

PETITIONER:
CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD, BEED & ORS.

Vs.

RESPONDENT:
SYED YASIN & ORS.

DATE OF JUDGMENT: 24/04/1996

BENCH:
G.B. PATTANAIK (J)
BENCH:
G.B. PATTANAIK (J)
RAMASWAMY, K.

CITATION:
1996 AIR 1994 JT 1996 (5) 135
1996 SCALE (4) 335

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

Leave granted.

This appeal by Special leave is directed against the judgment of the Bombay High Court dated 3.9.93 inter alia on the ground that the High Court committed gross error in relying upon the order of the Chief Executive Officer dated 18.4.90 even though the said Chief Executive Officer has suspended the operation of his earlier order by his order dated 26.10.1990. The short facts necessary for adjudicating the point in issue are that respondents 1 to 4 were serving under Zilla Parishad as Primary School Teachers on deputation between 1962-1968 and were finally absorbed in the services of Zilla Parishad in the year 1968-69. The State of Maharashtra, respondent no. 5, issued a Resolution no.PTP. 1070-F dated 22nd October 1970 authorizing the Zilla Parishads, authorized Municipalities in Western Maharashtra, the Nagpur Municipal Corporation and the Municipal Councils in Nagpur Division to upgrade the existing posts of primary school teachers on their respective establishments into the posts of Head Masters in the scale of pay of Rs.145-250 with retrospective effect from 1st April 1966. It was, however, stated in the said Resolution that the number of posts to be upgraded in each Zilla Parishad should be equal to the total of the number of primary school teachers upto and inclusive of Standard VII and other primary schools having 200 or more people on their rolls on 1st April, 1966. The Resolution also stipulated that the Zilla Parishads, the authorized Municipalities, the Nagpur Municipal Corporation and Municipal Councils in Nagpur Division should be requested to fix the number of posts of Head Masters on the basis indicated above on 1st April, 1966 for the first time and to subsequently review it annually on 1st April. The aforesaid Resolution further indicated that the Zilla Parishads should be requested to fill up the posts of Head Masters by

promotion in accordance with the provisions of Rule 6(4) read with item No. 8 in Appendix IV (Part II) to Rule 5 of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 (hereinafter referred to as "the Recruitment Rules"). The relevant Resolution is extracted hereinbelow in extenso:

" RESOLUTION.--Government is pleased to authorise the Zilla Parishads, authorized Municipalities in Western Maharashtra, the Nagpur Municipal Corporation and the Municipal Councils in Nagpur Division to upgrade the existing posts of primary school teachers on their respective establishments into the posts of Head Masters in the scale of pay Rs. 145-5-175-6-187-E.B.-6-205-9-250, sanctioned in Government Resolution, Education and Social Welfare Department, No.PTP. 1069-F dated the 19th June, 1969, with retrospective effect from 1st April, 1966, the number of posts to be upgraded by each Zilla Parishad. authorized Municipality. Nagpur Municipal Corporation or a Municipal Council, as the case may be, should be equal to the total of:

(i) the number of primary schools teaching upto and inclusive of Standard VII; and
(ii) the other primary schools having 200 or more pupils on their rolls on 1st April 1966.

The Zilla Parishads, the authorized Municipalities, the Nagpur Municipal Corporation and Municipal Councils in Nagpur Division should be requested to fix the number of posts of Head Masters on the basis indicated above on 1st April 1966 for the first time and to subsequently review it annually on 1st April.

2. (A) The Zilla Parishads should be requested to fill up the posts of Head Masters by promotion in accordance with the provisions of Rule 6(4) read with item No.8 in Appendix IV (Part II) to Rule 5 of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967.

EXPLANATION.- A primary teacher who has put in continuous service of five years as a teacher and who is trained should be held eligible for promotion to the upgraded post of Head Master. Five years' service need not necessarily be post-training service.

(B) The Municipal School Boards,

the Nagpur Municipal Corporation and the municipal Councils in Nagpur Division should be requested to fill up the posts or Head Masters authorized under the Government Resolution by promotion in accordance with the Recruitment Rule attached to this Government Resolution (Schedule A) and in consultation with the Staff Selection Committee, if any.

3. The fixation of pay, payment of arrears and other cognate matters should be regulated in accordance with the instructions contained in Schedule B attached to this Government Resolution.

4. This Government Resolution issues with the concurrence of the Rural Development Department and Finance Department, vide Finance Department, Unofficial No. 1750/XXVI, dated 22nd October, 1970.

By order and in the name of the Governor of Maharashtra."

Schedule A attached to the aforesaid Resolution made it clear that appointment to the posts shall be made by promotion on the basis of seniority-cum-merit from among trained primary school teachers in the service of the Municipal School Board, Corporation or Council, as the case may be, who have completed not less than 5 years of continuous service as a teacher.

In Schedule B to the aforesaid Resolution the 'Head Master' was defined thus -

"A 'Head Master' means a primary teacher who was working as the Head or Head Teacher of a primary school."

Expression "upgraded Head Master" was defined thus :

"A post of 'upgraded Head Master' means the newly authorized post of Head Master in the grade of Rs.145-250".

Expression "primary teacher eligible for appointment" was defined thus:

"A primary teacher' eligible for appointment' as an upgraded Head Master is that teacher who fulfills the conditions laid down in the recruitment rule for the said post read with explanation given below para 2(A) of the main Government Resolution to which this Schedule is

who on the basis of his seniority-cum-merit, had been found eligible by the competent authority (i.e.

the District Selection Board, the Staff Selection Committee etc.) for appointment to the said post."

Expression a primary teacher 'entitled to appointment' was defined) thus:-

A primary teacher 'entitled to appointment' as an upgraded Head Master on a particular date is that teacher who is eligible for appointment and who, by virtue of this rank in the list of teachers eligible for appointment to the posts of upgraded Head Masters, becomes due for appointment to the said post on that date."

The date of notional appointment was defined thus:

"Date of notional appointment" is that date on which a primary teacher entitled to appointment as an upgraded Head Master would have been appointed as such because a vacancy was available on that date, (It may be mentioned that in a vast majority of cases, 1st April, 1966, 1st April, 1967, 1st April 1968, 1st April 1969, 1st April 1970 and so on will be the notional dates of appointment. In a few cases however, the notional dates of appointment may fall within the period intervening between the aforesaid dates if vacancies of upgraded Head Masters had arisen owing to retirement, resignation removal, dismissal, death etc.) "

Schedule B also classified the different types of cases where appropriate authority was entitled to upgrade the post of teacher to that of Head Master and to review the position annually. The relevant portions of the Resolution is extracted hereinbelow in extenso:

II. CLASSIFICATION OF CASES

The Zilla Parishads, Municipal School Boards, Municipal Corporations and Municipal Councils of Nagpur Division have been authorized to create posts of upgraded Head Masters with effect from 1st April 1966 and to review the position annually on 1st of April every year thereafter. As a result, following types of cases are likely to arise:

(a) A primary teacher who is entitled to appointment as an upgraded Head Master from 1st April 1966 and

has also actually worked continuously as a Head Master of an eligible Primary School from 1st April 1966, or from any subsequent date, or for intermittent periods after 1st April 1966, till his actual appointment as an upgraded Head Master after the newly authorized post of upgraded Masters are formally created: or till his superannuation, retirement, resignation etc. on a date prior to the date on which the newly authorized posts of upgraded Head Masters are formally created.

(b) A primary teacher who is entitled to appointment as an upgraded Head Master from 1st April 1966 but has not actually worked as a Head Master of an eligible Primary School for any period of whatsoever from 1st April 1966 till he is actually appointed as an upgraded Head Master after the newly authorized posts of upgraded Head Masters are formally created; or till his superannuation, retirement, resignation etc. on a date prior to the date on which the newly authorized posts of upgraded Head Masters are formally created.

(c) A primary teacher who is entitled to appointment as an upgraded Head Master on any date subsequent to 1st April 1966 and who has actually worked continuously as a Head Master of an eligible primary school from 1st April 1966 or from any subsequent date, or for intermittent periods from 1st April 1966, till his actual appointment as an upgraded Head Master after the newly authorized posts of upgraded Head Masters are formally created; or till his superannuation, retirement, resignation etc. on a date prior to the date on which the newly authorized posts of upgraded Head Masters are formally created.

(d) A primary teacher who is entitled to appointment as an upgraded Head Master on any date subsequent to 1st April 1966 but has not actually worked as a Head Master of an eligible primary school for any period whatsoever from 1st April 1966 till he is actually appointed as an upgraded Head Master after the newly authorized posts of upgraded Head

Masters are formally created; or till his superannuation, retirement, resignation etc. on a date prior to the date on which the newly authorized posts upgraded Head Masters are formally created.

(e) A primary teacher who was only eligible for appointment as an upgraded Head Master and who has actually worked continuously as a Head Master of an eligible primary school from 1st April 1966, or from any subsequent date, or for intermittent periods after 1st April 1966, but who is not entitled to appointment as an upgraded Head Master even after all the newly authorized posts of upgraded Head Masters upto date (i.e. unto 1st April 1970) are formally created; or would not have become entitled to appointment as an upgraded Head Masters till his superannuation, retirement, resignation etc. on a date prior to the date on which all the newly authorized posts of upgraded Head Masters upto date (i.e. upto 1st April 1970) are formally created.

(f) A primary teacher who is not even eligible for appointment as an upgraded Head Master but actually worked continuously as a Head Master of an eligible primary school from 1st April 1966, or from any subsequent date, or for intermittent periods after 1st April 1966 till the newly unauthorise posts of upgraded Head Masters are formally created an appointment are made, thereto of teachers entitled to appointment, or till his superannuation, retirement, resignation etc. on a date prior to the date on which the newly authorized posts of upgraded Head Masters are formally created."

Respondents nos. 1 to 4 filed Writ Petition No. 1638 of 1489 before the Bombay High Court at Aurangabad claiming that they are entitled to the tine scale of pay admissible to' the post of Head Master with effect from 1.4.1966 on the basis of the aforesaid Government Resolution dated 22.10.1970. While the matter was pending before the High Court the Chief Executive Officer of Zilla Parishad who was the competent authority to decide the question of upgradation and fixing of scale of pay of the upgraded Head Masters considered the representations filed by respondents 1 to 4 and by his order dated 18.4.90 directed that respondents 1 to 4 be granted the scale of pay meant for upgraded Head Masters with effect from 1.4.1966. Pursuant to the aforesaid order of the Chief Executive Officer the Education Officer of Zilla Parishad passed the consequential

order of 31.5.1990 fixing the scale of pay of respondents 1 to 4 in the upgraded scale. But when the matter was referred to the Accounts Officers of Zilla Parishad for verification it was he who pointed out the error error committed by the Chief Executive Officer and indicated that the said order is contrary to the Government Resolution dated 22.10.1970. On the basis of the aforesaid notings of the Accounts Officer the Chief Executive Officer suspended the operation of his earlier order dated 18.4.1990 and the orders of the Education Officer dated 31.5.1990 by his order dated 26.10.1990. In the pending Writ proceedings the Zilla Parishad and other officers filed their counter affidavits indicating that the respondents 1 to 4 could not have been granted the higher scale of pay in the grade of upgraded Head Masters as such posts were not available, in terms of Clauses (i) and (ii) of the Resolution dated 22.10.1970. The High Court, however, by the impugned order without even noticing the order of the Executive Officer dated 26.10.1990 and solely relying upon his earlier order dated 18.4.1990 allowed the Writ Application and hence this appeal.

Mr. Manoj Swarup learned counsel appearing for the appellant contended that the High Court committed gross error in giving effect to the order of the Executive Officer dated 18.4.1990 even though the said order had been kept under suspension by the later order dated 26.10.1990. The learned counsel further urged that though the Executive Officer of Zilla Parishad is entitled to upgrade the post of primary school teachers on their establishment to the post of Head Master but such upgradation would be dependent upon the number of vacancies available after applying the preconditions mentioned in the Resolution dated 22.10.1970. Since the Chief Executive Officer without focussing his attention to that had passed orders in favour of respondents 1 to 4 the error having been pointed out by the Accounts Officer he reconsidered the matter and had placed the order under suspension and the High Court without even examining the question as to whether there was vacancy for upgradation in terms of Resolution dated 22nd October 1970 committed error in directing implementation of the earlier order of the Executive Officer dated 18.4.99.

The learned counsel for the respondent on the other hand contended that there were several subsequent clarificatory orders issued by the State Government which would make the position clear that respondents are entitled for being promoted to the upgraded post of Head Masters and the High Court did not commit any error in granting relief in question. But on being questioned the learned counsel for the respondents could not lay his hand on any of those circulars nor was he able to establish that the respondents were entitled to be promoted to the upgraded post of Head Masters in accordance with the Resolution of the Stated Government dated 22.10.1970.

Having heard the learned counsel for the parties we find sufficient force in the arguments advanced by Mr. Manoj Swarup, learned counsel for the appellants. On a bare reading of the Resolution dated 22.10.1970 we are of the opinion that a Chief Executive Officer of a Zilla Parishad would be authorized to upgrade the post of primary school teacher to that of Head Master provided the condition precedent prescribed in the said Resolution are satisfied. The Resolution in question does not ipso facto converts the post of primary school teacher to that of Head Master. In this view of the matter the Chief Executive Officer was entitled to consider the matter afresh and put the earlier order in abeyance. Non consideration of his order dated

26.10.1990 by the High Court and directing implementation of the earlier order dated 18.4.1990 vitiates the judgment of the High Court. In the aforesaid premises the impugned order of the High Court cannot be sustained and we accordingly quash the same. Needless to mention that since the Chief Executive Officer has merely suspended the earlier order dated 18.4.1990 and has not taken any final decision with regard to the entitlement of respondents 1 to 4 to be appointed against the upgraded post of Head Master and if so with effect of what date, the said Chief Executive Officer, appellant in the present appeal, is directed to take a final decision within three months from the date of receipt of this order and communicate the same to respondents 1 to 4.

This appeal is accordingly allowed. But in the circumstances there will be no order as to costs.