

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

WRIT PETITION NO. 3416 OF 2014

Gajanan Ashok Surwade,
Age: 39 years, Occu: Nil,
R/o. At post Dahigaon,
Tq. Yawal, Dist. Jalgaon.

...Petitioner

versus

1. The State of Maharashtra,
Through Education Officer (Secondary),
Zilla Parishad, Jalgaon.

2. Hitsanvardhan Lok Seva Mandal,
At post Nhavi, Tal. Yawal,
Dist. Jalgaon,
Through its President.

3. Sharada Madyamik Vidyalaya,
At post Nhavi, Tal. Yawal,
Dist. Jalgaon,
Through its Head Master.

...Respondents

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Ms. Surekha Mahajan, Advocate for petitioner.
Mr. S. K. Tambe, A. G. P. for respondent/State.
Mr. R. R. Bangar, Advocate for respondent No. 2.
Mr. V. V. Deshmukh, Advocate for respondent No. 3.

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CORAM : N.W. SAMBRE, J.

DATE : 11TH MARCH, 2015

ORAL ORDER :

. The order impugned dated 05/03/2014 passed in Appeal
No. 29 of 2010 by the Presiding Officer, School Tribunal, Nashik

Division, Nashik at the behest of present petitioner for setting aside oral termination dated 14/06/2010, is subject matter of the present petition.

2. Learned Counsel for the petitioner would urge that, the appeal against oral termination came to be dismissed by holding that, the petitioner is not holding appropriate qualification.

3. It is not in dispute that, the petitioner holds B.A B.Ed. qualification and was appointed by the respondent-management, as a 'Shikshan Sevak', by passing resolution on 30/03/2003 for the period from 01/10/2003 to 30/03/2006. It is also required to be noted that, present petitioner remained in employment on the said post from the date of appointment till the date of oral termination and there was approval granted by Education Officer from time to time as 'Shikshan Sevak'.

4. In the background of above referred factual matrix, Ms. Mahajan, learned Counsel for the petitioner relying upon the judgment of this Court in the matter of **Abdul Jamey s/o Abdul Salam vs. State of Maharashtra and ors.** reported in **2013(1) Mh.L.J. 319** would urge that, the qualification with which the petitioner holds i.e. B.A.B.Ed., has to be taken as appropriate

qualification for the post of 'Shikshan Sevak' and then 'Assistant Teacher'. According to her, the judgment rendered by the Tribunal is ignorance by law laid down by this Court in the matter of **Abdul Jamey s/o Abdul Salam** (supra).

5. In response to the notice ordered in the present petition, the Education Officer has filed his affidavit in reply and in paragraph No. 6 has stated thus :

“ 6. I say and submit that, as per the staff approval of year 2013-14 there are total 9.5 posts are approved. I say that, out of that, one post is approved as Head Master and 7.5 posts are approved as a trained graduate teacher and only one post of D.Ed pay scale approved. I say that, as per staff approval of 2013-14 6 trained graduate teachers have been granted approval as a trained graduate teacher and in view of that, one post of trained graduate is vacant in view of new staffing pattern. I say that, in view of that, the claim of the Petitioner can be considered for the post of trained graduate teacher subject to submission of the proposal by the Respondent management as per the M.E.P.S. Act and Rules. Hereto annexed and marked as **EXHIBIT-R-1** is the copy of staff approval for the year 2013-14.”

6. Learned A. G. P. for respondent No. 1 i.e. Education Officer, has urged that, the claim of the petitioner can be considered

for the post of trained graduate teacher subject to submission of proposal by respondent-management as per M.E.P.S. Act and Rules framed thereunder.

7. Respondent-Management has tendered its affidavit in reply and in paragraph No. 3 of the same, has submitted that, the petitioner was working as untrained teacher at the relevant time and in view of the reply filed by the Education Officer, the respondent-management is ready to accommodate the petitioner on the post of trained graduate teacher as the petitioner holds appropriate qualification. Paragraph No. 3 of the said affidavit in reply reads thus :

“ 3. I say and submit that, it is undisputed fact that the present petitioner is working in the school as an untrained teacher. As per the statement of the respondent No. 1 in para no. 6 of the reply the present answering respondent management is ready to accommodate the petitioner on the post of trained graduate teacher as the petitioner having required qualification of B.A.B.Ed. And also ready to submit the proposal of the petitioner as per the M.E.P.S. Act and Rules to the respondent No. 1.”

8. In view thereof, the order passed by learned School Tribunal, in my opinion, is not sustainable and is liable to be

quashed and set aside. The oral termination of the petitioner dated 14/06/2010, as such, is set aside by setting aside the order of School Tribunal, passed in Appeal No. 29 of 2010. The respondent-management shall take steps in accordance with the narration made by it in paragraph No. 3 of its affidavit mentioned herein above and the Education Officer shall also require to consider the said proposal forwarded by the Management considering the claim of the present petitioner as holding appropriate qualification from trained graduate teacher category.

9. So far as the entitlement of the petitioner of placement in the said category and monetary benefits thereof, shall also to be looked into by the Education Officer, who shall pass reasoned order, if required after hearing the petitioner and Management. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]