1990-91	26
1991-92	26
1992-93	28 (26 + 2 Posts newly created)
1993-94	23
1994-95	23
1995-96	22
1996-97	21
1997-98	21.1/2
1998-99	20.1/2
1999-2000	20.1/2
2000-2001	20

In 1991-93, only two posts of B.Ed. Scale were newly created & they were filled in subjectwise basis on 13-6-92.

Name	Qualification	Date of Appointment
1) Shri Theurkar	B.Sc. B.Ed.	13-6-92
2) Shri Nhavi	B.Sc. B.Ed.	13-6-92

12. He argued that the management at the relevant time could not appoint the Petitioner in the B.Ed scale in the sanctioned post of the

respective subject. The Petitioner, as such, till her retirement never worked in the sanctioned post having 10th standard from 1996-97 to 1998-99. The relevant subject in the B.Ed scale was not taught to the higher classes of 9th to 10th standard, that is, secondary section, according to the curriculum. He submitted that the office had given the B.Ed scale salary to the teacher as per the sanctioned quota. He laid specific emphasis on the point that the quota of B.Ed scale was full, and the Petitioner stood above the excess quota. He submitted that at no point of time any post of the B.Ed scale became vacant nor were newly created till the retirement of the Petitioner. He submitted that the Petitioner was not a trained graduate of the Science faculty, and the Management did not give her the appointment of the post which was sanctioned. He submitted that there was no question of giving a trained graduate scale to the Petitioner from 01/07/1991. He, however, submitted that the Petitioner was already in the senior scale of the undergraduate scale (1400-2600) from 01/07/1993 and also that the Education Officer has given her approval of senior scale, and she retired in the said scale. The Head Master submitted the pension papers to the office of the Respondent, and they were sent to the Accountant General by proper channel. The Accountant General

has passed the final pension order dated 23/01/2002. He submitted that the Petitioner was getting the same pay scale that is (1400-2600) and as such, there was no economic loss caused to the Petitioner. In the end, he prayed for dismissal of the Petition.

13. The learned Counsel appearing for the Respondent no.5 - Institution argued that there was no order of appointment of the Petitioner against the sanctioned post after she acquired B.Ed. qualification. He specifically submitted that except for the two posts created in the year 1992 – 1993, which were filled subject wise, there was no sanctioned post available for B.A. , B.Ed. category with which the Petitioner is concerned.

14. He argued that the school was directed to submit a fresh proposal by considering the Petitioner in the trained non-graduate scale with effect from 01/07/1993. He argued that since there was no vacant post available for B.A. , B.Ed., the management had not appointed the Petitioner in the sanctioned post on the basis of B.Ed. qualification.

15. We have heard the learned Counsel appearing for the Petitioner. We have considered the pleadings and the materials on record.

16. Before we proceed further, we must record that vide order dated 8th April 2013 passed by this Court, the Respondent-Management was directed to produce the relevant record and also file an affidavit in reply, pointing out whether the Petitioner, upon her acquiring B.Ed. qualification, was appointed in the sanctioned post. In response to that order, Respondent no.5 had filed their affidavit, thereby specifically stating that the appointment of the Petitioner was not against the sanctioned post. It was also further mentioned that there were only two posts which were created in the year 1992-1993, which were filled in subject-wise, and thereafter there were no vacant posts.

17. The Petitioner was admittedly educated up to S.S.C. D.Ed. when she joined the school on 01/07/1981. It is only during continuance of her service that she acquired the qualification of B.A., B.Ed. The contention of the Petitioner that, because the Petitioner

has obtained the said qualification, she should be considered to be a trained teacher is totally without any substance.

18. In order to be appointed as a trained teacher, it was necessary for the Petitioner to be appointed on a sanctioned post. The entire dispute surrounds as to whether the Petitioner was appointed against the sanctioned post after she acquired the B.A. ,B.Ed. qualification. That dispute is no longer contentious, in as much as both the Respondents - State and Respondent no. 5 - Institution have filed an affidavit stating that there was no order of appointment of the Petitioner against the sanctioned post after she acquired the B.A., B.Ed. qualification. The Respondent - State has also filed an affidavit to the effect that there were only two posts which were sanctioned, and both the two posts were filled in by the concerned teachers (who is not the Petitioner). It is also pertinent to note that, as on 01/07/1991, there was no sanctioned vacant post, and as such, the question of appointment of the Petitioner to the sanctioned post does not arise. The Petitioner was also given the senior pay scale of (1400-2600) from 01/07/1993, and that the Petitioner retired while taking the said scale. There is no infirmity in the order dated 06/12/2001.

The judgment in the matter of *Saramma Varghese Vs. Secretary/President. S.I.C.E.S. Society and Ors.*, (*supra*) is not applicable to the facts and circumstances of the case. There is no dispute about the seniority list in the present case. In these circumstances, there is no merit in the case of the Petitioner and as such the Writ Petition No. 4494 of 2001 is dismissed.

(SANDESH D.PATIL, J.)

(M. S. KARNIK, J.)