

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

WRIT PETITION NO. 2115 OF 2006

Rajeshwar s/o Nagnath Reddy
Sangangire,
Age : 35 years,
Occupation : Assistant Teacher,
R/o Sambhaji Society,
Nideban Road, Behind Ambedkar School,
Dandeme Niwas, Udgir,
Tq.Udgir, District Latur.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Education Department (Secretary),
Through Secretary, Mantralaya,
Mumbai.
- 2 Babasaheb Naik Banjara Shikshan
Sanstha, Nagalgaon,
Post and Taluka Udgir,
District Latur.
Through its Secretary.
- 3 Late Virbhanmama Primary Ashram
School, Mallapur, Tq.Udgir,
District Latur.
Through its Headmaster.
- 4 Maharashtra Rajya Shikshanik Sanshodhan
va Prashikshan Parishad, Pune.
through its Sanchalak.
- 5 The Special District Social
Welfare Officer, Latur.

...RESPONDENTS

...
Advocate for the Petitioner : Dr.R.J.Godbole.
AGP for Respondents 1, 4 and 5 : Shri Y.G.Gujrathi.
...

**CORAM: RAVINDRA V. GHUGE
AND
SUNIL K. KOTWAL, JJ.**

DATE :- 07th November, 2017

Oral Judgment :

1 By this petition, the Petitioner prays for quashing the order dated 09.08.2005 passed by Respondent No.5 and the order dated 11.08.2005 passed by Respondent No.3 directing the Petitioner to refund the excess amount that was paid to him as his salary.

2 The learned Advocate for the Petitioner submits that the impugned orders have been passed on the ground that the Petitioner should have acquired the qualification of Diploma in Education (D.Ed.). It is submitted that the Petitioner has the qualifications of Bachelor of Science (B.Sc.) and Bachelor of Education (B.Ed.) and is working in an Ashram School to which the Government Resolutions introduced by the Education Department would not be applicable. He submits that such Government Resolutions with reference to the Ashram Schools alone would be applicable to the employees employed in such Ashram Schools.

3 By order dated 26.04.2006, this Court granted ad-interim

relief to the Petitioner as against the proposed recovery. By order dated 10.07.2006, this petition was admitted and the interim relief in terms of prayer clause (D) was granted, to be continued till the disposal of the petition.

4 It is submitted by the learned Advocate for the Petitioner that for the last more than 11 years, the Petitioner is being paid his salary as is payable to a trained teacher.

5 The judgment of this Court dated 06.05.2004 in the matter of Tukaram Tryambak Chaudhari vs. State of Maharashtra and others, Writ Petition No.4632/1999 and large group of petitions is placed on record, wherein, the issue of qualification as regards B.Ed. and D.Ed. was considered. After recording the facts of the case in paragraph 2 and considering the earlier judgment dated 12.09.2002 in the matter of Kondiba Dattatraya Mirashe vs. State of Maharashtra and others, 2003 (2) Mh.L.J. 432, it was observed by this Court in *Tukaram Chaudhari's case (supra)* as under:-

"4. Considering the above, we are of the opinion that in schools having standards 1 to 7, it is permissible to appoint one teacher having B.Ed./ B.Sc. in terms of the Government Circular as now interpreted by this Court. Considering that all such teacher who were appointed and who possess graduate qualification with B.A., B.Sc. and also B.Ed. are entitled to be treated as trained teachers and will be continued to be paid salary as trained teachers. In the light of that the various orders issued directing that the teachers be paid in the untrained

pay scale are set aside."

6 It is thus, concluded that the candidates who possess the qualification of BA/B.Sc. and B.Ed. are duly qualified and are eligible to receive their salary as trained teachers from the dates on which they are appointed, along with the consequential benefits. These observations in paragraph 5 of *Tukaram Chaudhari's case (supra)* read as under:-

"5. Consequently, all the impugned orders in the various petitions are set aside and it is held that the teachers who possess B.A./ B.Sc. and B.Ed. qualification are duly qualified and are eligible to continue to receive their salary as trained teachers from the date on which they were appointed along with all consequential benefits and will be continued to be paid in the trained graduate scale. If the benefits have been withdrawn they will be paid the difference and any other consequential benefits at any rate within sixteen weeks from today."

7 The learned AGP points out that the judgment in *Tukaram Chaudhari's case (supra)* was subjected to a challenge before the Honourable Supreme Court in Petitions for Special Leave to Appeal (Civil) Nos.12084-12104 of 2004 . He, however, fairly states that the said Special Leave Petitions challenging the judgment of this Court in the group of matters have been dismissed by the Honourable Supreme Court on 20.02.2007.

8 Considering the above and in the light of the above interim relief granted by this Court, this Writ Petition is allowed. The impugned

orders dated 09.08.2005 and 11.08.2005 are quashed and set aside.

9 Rule is made absolute in the above terms.

kps

(SUNIL K. KOTWAL, J.)

(RAVINDRA V. GHUGE, J.)