

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

WRIT PETITION NO.7178 OF 2015

Ashok s/o. Venkatrao Bajgir,
Age 48 Years, Occu : Service,
R/o. Mojmad Tanda, Tq. Palam,
Dist. Parbhani.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai-32.
[Copy to be served on G.P.
High Court of Bombay Bench
at Aurangabad]
- 2] The Divisional Deputy Commissioner,
Aurangabad Division, Aurangabad.
- 3] The Assistant Commissioner,
Social Welfare Department,
Parbhani, Tq. and Dist. Parbhani
- 4] Jaibhavani Prathamik Ashram School,
Mojmad Tanda, Tq. Palam,
District: Parbhani,
Through its Headmaster.

RESPONDENTS

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Mr.A.D.Pawar, Advocate for the petitioner
Mr.S.D.Kaldate, AGP for Respondent Nos.1 to 3
Mr.C.T.Jadhav, Advocate for Respondent No.4.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Reserved on : 09.06.2016
Pronounced on : 14.06.2016

JUDGMENT: [Per S.S.Shinde, J.]:

The learned counsel appearing for the petitioner has tendered across the Bar Government Resolution dated 28th April, 2014, issued by the Social Justice and Special Assistance Department, Government of Maharashtra, the same is taken on record.

2] Heard. Rule. Rule made returnable and heard forthwith with the consent of the parties.

3] The petitioner has filed present Writ Petition seeking following relief:

B) To direct respondents to accord approval in favour of petitioner as a trained graduate primary teacher w.e.f. his initial date of appointment i.e. 01.07.1999 and also grant all consequential benefits including pay scale of trained graduate primary teacher by issuing writ of mandamus or any other

necessary writ or directions as the case may be;

4] It is the case of the petitioner that, the petitioner is having qualification of B.A. B.P.Ed. [B.Ed. Physical] and appointed as an Assistant Teacher in respondent No.4 School w.e.f. 01.07.1999. Respondent No.4 School is a Primary Ashram School, having classes of 1st to 7th Standard. There are in all total 9 posts of teachers approved as per the staffing pattern, in which 7 posts of teachers are getting the pay scale of trained teacher having D.Ed. qualification, 1 post of trained graduate primary teacher is vacant and 1 post of Headmaster. By taking into consideration the ratio of 25:75, two posts of trained graduate primary teachers are admissible.

5] It is further the case of the petitioner that, as per Government Resolution dated 01.06.2000, the candidates who are

having qualification of B.P.Ed. [B.Ed. Physical] and appointed in primary school having classes of 1st to 7th standards, are considered as trained teachers and as per Government Resolution dated 28th April, 2014, the teachers appointed in primary school, having 1st to 7th standards of B.Ed. qualification, are entitled to be considered as a trained graduate primary teacher from their date of initial appointment. The respondents denied the status of the petitioner as the trained graduate primary teacher only on the ground that the petitioner is B.P.Ed. and not B.Ed. Hence this Writ Petition.

6] The learned counsel appearing for the petitioner submits that the issue has already been decided in the cases of *State of Maharashtra Vs. Tukaram Trambak Chaudhari*¹, *Chandrakant s/o. Rajdhar Desale and others*

1 2007 AIR SCW 1321

Vs. The State of Maharashtra and others in Writ Petition No.3888/2010 decided on 29.04.2011 and in the matter of *Subhash Kisanrao Mangnale Vs. The State of Maharashtra and others* in Writ Petition No. 6253/2014 decided on 09.06.2015. This Court has considered that, the B.P.Ed. qualification under the bifocal course is qualification for being appointed as trained graduate teacher in primary Ashram School and also directed to consider the petitioners therein as trained graduate primary teachers.

7] He further submits that there cannot be denial of status of trained graduate primary teacher only on the ground that, the petitioner is not B.Ed. even though, there is one post vacant for trained graduate primary teacher in respondent No.4 school. The petitioner is not having other alternative except to approach this Court for seeking direction.

8] The learned AGP appearing for Respondent Nos.1 to 3 relying upon the averments in the affidavit-in-reply submits that the petitioner is not appointed as trained graduate teacher. His initial appointment is to the post of Assistant Teacher. The Government Resolutions dated 01.06.2000 and 11.11.2011 issued by the School Education Department are not applicable to the case of the present petitioner. The petitioner is not holding B.Ed. degree, which is the basic requirement of Government Resolution dated 28.04.2014 issued by the Social Welfare Department. The judgments relied on by the petitioner are not applicable to the present case.

9] The learned counsel appearing for Respondent No.4 relying upon the averments in the affidavit-in-reply filed by the said respondent submits that there is no Assistant

Teacher taking the benefits of the pay scale of trained graduate teacher in the School, since no one is having the qualification as B.A. B.Ed. or B.A. B.P.Ed. except the present petitioner, and therefore, the petitioner being a trained graduate is entitled to get the pay scale available to the trained graduate teachers.

10] 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 an Assistant Teacher in respondent No.4 School with effect from 1st July, 1999. 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 B.A. B.P.Ed. [B.Ed. Physical] on the date of

his appointment. Moreover, as stated earlier, this fact has not been disputed by the respondent. The approval letter filed on record by the petitioner at Exhibit-A collectively under the signature of Special District Social Welfare Officer, Parbhani, reveals that, the appointment of the petitioner was approved for the period in between 01.07.2002 to 30th April, 2004 in the pay scale of Rs.4500-7000/-. Another approval order placed on record by the petitioner at Exhibit-B [Page 19-20] reveals that, the services of the petitioner were approved on permanent basis by the Special District Social Welfare Officer, Parbhani, w.e.f. 01.05.2006.

11] 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 **State of**

Maharashtra Vs. Tukaram Tryambak Chaudhari
[supra] and unreported judgment of the
Division Bench of this Court in the case of
**Ramrao Jaimal Bacchav and ors. Vs. The State
of Maharashtra and ors.** in Writ Petition No.
478/2011, delivered on 11.10.2012.

12] The Division Bench of this Court
[Coram: S.S.Shinde & P.R.Bora, JJ.] in Writ
Petition No.5997 of 2014 [Sunil s/o. Kisanrao
Jadhav Vs. The State of Maharashtra &
others], decided on 17th December, 2015, while
considering the similar issue / controversy
in para 8 to 10 observed thus:

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 are entitled to be paid trained primary teacher's pay scale.

13] 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 28th April, 2014, issued by the Social Justice and Special Assistance Department, Government of Maharashtra, 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.

14] 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. 01.07.1999 and pay to the petitioner, the salary as applicable to the trained teachers 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.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE