**8IN THE HIGH COURT OF****KARNATAKA AT BANGALORE**

Writ Petition No. 18360/2012(S-PRO)

Decided On: 25.08.2012

Appellants: **Sri K.L. Gnanaprasad Rao**
**Vs.**
Respondent: **The State of****Karnataka and Ors.**

**Hon'ble Judges/Coram:**
Hon'ble Mr. Justice Subhash B. Adi

**ORDER**

**Hon'ble Mr. Justice Subhash B. Adi**

1. The petitioner has called in question the order passed by the second respondent dated 23.05.2012 in Appeal No. 4/2012 produce at Annexure 'W' and endorsement dated 26.12.2011 issued by the second respondent and also the endorsement contained therein dated 30.12.2011 issued by the fourth respondent produced at Annexure 'S' and a direction to approve promotion of the petitioner as Head Master of respondent No. 6 - School. The brief facts leading to this writ petition are that:

The petitioner was appointed as Assistant Master in the 6th respondent - School on 30th July 1979. His appointment was approved by the Department by order dated 24.11.1979 with effect from 30th July 1979. In February 2011, the post of Head Master became vacant on account of retirement of the incumbent, the management of the School passed a resolution dated 18.02.2011 to promote the petitioner as the Head Master of the School. The said resolution was sent for approval of the fifth respondent by letter dated 07.04.2011, by Annexure' s dated 26.12.2011, the resolution of the management was returned by directing the management to appoint an eligible person to the post of Head Master on the basis of seniority-cum-merit. It is against this, the petitioner filed an appeal under Section 130 read with Section 132 of theKarnataka Education Act, 1983, before the Commissioner for Public Instruction in Appeal No. 4/2012. The appellate authority, by the impugned order dated 23.05.2012 produced at Annexure 'W' rejected the appeal as against which, this writ petition is filed.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as an Assistant Master on 30th July 1979 and he had completed 20 years of service as an Assistant Teacher in Grade II as on 24.11.1999 and was promoted to Grade-I Teacher. The KarnatakaEducational institutions (Recruitment and Terms and Conditions of Service of Employees in Private Aided Primary and Secondary Educational Institutions) Rules, 1999 (hereinafter referred to as the 1999 rules) Annexure-VI appended to the said Rules provides for procedure as to filling up of the post of Head Master/Head Mistress in Private Aided High School, clause No. (i) of the said Annexure-VI requires that the post of Head Master/Head Mistress in Private Aided High School shall be filled up by promotion from the cadre of Secondary School Assistant Grade - I. If no eligible Secondary School Assistant Grade-I is available, then Secondary School Assistant Grade-II may be considered. According to clause (ii) of Annexure-VI, the said promotion shall be made on the basis of seniority amongst the Teacher, that is by counting the total number of years of continuous service from the date of entry into the cadre of Secondary School Assistant Grade - I or Grade II. Relying on this provision, learned counsel submitted that the petitioner was promoted to Grade I on 24.11.1999, whereas respondent No. 7 had joined the School on 17.08.1981. His post was approved by the Department on 01.10.1982 and he was promoted to Grade-I on 17.08.2001. Admittedly, the petitioner was senior in Grade-I. As such, respondent No. 2 was not justified in dismissing the appeal of the petitioner.

3. In the alternative, he also submitted that acquiring the qualification of B.Ed., was not compulsory and more so, for language Teacher. He relied on the Government order dated 01.07.1994 to point out that Grade-I shall be conferred on 25% of the Teachers in Grade-II based on the seniority of those Teachers. However, minimum of seven years of service in Grade-II was mandatory to upgrade to the post of Grade-I. The said Government order was further clarified by another Government order dated 26.02.1997 published in Gazette on 03.04.1997, wherein the Government, in order to remove the confusion as regard to Grade-I and Grade-II has clarified that, to acquire the scale of Rs. 1900-3700, the Teacher must have completed minimum of 20 years of service in Grade-II. However, in 1997, the said Government order also did not prescribe any condition of passing of B.Ed., as qualification for promotion upgradation to Grade-I. He also relied on the communication dated 26.03.1999 from the Education Department to the Commissioner, wherein it is clarified that the Language Assistant Grade has been merged in Grade-II and such Teachers past service has to be taken into consideration for fixing the seniority.

4. Learned counsel further submitted that even otherwise, the qualification of B.Ed., was not compulsory for the purpose of conferring Grade-I. The 1999 Rules also do not stipulate seniority amongst Grade-II, but seniority is only in Grade-I. When more than one candidate is available in Grade-I, the senior teacher in Grade-I has to be considered for the purpose of promotion to the post of Head Master.

5. In this case, the promotion of the petitioner to Grade-I has not at all been challenged by the seventh respondent. As such, the appellate authority erroneously has rejected the appeal of the petitioner by not considering the seniority of the petitioner in Grade-I. The impugned order is contrary to the Schedule-VI to the 1999 Rules.

6. Learned counsel appearing for respondent No. 7 submitted that the petitioner, though had joined the services on 30th July 1979, it is not disputed that he acquired B.Ed., Degree only in August 1982, whereas respondent No. 7 though joined as a Teacher in respondent No. 6 - School on 17.08.1981, but had acquired the B.Ed., Degree in 1974 itself. B.Ed., Degree was requisite qualification for appointment as Grade-II Teacher, without which, seniority of the untrained Teacher is not countable.

7. To support his contention, he relied on the Karnataka Education Department Services (Department of Public instruction) (Recruitment) Rules, 1967 (hereinafter referred to as the 1967 Rules) and submitted that the Government has prescribed the rules of recruitment for the Teachers of the Government School, the same is applicable to Aided Schools, at Item No. 36 in respect of Secondary School Assistants Cadre Grade - II Teachers. For direct recruitment, applicant must be holder of a Degree in requisite subject and must be holder of a Degree inEducation or equivalent qualification. The petitioner had acquired B.Ed., Degree in 1982. As per the Government order dated 26.02.1997, the Government had only decided to recognize the services of the Teachers, who have put in 20 years of service in Grade-II in order to remove the confusion regarding Grade-I in Private Aided Schools. He submitted that there is no procedure or Cadre for Grade-I in Private Aided School. Though Grade-I has been referred at Annexure-VI to 1999 Rules, however, the Government order dated 26.02.1997 has made it clear that by conferring Grade-I by the respective management, has created confusion and to avoid the same, every Teacher, who completes 20 years of service in Grade-II became eligible for the scale of Rs. 1900-3700.

8. In so for as Grade-II Teacher is concerned, 1967 recruitment rules requires B.Ed., Degree and without B.Ed., Degree, his/her seniority cannot be considered. He further submitted that as far as consideration of seniority in respect of untrained Teachers is concerned, the same is clarified in view of the amendment to 1999 Rules as per the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Private Aided Primary and Secondary Educational Institutions) (Amendment) Rules, 2000 produced at Annexure 'Y' Clause (ii) to Annexure-VI of the 1999 Rules has been amended to the effect that the service rendered in the cadre of Secondary School Assistant Grade-II (Untrained) may be protected for service benefits, but shall not be counted for fixing the seniority.

9. On the basis of the said documents, the learned counsel further submitted that, service rendered as untrained Teachers will not be available for considering seniority and Grade-I being not a cadre created in Private Aided Schools, the Government order dated 26.02.1997 has clarified that Grade-I means only upgrading the pay scale. As far as the petitioner is concerned, the basic eligibility to Grade-II itself was lacking. When he was appointed in 1979, he did not possess the B.Ed. Degree, he passed B.Ed. Degree only in 1982, his seniority has to be counted only from 1982. If the seniority of the petitioner is considered accordingly, he becomes eligible for upgradation of pay scale only in 2002. If seniority based on acquisition of B.Ed., which was the requisite qualification, respondent No. 7, who had acquired B.Ed., Degree in 1974, though appointed in 1981, becomes senior to the petitioner. Accordingly, the appellate authority, having regard to these circumstances, has held that the petitioner is not entitled to be promoted to the post of Head Master, as he is junior to Respondent No. 7.

10. Learned Government Pleader on instruction, on getting clarification as regard to the Rules, submitted that even in respect of Private Aided Secondary School, 1967 Rules are applicable and he also submitted that under the 1967 Rules, for appointment as a Grade-II Teacher, he/she must have possessed minimum qualification of B.Ed., Degree and that is one of the requisite qualification. Seniority would be reckoned in Grade-II from the date of acquisition of B.Ed., and not from the date of entry into service as untrained Teacher. He submitted that the appellate authority, having noticed these lacunas committed by the management in treating the petitioner as Grade-I has on interpretation has held that the petitioner is junior to respondent No. 7 and accordingly, has passed the order. He supported the findings of the appellate authority.

11. In the light of the above arguments, the points that arise for consideration are:

1. Whether the acquisition of B.Ed., qualification was necessary for a Grade-II Teacher?

2. Whether counting of seniority in respect of trained or untrained Teacher is from the date of entry into service or from the date of acquisition of B.Ed., qualification ?

3. Whether the order of the appellate authority is just and proper?

All the points are considered together.

12. Facts which are not in dispute are that, the petitioner was appointed as an Assistant Teacher on 30.7.1979. His appointment was approved on 24.11.1979. Further he acquired B.Ed. Degree in the year 1982. However, the petitioner was conferred Grade-I on 24.11.1999.

13. The 7th respondent acquired B.Ed. Degree in the year 1974. He was appointed in the 6th respondent - School on 17.8.1981. His appointment was approved on 1.10.1982 and his Grade-I was conferred on 17.8.2001.

14. The appointments in private aided school are governed by the provisions of the 1999 Rules. Rule 3 of the 1999 Rules prescribes the qualification and conditions of service of employees of the private aided educational institutions. Clause (a) of the Said Rules reads as under:

3(a) The categories of posts, the staffing pattern and the qualifications for recruitment to posts in an Institution shall be as specified in Annexures-III, IV and V. In respect of employees other than teachers, the prescribed qualifications for recruitment, etc. in Institutions shall be the same as those applicable for the corresponding category of employees in Government Educational Institutions. The procedure for selection of candidates to posts identified for recruitment shall be [as specified in Annexure-I and the procedure for filling up of the post of Head Master and Head Mistress in High Schools shall be specified in Annexure-VII]:

15. As far as the qualification for recruitment of the teaching staff is concerned, it is specified as per Annexures-III, IV, V and VI. Annexure-III deals with categories of posts and the qualification. The Assistant Master / Physical Education Teachers in lower/higher primary school have to be filled up with an applicant having minimum qualification as prescribed in the 1967 Rules. Thus, from the provisions of Rule 3 and Annexure-III, it is clear that the qualification for the post of Assistant Master was as prescribed in the 1967 Rules. The post of Head Master has to be filled up as per approved staffing pattern specified in Annexure-IV.

16. For the purpose of appointing Assistant Master or Headmaster, the 1967 Rules are mutatis mutandis applicable to the private aided institutions.

17. The 1967 Rules prescribe the method of recruitment, minimum qualification in respect of each of the categories specified therein. As far as the Assistant Teacher Grade-II appointments are concerned, Item No. 36 in relation to the secondary school prescribe 75% by direct recruitment and 25% by promotion. However, for direct recruitment as well as promotion, the qualification prescribed is as under:

(1) Must be holder of a degree in Arts, Science, Commerce with at least any two subjects of study out of the following as options (to teach in different media of languages, namely - English, Kannada, Marathi, Urdu, Hindi, Tamil and Telugu)

(i) in case of Secondary School Assistants for Science, he must be a holder of a degree in Physics, Chemistry, Mathematics, Botony, or Geology;

(ii) in case of Secondary School Assistants for Arts and Commerce, he must be a holder of a degree in History, Economics, Geography, Political Science, Accountancy, Kannada, English, Sanskrit, Urdu, Marathi. Telugu, Tamil and Hindi or must have passed an examination in the respective Indian languages recognised by the Government or equivalent qualification.

(2) Must be holder of a degree in Education or equivalent qualification.

18. The requisite qualification by promotion or by direct recruitment is that, one must be holder of a degree in Arts, Science, Commerce, etc. and must be holder of Degree in Education or equivalent qualification. Thus, for the purpose of appointing Assistant Cadre Grade-II the requisite qualification is prescribed in the 1967 Rules which are applicable even to the aided schools, i.e. a Degree in respect to the subject and also Degree in Education or equivalent qualification.

19. The qualification prescribed for the post of Head Master in the 1967 Rules is also specified in Clause 18 i.e. 50% by direct recruitment and 50% by promotion. In case of promotion, it is on the basis of seniority cum merit of the Officers in the Secondary School Assistants (Grade-I) cadre. Annexure-VI to the 1999 Rules also specifies that the post of Head Master should be filled up by promotion from the cadre of Secondary School Assistant Grade-I. if no eligible Secondary School Assistant Grade-I, Secondary School Assistants Grade-II may be considered i.e. based on seniority by counting the total number of years of continuous service from the date of entry into the cadre of Secondary Assistant Grade-I or Grade-II as the case may be and by following Roster Rules, if they are applicable as per the orders issued by the Government in the matter of reservation from time to time.

20. As far as Grade-I is concerned, the staff pattern which is specified in Annexure-IV for the private aided schools is as under:

(1) Headmaster/Mistress

(2) Assistant Masters

(3) Language Teachers

(4) Physical Education Teacher Grade-I

(5) Hindi Teacher (if taught as a compulsory language)

(6) Teacher (Craft or drawing or music)

21. Staff pattern does not prescribe Grade-I cadre in the private aided schools. Even as far as the Government schools are concerned, in respect of certain discipline, the Grade-I has been prescribed under the 1967 Rules. It is in this context a difficulty arose, in the matter of classifying the Grade-I and Grade-II teachers and the Management without any criteria were conferring the Grade-I to the teachers, to alley the confusion, the Government by its order dated 26.2.1997 by taking into consideration that there were many administrative difficulties on account of creation of Grade-I and to set it right passed the Government Order of 1997, inter-alia conferring additional increment to the teacher who has put in 20 years of service in Grade-II, he will be eligible for the scale of 1900-3700.

22. It is not in dispute that in the staff pattern for the private aided schools, there is no Grade-I as prescribed. Further, the 1999 Rules in so far as the selection of Head Master by promotion is concerned, terms of Annexure-VI Clause (ii) reads as under:

(ii) Promotion to the post of Head Master or Head Mistress shall be made on the basis of seniority of a teacher, seniority being determined by counting the total number of years of continuous service from the date of entry into the cadre of Secondary School Assistant Grade-I or Grade-II as the case may be and by following Roster Rules, if they are applicable as per the orders issued by the Government in the matter of reservation from time to time. The service rendered in the cadre of Secondary School Assistant Grade-II (Untrained) may be protected for service benefits but shall not be counted for fixing the seniority.

23. Reading of the above clause makes it clear that seniority of Assistant Grade-II would reckon from the date when the B.Ed. Degree is acquired and not otherwise. The Government Order of 1997 specifies the confirmation of only pay scale of 1900-3700 based on 20 years of service in Grade-II not a grade as such.

24. Undoubtedly, as far as Grade-II is concerned, the requisite qualification is graduation in respect of the subject plus acquisition of B.Ed. Degree. As such, Grade-I is understood in the light of requisite qualification and seniority based on qualification, i.e. seniority has to be understood on the number of years of service as Assistant Master in Grade-II after having acquired B.Ed. Degree.

25. In this case, no doubt the petitioner was appointed in 1979 whereas the 7th respondent was appointed in 1981. But, it is not disputed that the 7th respondent had acquired B.Ed. Degree in 1974 whereas the petitioner acquired B.Ed. Degree in 1982. If Annexure-VI is read for the purpose of considering the seniority in Grade-I, even the date of appointment with B.Ed. Degree is taken, 7th respondent becomes senior as his seniority starts from 1981 and as far as petitioner is concerned, he acquired B.Ed. Degree in 1982, his seniority starts from 1982 in Grade-II as Assistant Masters. Even if the seniority is considered for the purpose of fixing the higher pay scale by taking 20 years of service, respondent No. 7 completes 20 years of service in 2001 whereas the petitioner completes 20 years of service in 2002, if the higher pay scale is treated as Grade-I for the purpose of Annexure-VI. Thus, in seniority, the 7th respondent is senior to the petitioner.

26. Learned counsel for the petitioner vehemently argued that the seniority as Grade-I has not been disturbed and if the seniority in Grade-I is taken, petitioner is senior to 7th respondent.

27. To be Grade-II Assistant Master one has to have the requisite qualification. No Grade-II Assistant Master would be appointed without the qualification of B.Ed. Degree as per the Rules. If the petitioner was not qualified to be appointed as Grade-II Assistant Master in 1979, his period till he acquired B.Ed. Degree will be treated as an untrained teacher.

28. Schedule VI clarifies that service rendered as untrained teacher will not be counted for seniority. The confirmation of Grade-I is based on seniority in Grade-II. That is the seniority from the date of requisite qualification of B.Ed, and not otherwise.

29. Just by showing he is senior in Grade-I that itself is not sufficient when there is no cadre as Grade-I in private aided school, which is also clarified by the Government in its 1997 order.

30. If the seniority of an untrained teacher is considered, then post of the Head Master would be filled by a person without having B.Ed. Degree, the very purpose of prescribing the B.Ed. Degree qualification loses its importance. Such an act would be contrary to the Cadre and Recruitment Rules of 1967.

31. Learned Government Pleader submits that B.Ed, is compulsory, to be appointed as Grade-I. Untrained service of the teacher will not count for the benefit of the seniority. If the original appointment of the petitioner was in the year 1979 but it was as an untrained teacher.

32. Having regard to these circumstances and also having regard to the seniority of the petitioner and the respondent No. 7 in terms of the Rules, I find that the Appellate Authority has taken into consideration all these circumstances and has rightly rejected the appeal filed by the petitioner. Hence, I do not find any error in the order passed by the Appellate Authority. Any other contention in relation to pay scale it is open to the parties to raise the same in appropriate proceedings. This writ petition is decided only for the purpose of appointment of Head Master post is concerned.

Accordingly, petition is dismissed.