

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

WRIT PETITION NO.6355 of 2014

1. Ganesh s/o Pundlikrao Kawarkhe
Age : 44 years, Occu: Service
2. Vasanta S/o Narayan Wakudkar
Age: 44 years, Occu: Service,

Both R/o Sant Namdeo Aided
Tribal Ashram School,
Jambhroon Andh,
Tq. & Dist. Hingoli.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
2. The Commissioner,
Tribal Development, Nashik.
3. The Additional Commissioner,
Tribal Development, Amravati.
4. The Project Officer,
Integrated Tribal Development Project,
Kinwat, Dist. Nanded.
5. The Project Officer,
Integrated Tribal Development Project,
Kalamnuri, Dist. Hingoli.

...RESPONDENTS

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Shri Vijay A. Dhakne, Advocate of Petitioners;
Shri A.V. Deshmukh, AGP for Respondent / State;

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

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Date of reserving the judgment : 23rd December, 2015
Date of pronouncing the judgment: 04th February, 2016

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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 Petitioners have filed the present writ petition seeking the following reliefs:

(B) To direct the respondent no.3 to grant the pay scale of trained primary teacher to the petitioners from the date of their initial appointments and to pay the arrears of the salaries of the petitioners on account of difference of salary between a trained primary teacher and untrained primary teacher from the date of their initial appointments till the date on which the petitioners were granted the pay scale of trained primary teacher with all other consequential benefits, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

(C) To quash and set aside the impugned order dated 4.03.2014 passed by the respondent no.3 refusing to grant the pay scale of trained

primary teacher to the petitioners from the date of their initial appointments with the arrears of the salary, by issuing a writ of Certiorari or any other appropriate writ, order or direction as the case may be.

3) It is the case of the petitioners that, though from the date of their appointment both of them were holding the qualification of B.A.B.P.Ed, merely because they were not holding the qualification of D.Ed., they were treated as untrained teachers, and hence were not provided with the salary of trained teacher till the date of their acquiring the qualification of D.Ed. It is the further contention of the petitioners that, though the proposals were submitted to respondent No.3 seeking approval to grant the trained teacher's pay scale to the petitioners from the date of their initial appointment, the same was turned down by respondent No.3 vide his order dated 04.03.2014. The Petitioners have therefore prayed for quashment of the said order dated 04.03.2016 passed by respondent No.3 and have further prayed for extending the pay scale as well as all consequential benefits of the trained teacher from the date of their appointment for all purposes.

4) Shri Ashok Maruti Atram, the Additional Tribal Commissioner, Tribal Development, Amravati Division has filed the affidavit in reply on behalf of respondent Nos. 1 to 3. Respondents have opposed the contentions raised in the petition

and the prayers made therein on the ground that, the petitioners were holding the qualification of B.P.Ed. and not B.Ed., and further that at the relevant time they were also not holding the qualification of D.Ed. It is further contended that, petitioners cannot seek the benefit of the Government Resolution dated 11.11.2011 for the reason that, the said Government Resolution is not made applicable to the employees working under the Tribal Development Department.

5) In support of the contentions raised in the petition, Shri Dhakne, learned Counsel appearing for the petitioner has placed 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., reported in 2007 AIR SCW 1321**. The learned Counsel has also relied upon the judgment of the Division Bench of this Court in Writ Petition No.6096/2010 in the case of **Ramrao Nagnathrao Kendre vs. The State of Maharashtra and ors.** decided 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, on the date of their initial appointment both the petitioners were holding the qualification of B.A.B.P.Ed. Petitioner No.1 was appointed on 01.07.1994, whereas petitioner

No.2 entered into services with effect from 18.08.1996 as an Assistant Primary Teacher. The Petitioners have filed on record their respective appointment orders. Petitioners have also placed on record the copies of the approvals granted to their appointments time to time. It is further not in dispute that, the petitioners acquired the D.Ed qualification in the year 2002, and thereafter, the pay scale for the trained teacher was made applicable to them.

7) Considering the undisputed facts as enumerated in the above para, we find that 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 Kendre and ors.** (cited supra) would squarely apply to the case of the present petitioners.

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. However, subsequently they were informed that they would be treated as untrained teachers and would be paid their salaries accordingly since they were not holding the qualification of D.Ed. 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 Kendre and ors.** (cited supra) are also similar to the facts of the present case. Petitioner in the said case was also working as a primary teacher in primary school to which 5th to 10th standards were attached. The said petitioner was also possessing B.A.B.P.Ed. qualification, however, approval to his appointment was granted as an untrained teacher. The said petitioner approached this Court by filing the aforesaid writ petition, which came to be allowed and the Division Bench of this Court relying on the judgment in the case of **Tukaram and Ors.** (cited supra) held the said petitioner entitled to be considered as a trained primary teacher from the date of his initial appointment.

11) We reiterate that, the facts involved in the preset case are similar to the facts in the cases *cited supra*, and as

such, the decisions rendered in the aforesaid cases would squarely apply to the facts of the present case. Moreover, the petitioners have also placed on record the Government Resolution dated 11.11.2011, in para (B) of which 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 fact that, the Division Bench of this Court has held the petitioner in writ petition No.6096/2010, entitled to the trained teacher's (D.Ed.) pay scale from the date of his appointment, who was holding the qualification as B.A., B.P.Ed. and was working under the Tribal Development Department, both the objections raised by the respondents; first that at the relevant time the petitioners were holding the qualification as B.P.Ed. and not B.Ed., and the other that Government Resolution dated 11.11.2011 has not been made applicable to the Tribal Development Department, would not sustain. Moreover, the petitioners have also placed on record the order dated 17.03.2011 passed by respondent No.3, whereby the trained teacher's pay scale has been made applicable to the primary teachers who are working under the Tribal Development

Department and who were holding only B.A., B.P.Ed. qualification on the date of their appointment. 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 order dated 04.03.2014 passed by the respondent No.3 is quashed and set aside.
- (iii) The respondents are directed to grant the pay scale of trained primary teacher (D.Ed) to the petitioners from the date of their initial appointment and to pay the arrears of salary of the petitioners on account of difference of salary from the date of their initial appointment till the date on which the petitioners were granted the pay scale of trained primary teacher (D.Ed.) with all other consequential benefits, as expeditiously as possible and preferably within the period of six months from the date of this order.
- (iii) Rule is made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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SPR

