

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

WRIT PETITION NO.4278 OF 2016

Dnyaneshwar s/o. Dattatraya
Naladkar, Age : 56 years,
Occu. Service as Assistant Teacher,
r/o. C/o. Shri Jemla Naik Primary
Ashram School, at Saknur Tanda,
Post Barhali, Tq. Mukhed,
Dist. Nanded

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 32
2. The Regional Deputy Commissioner,
Social Welfare, Latur Division,
Latur
3. The Assistant Commissioner,
Social Welfare Department,
Nanded
4. Shri Jemla Naik Primary Ashram
School, Saknur Tanda,
Post Barhali, Tq. Mukhed,
Dist. Nanded
Through its Head Master

..Respondents

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Mr.A.V.Patil (Indrale), Advocate for petitioners

Mr.A.A.Jagatkar AGP for respondent nos.1 to 3

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**CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.
DATE : DECEMBER 06, 2016**

ORAL JUDGMENT :

Heard.

2. Rule. Rule made returnable forthwith.
With consent of the parties, the petition is taken up for final hearing at admission stage.

3. By this petition, the petitioner is questioning legality and validity of the communication dated 27.06.2013 issued by the Assistant Commissioner, Social Welfare, Nanded rejecting the proposal of the petitioner for grant of time bound higher pay scale upon completion of twelve years continuous service as trained Graduate Teacher.

4. The petitioner contends that he possesses qualification of M.Com, B.Ed. and was appointed as trained Graduate Teacher on 22.06.1998. Initially, he was put on probation for two years in the pay

scale of Rs.1400-2600. On completion of probation period, the services of petitioner have been confirmed and the petitioner has been granted revision of the pay scale of Rs.5500-9000 of the post of trained Graduate Teacher. It is contended that in the year 2004, the petitioner has also acquired D.Ed. qualification. The petitioner contends that he is discharging functions of trained Graduate Teacher from the date of appointment i.e. 22.06.1998. He has completed twelve years service in the year 2010 and as such, as per the policy prescribed by the Government, he is entitled to claim benefits of the higher pay scale.

5. The request made by the petitioner has been turned down by the Assistant Commissioner, Social Welfare, Nanded on the ground that the petitioner has not completed continuous service as a trained Graduate Teacher for a period twelve years.

6. The Reasons recorded for turning down the proposal appears to be erroneous on the face of record. On perusal of the staff approval order dated 21.06.1999, it appears that there was vacancy of a trained Graduate Teacher in the year 1999 and that the petitioner has been appointed as against the said vacancy. The order of approval accorded by the Special District Social Welfare Officer, Nanded on 29.10.2002 records the pay scale admissible to the petitioner as Rs.5500-9000 i.e. the pay scale prescribed for a trained Graduate Teacher. The petitioner is drawing the pay scale prescribed for a trained Graduate Teacher from the date of his appointment. Therefore, there shall be no controversy as regards the acquisition of qualification by the petitioner since he holds the degrees of Master in Commerce and Bachelor of Education on the date of appointment.

7. As per the policy prescribed by the State Government, 25% posts out of the total available posts can be permitted to be filled in from amongst the trained Graduate Teachers. The petitioner claims that he fulfills the condition of qualification for being treated as a trained Graduate Teacher and hence, he is entitled to be included in 25% posts which carry the pay scale of trained Graduate Teacher.

8. Our attention is invited to the judgment in the case of **State of Maharashtra and ors. Vs. Tukaram Trymbak Chaudhari and ors., 2007(2) All.M.R.(SC)933**. In paragraph 17 of the judgment, the Supreme Court has observed thus :-

"17. We have carefully considered the submissions made on behalf of the respective parties. Having particular regard to the fact that though standards 5 to 7 were attached to both primary schools as well as secondary schools, these classes in

fact, represented the middle schools for which different standards were being followed. Conscious of such disparity in respect of teachers who are similarly situated but were treated differently on account of their being attached to primary schools and/or secondary schools, the State Government resolved to eliminate such differences and to make provisions for trained graduate teachers to be upgraded to a higher scale to the extent of 25% of the posts. The said Resolution consciously refers to in service graduate primary teachers who were eligible for appointment to the posts in the increased pay-scale. In fact, one of the conditions for appointment of in service graduate primary teachers to the converted post carrying the higher pay-scale was that such teacher should have obtained a degree in Arts or Science and had also obtained a degree in education namely, B.Ed. While adopting the aforesaid Resolution,

the Government was, therefore, fully aware of the fact there were graduate teachers teaching in standards 5 to 7 in the primary schools. This fact was also referred to by the Division Bench of the High Court in its judgment under appeal. It has been mentioned that one of the contentions raised on behalf of writ petitioners was that in terms of Government Resolution dated 26th October, 1982, the petitioners were entitled to be appointed and continued as trained teachers in B.Ed. scale."

The policy formulated by the State Government of earmarking 25% for trained Graduate Teachers in the schools imparting education from 5th to 7th standards has been upheld by the Supreme Court.

9. In view of the reasons recorded above, we are of the considered opinion that respondent no.3 - Assistant Commissioner, Social Welfare Department, Nanded has committed error while

issuing the impugned communication turning down the proposal tendered by the Institution seeking approval for grant of higher pay scale in favour of the petitioner. The impugned communication appears to have been passed without consideration of record of the case and as such, deserves to be quashed and set aside and the same is accordingly, quashed and aside. The proposal submitted by the Institution for approval for granting higher pay scale to the petitioner on completion of twelve years of service, shall be deemed to have been granted. The monetary benefits accruable to the petitioner shall be released within a period of four months from today.

10. Rule made absolute accordingly. There shall be no order as to costs.

Sd/-
[SANGITRAO S. PATIL, J.]

Sd/-
[R.M. BORDE, J.]