

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

WRIT PETITION NO. 8099 OF 2009

Pandharinath Prabhanna Aspatwar .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri R. J. Godbole, Advocate for the Petitioner

Smt. Y. M. Kshrisagar, A. G. P. for the Respondent Nos. 1 to 3

Shri V. D. Gunale, Advocate for the Respondent Nos. 4 and 5

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 13TH APRIL, 2015.

PER COURT :

1) Mr. Godbole the learned counsel submits that, the petitioner is entitled for Trained Graduate Teacher's Pay Scale from the year, 1994. The petitioner is granted the same from the year, 2003. There is no reason to deny the pay scale of a Trained Graduate Teacher to the petitioner from 1994. Petitioner was the only Trained Graduate Teacher in the year, 1994 duly appointed by following selection process. The petitioner possessed the

qualification of B.A. B.Ed. since the date of his initial appointment that is 1994. Even the post advertised was meant for the same. The learned counsel submits that, the Management has even forwarded the proposal for grant of Trained Graduate Teacher's Pay Scale keeping in mind the position of the post available for Trained Graduate Teachers Pay Scale. The school is meant for students from standard 1st to Standard 10th. Even initially if the school is presumed to be primary school to which 5th to 7th Standard are attached. Still in view of the Judgment of the Apex Court in a case of **State of Maharashtra and Others V/s Tukaram Tryambak Chaudhari and others** reported in **2007 (2) B. C. R. 748**, 25% post are meant for B.A. B.Ed. pay scale. To show the bonafides the petitioner has filed an undertaking to this Court stating that, petitioner would not claim past benefits that is arrears of salary as per the pay scale of Trained Graduate Teacher and also would not claim seniority to all those persons in the seniority list as on today.

2) Mr. Gunale the learned counsel for the respondents submits that as per the availability of the post, the proposal was submitted for grant of Trained Graduate Teacher Pay Scale to the petitioner. However, as the Education Officer rejected the

said proposal the Management can not extend the said benefit.

3) We have heard the learned A. G. P. also for the Respondent No. 3, who submits that, the post was not available so also the parties would be governed by the terms of the appointment order. The order is rightly passed.

4) It appears that, there is no dispute amongst the Management and the petitioner about the availability of the posts for Trained Graduate Teacher on the date petitioner was appointed. Appointment for Standard 8th to Standard 10th is always subject wise. The petitioner was appointed for subject History as per the advertisement by following due selection process. There appears to be merit in the contention of the petitioner that at the relevant time when petitioner was appointed, he was having qualification of a Trained Graduate Teacher and also about the availability of the post. The petitioner has filed undertaking to this Court stating that, if the petitioner is granted Trained Graduate Teacher's Pay Scale from 01.07.1994 then the petitioner would not claim the past arrears of the said benefit and also would not claim seniority to those persons who are shown as senior in the seniority list as on today.

- 5) Considering the above we pass the following order -

ORDER

A] The respondents shall consider the petitioner as a teacher in the Trained Graduate Teacher's Pay Scale from 01st July, 1994 and the petitioner be given further monetary benefit from the date of this order considering him to be in Trained Graduate Pay Scale from 01st July, 1994. However, the petitioner shall not be eligible for the monetary arrears

B] The petitioner also shall not be entitled to the seniority as against those persons who are already shown as senior to the petitioner in the seniority list as on today, in view of the undertaking filed by the petitioner which is accepted and marked "X" for identification

C] The respondent Education Officer shall accordingly grant approval to the petitioner in tune with the order passed by this Court.

- 6) Writ Petition accordingly disposed of. No costs.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]