

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

WRIT PETITION NO. 1953 OF 2012

Shilpa Chintaman Talele
Age : 36 years, Occ : Service,
R/o C/o Choudhari Plot No.10,
Udyog Shakti Apartment,
Sutgirni Road, Garkheda,
Aurangabad.

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
School Education, Mantralaya,
Mumbai.
- 2] The Deputy Director of Education,
Aurangabad.
- 3] The Education Officer (Secondary),
Aurangabad.
- 4] Madhyavarti Marathwada Mahila
Shikshan Samiti Aurangabad Sanchalit
Proudh Mahila, Vidyalaya,
Through its Secretary
Smt. S.M. Murambikar
Age : 69 years,
R/o As above.
5. Madhyavarti Marathwada Mahila
Shikshan Samiti Aurangabad Sanchalit
Proudh Mahila, Vidyalaya,
Through its Head Mistress,
Smt. J.S. Khristi
Age : 56 years, R/o As above.

6. Shubhangi Raghudas Katkar
Age : 30 years, Occ : Service,
R/o Proudth Mahila Vidyalaya,
Samarthnagar, Aurangabad.

RESPONDENTS

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Ms. Mahajan Surekha P., Advocate for the petitioner.
Mr. D.V. Tele, A.G.P. for the Respondent/State.
Mr. A.S. Shelke, Advocate for Respondent Nos. 4 and 5.
Mr. N.T. Tribhuwan, Advocate for Respondent no.6.

**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 08.05.2015
Pronounced on: 08.06.2015

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

Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the respective parties, heard finally.

2. This Petition is filed seeking directions to Respondent Nos. 3 to 5 to appoint the petitioner on the post of graduate pay scale and also to grant arrears of trained graduate pay scale w.e.f. 6th November, 2006 at 8% interest thereupon. There is also prayer seeking

directions to hold an enquiry of Respondent No.5 – School.

3. The petitioner has stated detail facts, leading for filing the Petition, hence same are not repeated herein, as and when it is necessary, reference will be made to the relevant facts disclosed in the memo of Petition.

4. The main grievance of the petitioner is that, though she possesses educational qualification i.e. B.A. B.P. Ed., she is not granted trained graduate pay scale. Her initial appointment was on D.Ed. scale. There is also one another teacher Smt. Gadekar, who was appointed on D.Ed. scale. According to the petitioner, on 6th November, 2006, Smt. Shubhangi Raghuras Katkar was appointed as Shikshan Sevak, who is at Sr. No.7 in the seniority list, was drawing salary in the pay scale of Rs. 9,300 to 34,800/-, which is admissible to the post of trained graduate assistant teacher. The

petitioner though appointed in the year 1999, is not receiving the graduate pay scale, but said Smt. Katkar since beginning of her appointment, started receiving the pay scale admissible to the trained graduate assistant teacher. It is further the case of the petitioner that, inspite of number of applications filed and request was made to the respondents, she is not appointed in graduate pay scale, though she fulfills all the conditions/qualifications for appointment on the post of graduate pay scale.

5. Respondent Nos. 4 and 5 have filed their affidavit in reply denying the allegations in the Petition. It is stated that, Smt. Shubhangi Raghuras Katkar came to be appointed as Shikshan Sevika w.e.f. 6th November, 2006. She belongs to S.T. Category. The approval to her appointment was granted by the Education Officer on 25th January, 2007, for a period of three years. Her remuneration was fixed at Rs. 4,000/- per month for three years. However, inadvertently the

pay scale was mentioned as Rs. 9300-34800/- for a period of 2007-2009. It is stated in the affidavit in reply that, after completion of 12 years continuous service by the petitioner w.e.f. 19th July, 2011, the petitioner has been granted higher pay scale of Rs. 9300-34,800. It is further stated that, the petitioner's claim will be considered as and when there is vacancy of open category in future.

6. Respondent No.3 has also filed the affidavit in reply. It is stated that, Smt. Subhangi Raghuras Katkar, who is having qualification of B.A. B.P.Ed., was appointed on 6th November, 2006 as assistant teacher on the post created by vacancy and she was given pay scale of trained graduate teacher.

7. The petitioner has filed rejoinder affidavit repeating assertions made in the Petition that, though Smt. Katkar was appointed in the year 2006, she was being paid the pay scale of Rs. 9,300-34,800, and the

petitioner was not given graduate pay scale.

8. The petitioner has filed Civil Application No. 492/2015 in change circumstances, in as much as, one assistant teacher namely V.M. Patil, who was at Sr. No.3 in the seniority list, has tendered her resignation for voluntary retirement and said resignation is accepted by the management. Therefore, there is vacancy of the post of trained graduate assistant teacher in the year 2014, and the said vacancy can be filled in by appointing the petitioner. After filing of Civil Application, Respondent Nos. 4 and 5 have filed their additional affidavit in reply on 10th April, 2015. Para 2 of the said reply reads thus :-

“I say and submit that, on account of vacancy of post of Assistant Teacher, due to voluntary retirement of Smt. V.M. Patil, the next senior most teacher i.e. Smt.Vimal C. Randhe can be upgraded to the vacant post. The petitioner can be upgraded on the post held by Smt. V.C. Randhe and the respondent No.5 can be

accommodated / absorbed on the post held by the petitioner. As such, the grievance of the petitioner regarding promotion to the post of trained graduate scale can be redressed. Considering these facts, letter dated 26/03/2015 (Exh.AR-2) was addressed to the Education Officer (Secondary), Zilla Parishad, Aurangabad soliciting guidance.”.

9. By order dated 10th April, 2014, the Education Officer (Secondary), Zilla Parishad, Aurangabad was directed to file his response on or before 18th April, 2015. Accordingly, Respondent No.3 has filed his affidavit in reply. In para 5 of the said affidavit in reply, it is stated that, according to the staffing pattern sanctioned for respondent no.5 school until the academic year 2012-13, apart from the post of Headmistress, 4 posts of trained graduate teachers were available in the school. However, in the academic year 2013-14, one post of trained graduate teacher was rendered surplus due to reduction in the strength of students. Therefore, apart from the post of

Headmistress, only 3 posts for trained graduate teachers are now available in respondent no.5 school and the said posts are occupied by Smt. Shingankar S.N., Smt. Vimal Chandrabhan Randhe and Smt. Shubhangi Raghuram Katkar. Therefore, presently, there is no vacant post of trained graduate teacher available in respondent no.5 school.

10. The learned counsel appearing for the petitioner invited our attention to the copy of Schedule 'A' annexed with the affidavit in reply filed by Respondent No.3, and in particular relevant column, showing the strength of the students available for the academic year 2012-2013, and 2013-2014 in Respondent Nos. 4 and 5 school, and submits that, in the academic year 2012-2013, in all there were 147 students. In the academic year 2013-2014 in all there were 149 students, and therefore, there was no reduction in strength of students. It is submitted that, Respondent No.3 has not properly considered the fact

that, the strength of the students is not reduced in the academic year 2013-2014, and therefore, the statement in the affidavit in reply that, in the academic year 2013-2014, one post of trained graduate teacher was rendered surplus due to reduction in the strength of students, is contrary to the record maintained by the office of the Education Officer, as it is apparent from the perusal of the Schedule 'A' annexed at Page 93, along with the affidavit in reply filed by Respondent No.3 in response to the order passed by this Court on 10th April, 2015. Therefore, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

11. The learned counsel appearing for Respondent Nos. 4 and 5, invited our attention to para 2 of the additional affidavit in reply filed on 10th April, 2015 and submits that, there is vacant post of assistant teacher, due to voluntary retirement of Smt. V.M. Patil and the next senior most teacher i.e. Smt. Vimal C. Randhe can be upgraded to the vacant post

and the petitioner can be upgraded on the post held by Smt. V.C. Randhe and respondent no.5 can be accommodated/absorbed on the post held by the petitioner.

12. The learned Additional Government Pleader appearing for the respondent – Education Officer tried to justify the statement in para 5 of the affidavit in reply that, due to reduction of the strength of the students, one post of trained graduate teacher was rendered surplus.

13. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the Respondent/State, the learned counsel appearing for Respondent Nos. 4 and 5 and also the learned counsel appearing for the Respondent No.6, and we are of the considered view that, there is no question of declaring one post of teacher surplus. The Education Officer is

not correct in his submission that, there is reduction of strength of the students during the academic year 2013-2014 compared to academic year 2012-2013. Upon careful perusal of the copy of Schedule 'A' (annexed with reply of the Education Officer, and in particular column showing number of divisions sanctioned and students available, it is abundantly clear that, for the academic year 2012-2013, the total strength of the students is shown as 147, and for the academic year 2013-2014, the total strength of student is shown as 149. Therefore Respondent no.3 is not correct in submitting that, one post of trained graduate teacher is rendered surplus due to reduction in the strength of students in the academic year 2013-2014. The statement made in para 5 of the affidavit in reply runs contrary to the information placed on record in Schedule – A, which is at page 98 along with affidavit in reply. There is no document placed on record showing the order passed by the Education Officer, declaring one post of trained graduate teacher surplus due to

reduction in the strength of students.

14. In that view of the matter, we direct the Education Officer (Secondary), Zilla Parishad, Aurangabad to consider the averments in the Civil Application filed by the petitioner, in the light of additional affidavit in reply filed by Respondent Nos. 4 and 5 on 10th April, 2015 and in particular para 2 thereof and take decision in respect of appointment of the petitioner on the post of trained graduate pay scale, as expeditiously as possible, preferably within four weeks from today, and communicate the said decision to the petitioner and respondent nos. 4 and 5. Rule made absolute in above terms.

15. The Writ Petition is disposed of accordingly.

Sd/-

(P.R. BORA, J.)

Sd/-

(S.S.SHINDE,J.)

sga/-