

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.904 OF 2015

Shamrao s/o. Gyanbarao Bagate,
Age: 49 Years, Occu: Service,
R/o. Jayprakash Nagar, Nanded.

PETITIONER

VERSUS

- 1] The State of Maharashtra
[Through its Secretary,
School Education & Sports
Department, Mantralaya,
Mumbai-32]
- 2] The Zilla Parishad,
Nanded
Through its Education Officer [Primary]

RESPONDENTS

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Mr. V.A.Dhakne, Advocate for the Petitioner
Mr. S.B.Pulkundwar, AGP for the Respondent No.1
Ms. Preeti Diggikar, Advocate for the Respondent No.2.

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**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 01.09.2015
Pronounced on: 21.09.2015

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.
- 2] Rule. Rule made returnable forthwith, and
heard finally with the consent of the parties.

3] This Petition is filed with following prayers:

- B] To direct the respondent no.2 to grant the pay scale of Trained Graduate Primary Teacher to the petitioner from the date of his initial appointment and to pay the arrears of salary admissible to a trained graduate primary teacher to the petitioner from the date of his initial appointment, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.
- C] To quash and set aside the impugned order / letter dated 11.11.2014 issued by the Education Officer [Primary], Zilla Parishad, Nanded cancelling its earlier order dated 27.08.2014, by issuing a writ of Certiorari or any other appropriate writ, order or direction as the case may be.

The relevant facts as disclosed in the Petition are as under:

4] The petitioner is working as Graduate Primary Teacher in Swami Ramanand Tirth Primary School, Nava Mondha, Nanded with effect from 16.06.1993. The petitioner possesses B.A., B.Ed. and D.Ed. qualifications. After following due procedure, on 16.06.1993, the petitioner was appointed as an Assistant Teacher in the pay scale of

graduate primary teacher, as he was having B.A.,B.Ed. qualification. Accordingly, for first three years on 02.11.1993, the respondent No.2 had accorded approval to the appointment of the petitioner as graduate primary teacher. However, thereafter, without giving any notice to the petitioner, on 31.03.2003, the respondent No.2 had granted approval to the services of the petitioner as untrained teacher for the period from 01.05.1996 to 03.07.2003 on the ground that, he was not having D.Ed. qualification. The petitioner had completed postal D.Ed. course, while he is in service on 04.07.2003, and thereafter, with effect from 04.07.2003, his services had been approved as trained primary teacher in D.Ed. scale by the respondent No.2.

5] The Government has issued a Resolution on 11.11.2011, adopting a policy that, the graduate teachers appointed in primary school, who possesses B.Ed. qualification, are entitled to be treated as trained teachers in B.Ed. scale from the date of initial appointment, if their appointments are within 25% quota. Therefore, on 20.08.2013, the Head Master had forwarded the proposal of the petitioner for granting the pay scale of graduate

primary teacher since his appointment. However, the respondent No.2 has granted the said pay scale to the petitioner with effect from 01.08.2007, instead of granting the same from the date of his initial appointment. Therefore, on 27.08.2014, the Head Master has again forwarded the requisition to the respondent No.2, for granting the pay scale of graduate primary teacher to the petitioner since his initial appointment, and thereafter, the respondent No.2 had granted the pay scale of graduate primary teacher to the petitioner from the date of initial appointment, in view of the Government Resolution dated 11.11.2011. However, without giving any notice to the petitioner and without any reason to cancel its earlier order, the respondent No.2 has issued the impugned order on 11.11.2014 cancelling its order dated 27.08.2014 granting the pay scale of graduate primary teacher to the petitioner, since his initial appointment on the ground that, the same was issued inadvertently. Hence this Writ Petition.

6] The learned counsel appearing for the petitioner submits that, the petitioner's case is covered by the Judgment of the Hon'ble Supreme Court in the case of ***State of Maharashtra & others Vs. Tukaram Trimbak***

Chaudhari & others¹, and also the Government Resolution dated 11.11.2011 issued by the School Education and Sports Department, Mantralaya, Mumbai. It is submitted that, in view of the Government Resolution dated 11.11.2011, the graduate teachers appointed in primary school, who possesses B.Ed. qualification, are entitled to be treated as trained teachers in B.Ed. scale from the date of initial appointment, if their appointments are within 25%, and the very appointment of the petitioner is within 25% quota provided for graduate teachers, and he is the only person, who is a graduate teacher in the school.

7] On the other hand, the learned counsel appearing for the respondent No.2 invited our attention to the averments in the affidavit-in-reply. It is submitted that, the appointment of the petitioner is not from 25% quota provided for graduate teachers. From the said 25% quota, one Shri D.M.Salunke is appointed, and therefore, the petitioner cannot claim the benefits of the Government Resolution dated 11.11.2011. It is submitted that, the petitioner was appointed as an Assistant Teacher on the basis of B.A. B.Ed. qualification with Swami Ramanand Tirth Primary School, Nanded run by Kai. Gayabai Shikshan

1 2007 AIR SCW 1321

Sanstha, Ekdara, Nanded with effect from 16.06.1993. During his service tenure, the petitioner has completed his D.Ed. course on 04.07.2003, and therefore, he became the trained graduate teacher on 04.07.2003, in view of the provisions of Rule 2 (k) of the Maharashtra Private Schools Employees [Service Conditions] Rules, 1981. For the said school, the permission is only for 1st Standard to 7th Standard. It is submitted that, as per the Government Resolution dated 14.11.1979, if there are 5th to 7th Standard, there are 4 posts sanctioned, and out of the said 4 posts, one post comes within 25% quota provided for graduate teachers. It is submitted that, in view of the Government Resolution dated 28th April, 1989, the school of the petitioner was sanctioned 25% of the salary aid, and thereafter, 100% aid was sanctioned from June, 1994. As the petitioner did not possess the D.Ed. qualification, the answering respondent has accorded individual approval orders from 1st May, 1996. Thereafter, the petitioner has passed the D.Ed. qualification on 04.07.2003, as such, the answering respondent has made applicable the trained graduate teachers scale to the services of the petitioner with effect from 30.04.2004.

8] It is further submitted that, on 1st October, 2000, the Head Master of the School has submitted the proposal of one Shri D.M.Salunke for trained graduate teacher's pay scale, as he was possessing the B.Sc. D.Ed. qualification. Accordingly, graduate teacher's pay scale was granted to Shri D.M.Salunke with effect from 01.08.2000, vide letter dated 2nd December, 2008, subject to the completing B.Ed. course within 5 years. However, Shri D.M.Salunke did not complete B.Ed. course within 5 years, and therefore, vide letter dated 30th June, 2005, his graduate teachers pay scale was stayed. For completing B.Ed. course time was extended up to 7 years, however, he could not complete the B.Ed. course. Therefore, as the petitioner was eligible for the said benefit, the answering respondent has given the said benefit to the petitioner from 1st August, 2007. It is submitted that, the petitioner has sought trained graduate pay scale from the date of his initial appointment i.e. from 16th June, 1993, however, for the said primary school where the petitioner is serving, there is only one post is permissible from 25% quota provided for graduate teachers. The said benefit is already given to Shri D.M.Salunke by the answering respondent and in view of the Government Resolution, the answering

respondent can give the said benefit to only one employee in view of the teacher's strength of the school. It is submitted that, as the answering respondent has already given the pay scale of trained graduate teacher to Shri Salunke from 1st August, 2000 to 31st July, 2007, the said benefit cannot be given to the present petitioner at this stage, as he is not appointed from 25% quota provided for trained graduate teachers. It is submitted that, upon request of the petitioner, the Head Master of the School has submitted the application on 1st April, 2014 for review of the pay scale of graduate teachers. After verifying the same, the answering respondent vide letter dated 27th August, 2014, has inadvertently sanctioned the graduate pay scale with effect from 16th June, 1993 to 31st July, 2007, though the petitioner did not complete the D.Ed. course at the relevant time. When the said fact came to the notice to the answering respondent, the answering respondent vide letter dated 11th November, 2014 has cancelled the said order dated 28th August, 2014, thereby granting the trained graduate pay scale to the petitioner with effect from 16th June, 1993 to 31st July, 2007. At the cost of repetition, the learned counsel appearing for the respondent No.2 submits that, Shri Salunke was appointed from 25% quota provided

for graduate teacher. On his failure to complete B.Ed. course within 7 years, the answering respondent has stayed further pay scale of the said Salunke, and the same was given to the petitioner with effect from 1st August, 2007, and therefore, the petitioner is not entitled for the graduate teacher pay scale from 16th June, 1993 to 31st July, 2007. Therefore, the learned counsel appearing for the respondent No.2 submits that, Petition may be rejected.

9] The learned AGP appearing for the Respondent – State, adopted arguments advanced by the learned counsel appearing for the respondent No.2, and prayed for rejection of the Writ Petition.

10] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned AGP appearing for Respondent – State, and the learned counsel appearing for the Respondent No.2. With their able assistance, we have carefully perused the pleadings in the Petition, annexures thereto and the affidavit-in-reply filed by the respondent No.2. Upon perusal of the documents placed on record, it appears that, the petitioner was appointed on 16th June, 1993. At the relevant time, he was possessing B.A. B.Ed. qualification.

However, since at the relevant he was not possessing D.Ed. qualification and he acquired the said qualification on 31st March, 2003, his service with effect from 4th July, 2003 had been approved as trained primary teacher in D.Ed. scale by the respondent No.2. It appears from the affidavit-in-reply filed by the respondent No.2 that, Shri D.M.Salunke was appointed within 25% quota provided for the graduate teachers. However, he could not complete B.Ed. course within stipulated period, therefore, the petitioner is given appointment from 25% quota as provided under Government Resolution dated 11st November, 2011. It is true that, the said Government Resolution provides for 25% quota for the teachers, who are teaching in primary school, and who possesses B.A. and B.Sc. B.Ed., and do not possess D.Ed. qualification, and if such employee is already appointed from the date of his appointment, he should be treated as trained teacher, and accordingly, he / she should be paid pay scale meant for trained graduate teacher i.e. B.Ed. The relevant clause-A, for the purpose of deciding present Writ Petition, in the Government Resolution dated 11th November, 2011 issued by the School Education and Sports Department, Mantralaya, Mumbai, reads thus:

अ) प्राथमिक शाळेतील पदवीधर शिक्षकांच्या (25%) पदावर बी.ए. /बी.एस.सी. व बी.एड. अगोदर अर्हता धारण करून (डी.एड. ही अर्हता नसणारे)या पदावर शिक्षकाच्या नियुक्त्या केल्या असल्यास अशा शिक्षकांना नियुक्तीच्या दिनांकापासून प्रशिक्षित शिक्षक म्हणून समजण्यात यावे. त्यांना पदवीधर प्रशिक्षितांची (बी.एड.) वेतनश्रेणी देण्यात यावी.

Upon careful perusal of the afore-mentioned provisions in the Government Resolution, it is abundantly clear that, if the teacher possessing B.A. and B.Sc. B.Ed., if appointed from 25% quota available to the trained graduate teacher, serving in Primary School, he should be treated as trained teacher from the date of his appointment, and accordingly, he should be given pay scale of the trained teacher. In the present case, the petitioner was already appointed as an Assistant Teacher on 16.06.1993 in the pay scale of graduate primary teacher, as he was having B.A. B.Ed. qualification, is entitled for the benefit provided under afore-mentioned Government Resolution. However, it appears that, Shri D.M.Salunke was appointed from 25% quota provided for trained graduate teacher in the school of the petitioner. However, he could not complete B.Ed. course within stipulated period, his pay scale was withdrawn, and the petitioner being eligible to be

appointed from 25%, is given benefit of the afore mentioned Government Resolution, however, w.e.f. 1st August, 2007.

11] Upon careful perusal of the afore-mentioned clause-A of the said Government Resolution, it is abundantly clear that, the benefit extended by the said Government Resolution is with effect from the date of appointment, in case the teacher is appointed to teach in a primary school and possesses B.A. & B.Sc. B.Ed. qualification. Therefore, we have no hesitation to hold that, the petitioner should be treated as trained graduate teacher with effect from his appointment, and also entitled for the pay scale meant for trained graduate category. Therefore, the petitioner is entitled for the benefit of the said post with effect from his date of appointment. However, so far monetary benefits for the period from 1st August, 2000 to 31st July, 2007 is concerned, those are required to be given notional, and not actual monetary benefits, since for the said period Shri D.M.Salunke was appointed and as a matter of fact, he has availed monetary benefits available to the graduate teachers.

12] In the light of the discussion in the foregoing paragraphs, we are of the considered view that, the petitioner should be treated as trained graduate teacher with effect from his appointment and entitled for the pay scale meant for trained graduate teachers [B.A.] category. However, excluding monetary benefits, which are already drawn by Shri D.M.Salunke with effect from 1st August, 2000 to 31st July, 2007. However, for all other purposes, the petitioner should be treated as trained graduate teacher in relevant pay scale with effect from his date of appointment including continuity in service and all other benefits available.

13] The Petition is partly allowed. Rule made absolute on above terms. Petition stands disposed of.

Sd/-
[A.M.BADAR]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE