

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

WRIT PETITION NO.5997 of 2014

Sunil s/o Kisanrao Jadhav
Age :- 39 years, Occ.: Service as
Assistant Teacher,
R/o Kewla Naik Tanda,
Tq.Kandhar, District Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Department of School Education,
Mantralaya, Mumbai - 32.
2. The Education Officer (Primary),
Zilla Parishad, Nanded.
3. Headmaster,
Primary School,
Kewla Naik Tanda
Run by Shivaji Education Society
Kandhar, Tq. Kandhar, Dist. Nanded.

...RESPONDENTS

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Shri S.R.Choukidar, Advocate of Petitioner;
Shri V.S.Badakh, AGP for Respondent / State;
Mr. V.s.Panpatte, Advocate for Respondent No.3.

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

Date : 17th December, 2015.

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JUDGMENT : (PER P.R.BORA, J.)

1) Heard. Rule. Rule made returnable and heard forthwith with the consent of the parties.

2) The Petitioner has filed the present writ petition seeking the following relief:

(B) By issuance of appropriate writ or direction, the respondent No.2 – Education Officer may be directed to extend to the petitioner the benefit of trained Teacher's pay scale from the date of his appointment i.e. 05/07/1996 and pay to the petitioner salary in the pay scale applicable to the trained Teacher, on regular basis and pay to the petitioner arrears from the date of receipt of grants and extend to him all the benefits of trained teacher from the date of appointment for all purposes.

3) It is the case of the petitioner that, though from the date of his appointment he was holding the qualification of the B.A.B.P.Ed. Merely because he was not holding the qualification of the D.Ed. , he was treated as untrained teacher and hence was not provided the salary of trained teacher till the date of his acquiring the qualification of D.Ed. The Petitioner has therefore prayed for extending all the benefits of the trained teacher from the date of his appointment for all purposes.

4) Shri Eknath Watuji Madavi, the Education Officer (Primary), Zilla Parishad, Nanded has filed an affidavit of reply on behalf of respondent No.2. Respondent No.2 has opposed

the contentions raised in the petition and the prayers made therein on the ground that, the petitioner was holding the qualification of B.P.Ed. and not B.Ed. so as to treat him a trained teacher. It is further contended that from 05.07.1996 till 05.06.2005 i.e. till the petitioner acquires the qualification of D.Ed., he was rightly treated as untrained Assistant Teacher. The respondent No.2 has therefore prayed for dismissal of the petition.

5) Shri Choukidar, learned Counsel appearing for the petitioner has placed his reliance on the judgment of the Hon'ble Apex Court in the case of **State of Maharashtra and ors. vs. Tukaram Trimbak Choudhary and ors.** The learned Counsel also relied upon the judgment delivered by the learned Division Bench of this Court in Writ Petition No.478/2011 in the case of **Ramrao Jaimal Bacchav and ors. vs. The State of Maharashtra and ors.** delivered on 11.10.2012.

6) We have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. We have also perused the documents filed on record. It is not in dispute that, the petitioner was appointed as Assistant Teacher in the respondent No.3 – School with effect from 05.07.1996. It is also not in dispute that, on the date of his appointment, the petitioner was holding the qualification of B.A. B.P.Ed.. In the petition, the petitioner has stated his qualification as H.Sc. D.Ed and B.P.Ed, however, by filing further affidavit in support of the petition, the petitioner clarified that he was holding the qualification of B.A. B.P.Ed on the date of his appointment. Petitioner has also placed on record his B.A. and B.P.Ed. certificate. Moreover, as stated

earlier, this fact has not been disputed by the respondent. It is further not in dispute that, the petitioner acquired the qualification of D.Ed. in the year 2005. The approval letter filed on record by the petitioner at Exhibit 'D' under the signature of Education Officer (Primary), Zilla Parishad, Nanded reveals that, the appointment of the petitioner was approved on non grant basis for the period in between 05.07.1996 till 30.11.2002; from 01.12.2002 to 05.06.2005 on partly grant basis as an untrained Assistant Teacher and from 06.06.2005 as a trained Assistant Teacher in the pay scale of 1500-7000.

7) Considering the undisputed facts as enumerated in the above paras, we find that the case of the present petitioner is squarely covered by the judgment of the Hon'ble Apex Court in the case of **Tukaram and ors.** (cited supra) and unreported judgment of the Division Bench of this Court in the case of **Ramrao and ors.** (cited supra).

8) In the case of **Tukaram and ors**, the petitioners were all graduate teachers having B.Ed. qualification and they had been appointed to teach in primary school conducting classes up to the 7th standard. In most of the cases, approval was granted for their appointment as trained teachers. Subsequently, however they were informed that they would be treated as untrained teachers and would be paid their salaries accordingly. The said petitioners challenged the said decision by filing the writ petition before this Court, which was allowed by the Division Bench of this Court, and the petitioners were held eligible and qualified to continue to receive their salaries as trained teachers from the date on which they were appointed

along with all consequential benefits.

9) The aforesaid Division Bench judgment was challenged by the State before the Hon'ble Apex Court. The Hon'ble Apex Court did not interfere in the decision rendered by the Division Bench of the High Court and dismissed the appeal.

10) The facts involved in the case of **Ramrao and ors.** are also identical to the facts of the present case. In the aforesaid case of **Ramrao and ors.**, the petitioners were primary teachers working in Ashram Schools having classes from 1st to 7th standards, and all those petitioners were selected and appointed as Assistant Teachers since they were possessing B.A.B.P.Ed. qualification. Initially, all those petitioners were being paid in the pay scale for trained graduate teachers, however, subsequently they were directed to be treated as untrained teachers since they were not possessing D.Ed. qualification. The learned Division Bench of this Court relying upon the judgment of the Hon'ble Apex Court in the Case of **Tukaram and ors.**, and the earlier Division Bench Judgment of this Court in the matter of **Govind Narayan Gunjal** (Writ Petition No.6437/2007 and connected writ petitions, decided on 12.03.2008) allowed the writ petition by holding that, the petitioners entitled to be paid trained primary teacher's pay scale.

11) We, reiterate that, the facts involved in the preset case are identical to the facts in the cases *cited supra*. As such, the decisions rendered in the aforesaid cases will be squarely

applicable to the facts of the present case. Moreover, the petitioner has also placed reliance on the Government Resolution dated 11.11.2011, wherein in para (B), it has been prescribed that teachers holding trained graduate qualification are entitled to be paid trained teacher's (D.Ed.) pay scale (Rs.5200 to Rs. 20200 + Grade pay Rs.2800). It is also recorded in the said Government Resolution that such of the teachers are entitled to be paid trained primary teacher's pay scale from the date of their appointment.

12) In view of the above, the writ petition deserves to be allowed, and hence the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The respondents are directed to extend to the petitioner the benefit of trained teacher's pay scale from the date of his appointment i.e. 05.07.1996 and pay to the petitioner, the salary applicable to the trained teacher on regular basis and pay to the petitioner the arrears from the date of receipt of the grants and extend to him all benefits of trained teacher from the date of his appointment for all purposes.
- (iii) Rule is made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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S.P.Rane