

AJAY JADHAV
v.
GOVERNMENT OF GOA AND ORS.

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SEPTEMBER 14, 1999

[S. SAGHIR AHMED AND D.P. WADHWA, JJ.]

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Service law :

Appellant employed as a full time teacher—Selected through proper channel—Post carrying pay scale of Rs. 1640-2900—Selection approved with pay-scale of Rs. 1400-2600 by Government—Claim of appellant for parity in scale—Respondent relying on a notification in 1990—Notification already quashed by High Court in separate proceedings—Similarly placed teachers getting pay scale of Rs. 1640-2900—Held, action of respondents amount to discrimination—Respondent directed to give correct pay scale with retrospective effect.

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The Appellant employed as a full time Teacher in vocational stream in the Respondent-school, filed a writ petition claiming parity in pay-scale as that of Grade-I Teachers. The Appellant was employed in the school in June 1990 through proper selection in the pay scale of Rs. 1640-2900. The appointment though was approved by the Respondent—Government, he was given a pay-scale of Rs. 1400-2600 instead of Rs. 1640-2900. The Appellant possessed required qualifications as given in the advertisement. The High Court rejected the writ petition.

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On appeal before this Court, the Respondents contended that the appellant was not having the requisite qualification and experience. The Respondent brought to the notice of this Court the circulars issued by Directorate of Education under which it was mentioned that certain anomalies in the pay scale were in existence and as such rationalisation would be informed in due course. The Respondent contended that by a circular dated November 20, 1990 it was clarified that candidates possessing requisite qualification would be entitled to the pay-scale of Grade-I teacher i.e. Rs. 1640-2900, and that it was on account of this circular that the appellant was denied the pay-scale. The Respondent brought a circular dated June 30, 1988 wherein it was mentioned that pay-scale of Rs. 1640-2900 is payable for teachers with qualification prescribed therein and that the schools are

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A permitted to appoint less qualified candidates available in a lower scale for a fixed tenure as a stop gap arrangement with prior approval of the Department.

B The Appellant contended that the Circular dated November 20, 1990 has been set aside by the High Court in a writ petition filed by three similarly situated teachers whose pay-scale got downgraded to Rs. 1400-2600 in pursuance of the circular, and that this judgment was not noticed by the High Court in this case; and that teachers apart from those Writ Petitioners similarly situated and having the same qualifications are getting the pay-scale of Rs. 1640-2900.

C Allowing the Appeal, the Court

D HELD: 1. The appellant has been wrongly denied the pay scale of Rs. 1640-2900 to which he was entitled from June 1990. The letter dated October 25, 1990 of Directorate of Education approving the pay scale of Rs. 1400-2600 to be given to the appellant is quashed. Mandamus is issued to Respondents to give to the appellant the pay-scale of Rs. 1640-2900 with effect from June 14, 1990. [376-D-E]

E 2. It is not that the appellant was having less qualification than prescribed in the circular or that his appointment was for a fixed tenure of 3 or 6 months as a stop gap arrangement. Appellant has also pointed out with reference to a comparative chart filed in the proceedings that teachers similarly situated and having the same qualification of Postgraduate Diploma are getting the pay-scale of Rs. 1640-2900. [375-H]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5043 of 1999.

From the Judgment and Order dated 5.3.98 of the Bombay High Court in W.P. No. 257 of 1995.

M.S. Ganesh and K.B. Sunder Rajan for the Appellant.

G Ms. A. Subhashini and A. Ranganadhan for the Respondents.

The Judgment of the Court was delivered by

D.P. WADHWA, J. Leave granted.

H Appellant, who was employed as full time teacher in Vocational Stream

in Murgaoon Education Society's Higher Secondary School, respondent No. 3 (for short 'the school'), was given lower pay scale of Rs.1400- 2600, but he said that he was entitled to the scale of Grade-I Teacher of Rs.1640-2900. His claim was denied by the Director of Education, Government of Goa. His writ petition seeking relief was dismissed by the Bombay High Court, Goa Bench, by the impugned judgment dated March 5, 1998.

Appellant was employed as full time teacher in Computer Programme in Vocational Stream in the school in July, 1988 for a period of one year. He was given the pay-scale of Rs.1400-2600. In June, 1989 appellant was again given fresh appointment in the same post in the same pay-scale of Rs.1400-2600 and the appointment was also for a period of one year. Pursuant to fresh advertisement on May 24, 1990 appellant was once again appointed to the same post, now in the pay-scale of Rs. 1640-2900 with effect from June 14, 1990. Appellant possessed the qualification of B.Sc., P.G.D.C.A. (Post Graduate Diploma in Computer Application) and experience of two years and seven months. He possessed the required qualifications as given in the advertisement. Appellant was told that this appointment was temporary for the academic year 1990-91 and that he was liable to be transferred to any of the institution of the Society. He was also told that the order of appointment was subject to approval of the Director of Education, Goa. On August 6, 1990 a letter was addressed by the Principal of the school to the Directorate of Education seeking approval to the grant of Teacher Grade-I pay scale to the appellant and it was stated that the appellant had the requisite qualifications and experience. However, by letter dated October 25, 1990 request of the Principal of the school was turned down and though the appointment of the appellant was approved, he was given the pay-scale of Rs.1400-2600 with effect from June 14, 1990. Representation of the appellant for granting him pay- scale of Rs.1640-2900 did not bring any result which led the appellant to file writ petition in the High Court. As a matter of fact appellant had claimed pay- scale of Rs.1640-2900 from his first appointment since 1988 but before us he claimed this pay-scale only from June 14, 1990. It was pointed out that the appellant is still working in the same very school in the pay- scale of Rs.1400-2600.

Cause of the appellant has been opposed on the ground that he was not having the required qualification for the post which required the Post Graduate Degree and not the Post Graduate Diploma. It was admitted that a circular dated June 30, 1988 was issued by the Directorate of Education under which qualifications prescribed by NCERT (National Council for Education, Research and Training) for teachers of various courses prescribing pay-scale

A for Teachers Grade-I as Rs.1640-2900. Subsequently a circular dated August 13, 1990 was issued by the Directorate of Education wherein it was stated that a doubt had arisen whether the same pay-scale of Rs.1640-2900 was also to be given to all incumbents holding alternate qualifications in the descending grade and that a reference was made to NCERT which had stated that "so far as the pay scales are concerned the States have to decide about it, keeping in view the prevalent norms pay structure for similar categories of the teachers in the State." It was thus mentioned that certain anomalies in the pay-scale were in existence and as such rationalisation of pay-scales by setting right the existing anomalies would be informed in due course of time. By another circular dated November 20, 1990 it was clarified that candidates possessing requisite qualification, i.e., Post Graduate Degree would be entitled to the pay-scale of Grade-I Teacher, i.e., Rs.1640-2900. It was on account of this circular that the appellant was denied the pay-scale of Rs.1640-2900.

D Appellant has submitted that the circular dated November 20, 1990 was set aside by the judgment of the High Court dated February 11, 1992 in Writ Petition No. 61 of 1991, filed by three teachers similarly situated. These teachers were in the pay-scale of Rs.1640-2900 which they were getting and in view of the circular of November 20, 1990 were down-graded to the pay-scale of Rs. 1400-2600 from November 1990. High Court had ordered that the pay-scale of Rs. 1640-2900 be restored to them with effect from November 1990. It was stated that this judgment was not noticed by the High Court in the impugned judgment. Reference was then drawn to the circular dated June 30, 1988. This circular we reproduce as under:-

F "The Heads of Higher Secondary Schools and Higher Secondary Units of Colleges are hereby informed that the qualifications prescribed by NCERT for Gr. I Teachers and Part Time teachers to be appointed for various vocational subjects introduced in your school under the vocationalisation of Education at +2 stage are furnished in the Annexure enclosed for guidance and necessary action. The said qualifications are worked out and approved by NCERT and may be considered for the appointment of teachers as said above.

G The pay scale prescribed for the Gr. I teacher with above qualifications is 1640-2900. In this regard, it is informed that if the schools do not get the qualified candidates as prescribed in spite of their efforts made by notifying the vacancies in the local Employment Exchange, Local Newspapers and All India Newspapers, the schools are permitted to appoint less qualified candidates available in a lower

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scale for a fixed tenure of three or six months, as a stop gap arrangement with prior approval of this Department. Rest of the recruitment procedure will be the same as laid down in the Education Rules.

Sd/-

(S.V. Kurade)

Director of Education”

Annexure to this circular, in so far as the qualification of the appellant is concerned, is as under :

Name of the Vocational Course	Qualifications prescribed by the NCERT for Full Time Teachers	Qualifications prescribed by the NCERT for Part-Time Teachers
8. Computer Technique/ Computer Programme Assistant	(i) B.Tech/B.E. or equivalent in Computer Science/Engineering (ii) Diploma/Post Diploma with 2 years experience (iii) Masters Degree in Computer Application (iv) B.Sc. in Computer Science with 3 years programming experience (v) M.Sc. in Physics or Maths or Statistics or Chemistry OR M.A. Economics and Post Graduate Diploma in Computers with 3 years programming experience	

It is not that the appellant was having less qualification than prescribed in the circular or that his appointment was for a fixed tenure of 3 or 6 months as a stop gap arrangement. Appellant has also pointed out with reference to a comparative chart filed in the proceedings that teachers similarly situated and having the same qualifications are getting the pay-scale of Rs.1640-2900. These teachers are apart from the three teachers in the writ petition No. 61

A of 1991, mentioned above. There has been no reply to this submission of the appellants as to how other teachers with the same qualification are getting higher pay-scale of Grade-I Teacher. It appears to us that it is a clear case of discrimination.

B It was then contended on behalf of the Directorate of Education that the circular dated November 20, 1990 which had been set aside by the judgment of the High Court in writ petition No. 61 of 1991 concerned only three writ petitioners and the circular had not been set aside generally. That may be so but the fact remains that the three writ petitioners were possessing the same qualifications, i.e., they were not having Post Graduate Degree and were having Post Graduate Diploma and yet had been held entitled to the C Grade-I Teacher pay-scale of Rs.1640-2900. That judgment, it appears, has been accepted by the Government of Goa.

D We are of the view that the appellant has been wrongly denied the pay-scale of Rs.1640-2900 to which he was entitled to from June 14, 1990. The impugned judgment of the High Court is, therefore, set aside. Letter dated October 25, 1990 of the Directorate of Education approving the pay-scale of Rs.1400-2600 to be given to the appellant with effect from June 14, 1990 is quashed. Mandamus is issued to the respondents 1 and 2, being the Government of Goa and the Directorate of Education, to give to the appellant E the pay-scale of Rs.1640-2900 with effect from June 14, 1990. Arrears be paid to the appellant within two months.

Accordingly the appeal is allowed with costs.

V.M.

Appeal allowed.