

Ajay Jadhav

Vs

Government of Goa & Others

Civil Appeal No. 5043 of 1999

(S. Saghir Ahmad, D. P. Wadhwa JJ)

14.09.1999

JUDGMENT

D. P. WADHWA, J.:-

1. Leave Granted.

2. The appellant, who was employed as a full time teacher in vocational stream in Murgaoon Education Society's Higher Secondary School, Respondent 3 (for short The School), was given lower pay 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 5-3-1998.

3. The appellant was employed as full time teacher in Computer programme in vocational stream in the School in July 1998 for a period of one year. He was given the pay scale of Rs. 1400-2600. In June 1989 the appellant was 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 24-5-1990 the appellant was once again appointed to the same post, now in the pay scale of Rs. 1640 – 2900 with effect from 14-6-1990. The appellant possessed the qualification of B.Sc., PGDCA (Post Graduate Diploma in Computer Application) and experience of two years and seven months. He possessed the required qualification as given in the advertisement. The 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 institutions of the Society. He was also told that the order of appointment was subject to approval of the Director of Education Goa. On 6-8-1990 a letter was addressed by the Principal of the School to the Directorate of Education seeking approval to the grant to 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 25-10-1990 the 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 w.e.f 14-6-1990. 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 the appellant has claimed pay scale of Rs. 1640 – 2900 from his first appointment since 1988 but before us he claimed this pay scale only from 14-6-1990. It was pointed out that the appellant is still working in the very same school in the pay scale of Rs. 1400 – 2600.

4. The cause of the appellant has been opposed on the ground that he was not having the required qualification for the post which required postgraduate degree and not postgraduate diploma. It was admitted that a circular date 30-6-1988 was issued by the Directorate of Education under which

among the qualifications prescribed by the NCERT (National Council for Education, research and Training) for teachers of various courses was prescribed pay scale for teacher Grade I as Rs. 1640 – 2900. Subsequently a circular dated 13-8-1990 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 has stated that "so far as the pay scales are concerned the State have to decide about it. Keeping in view the prevalent norms and pay structure for similar categories of the teachers in the State". It was thus mentioned that certain anomalies in the pay scales 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 20-11-1990 it was clarified that candidates possessing the requisite qualification, i.e., postgraduate degree would be entitled to the pay scale of Grade I Teacher. i.e., postgraduate degree would be account of this circular 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.

5. The appellant has submitted that the circular dated 20-11-1990 was set aside by the judgment of the High Court dated 11-2-1992 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 on 20-11-1990 were downgraded to the pay scale of Rs. 1400 – 2600 from November 1990. The High Court had ordered that the pay scale of Rs. 1640 – 2900 be restored to them w.e.f 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 30-6-1988. This circular we reproduce as under:

"The head of higher secondary schools and higher secondary units of colleges are hereby informed that the qualifications prescribed by NCERT for Grade 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.

The pay scale prescribed for Grade 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 scale for a fixed tenure of three of six months, as a stopgap arrangement with prior approval of this Department. Rest of the recruitment procedure will be the same as laid down in the education rules.

Annexure to this circular, insofar as the qualification of the appellant is concerned, is as under:

| <i>Name of the Vocational Course</i>                     | <i>Qualifications prescribed by NCERT for full time teachers</i>   | <i>Qualifications prescribed by NCERT for part time teachers.</i> |
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| 8. Computer Technique/<br>Computer Programmed Assistant. | (i) B. Tech./BE or equivalent in Computer Science/Engineering<br><br>(ii) Diploma/ Post Diploma with 2 years experience. |   |

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|  | <p>(iii) Master's Degree in<br/>Computer Application</p> <p>(iv) B.Sc. in Computer<br/>Science with 3 years<br/>Programming Experience.</p> <p>(v) M.Sc. in Physics of<br/>Maths or Statistics or<br/>Chemistry.</p> <p>OR</p> <p>MA in Economics and<br/>Postgraduate Diploma in<br/>Computers with 3 years<br/>Programming Experience.</p> |  |
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6. 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 stopgap arrangement. The 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 Writ Petition No.61 of 1991, mentioned above, there has been no reply to this submission of the appellant 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.

7. It was contended on behalf of the Directorate of Education that the circular dated 20-11-1990 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 postgraduate degree and were having postgraduate diploma and yet been held entitled to the Grade I Teacher pay scale of Rs. 1640 – 2900. That judgment, it appears, has been accepted by the Government of Goa.

8. 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 14-6-1990. The impugned judgment of the High Court is, therefore, set aside. Letter dated 25-10-1991 of Directorate of Education approving the pay scale of Rs. 1400 – 2600 to be given to the appellant w.e.f. 14-6-1990 is quashed. Mandamus is issued to Respondents 1 and 2, being the Government of Goa of Rs. 1640 – 2900 w.e.f 14-6-1990. Arrears be paid to the appellant within two months.

9. Accordingly the appeal is allowed with costs.

