

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9361 OF 2013
(Arvind Nivrati Bhise Vs. The State of Maharashtra and others)

Mr.K.N.Farooqui h/f Mr.R.E.Khillare, Advocate for the petitioner.
Mr.P.N.Kutti, AGP for respondent Nos. 1 to 4.
Respondent Nos.5 and 6 served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/09/2016

PER COURT :

1. The petitioner is aggrieved by the order dated 23/07/2012 delivered by respondent No.3 by which his Appeal No.74/2008 has been rejected.

2. The petitioner submits that he was appointed on 18/06/1997 as an "Assistant Teacher" in the Shivaji Adiwasi Ashram School. He was terminated on 14/06/2004. He applied for postal D.Ed.course on 05/10/2004. He acquired postal D.Ed. qualification on 30/12/2009.

3. The petitioner points out that the order dated 17/12/2005 passed by the concerned Tribal Development Commissionerate, has led to the cancellation of his appointment by placing reliance upon

the GR dated 06/12/2005. He submits that the department should have relied upon the subsequent GR dated 25/09/2006 by which the service of the petitioner would be protected. He, therefore, submits that the impugned order dated 23/07/2012, rejecting his appeal deserves to be quashed and set aside.

4. The learned AGP appearing on behalf of respondent Nos. 1 to 4 supports the impugned order. None present for respondent Nos. 5 and 6.

5. I have considered the submissions of the learned Advocates. There is no dispute as regards the dates and events recorded hereinabove. Issue is as to whether the appointment of the petitioner was legal and whether he could be termed to be a trained teacher so as to protect his service and thereby except his prayer for reinstatement in employment.

6. The School Education Department had issued a circular dated 13/10/2000 which was accepted by the Tribal Development Department on 03/10/2002. It was provided that if the trained candidate for appointment as an "Assistant Teacher" is not available as regards the posts reserved for the backward classes, the

concerned Authorities shall call for necessary information from the Employment Exchange, the District Social Welfare Officer and the Tribal Development Department as to whether any eligible candidate from the reserved category is available. If no such candidate is available, an untrained candidate could be appointed only on year to year basis. The said exercise has to be performed every year while making the temporary appointment in the event the candidate is not available.

7. It is further provided that if an untrained candidate is appointed continuously for 3 years, he should be permitted to continue on the condition that he would acquire the requisite qualification of a trained teacher within 3 years thereafter.

8. There is no dispute that the petitioner was appointed on 18/06/1997 and continued as an untrained Assistant Teacher on temporary basis for 3 years. He was therefore expected to acquire his D.Ed qualification in between 2000-2001 till 2003-2004 in a period of 3 years.⁸ It is admitted that the petitioner completed his D.Ed. on 30/12/2009. His termination, therefore, does not appear to be improper.

9. Grievance of the petitioner is that he is covered by clause 1-A of the GR dated 25/09/2006. It cannot be ignored that there were about 1433 such untrained teachers who were appointed in such schools. The State Government decided to regularize the services of 599 teachers as a special case. Out of the remaining 373 trained teachers, 357 were found to be eligible. By the GR dated 25/09/2006, services of such 357 trained teachers were approved.

10. It is not disputed that the petitioner does not figure in the said list of 357 trained teachers and obviously because he acquired his D.Ed. qualification in 2009. I am, therefore, of the view that the said GR dated 25/09/2006 does not protect the services of the petitioner.

11. In the light of the above, the impugned order dated 23/07/2012 is neither perverse nor erroneous. This petition, being devoid of merit, is therefore dismissed.

(RAVINDRA V. GHUGE, J.)