

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

WRIT PETITION NO. 1261 OF 2004
WITH
WRIT PETITION NO.1267 OF 2004

Shri Devidas Kisan Bankar,
Age : 30 years, Occupation : Service,
R/o Sillod, District Aurangabad.

...in WP/1261/2004.

Rajendra Santaram Kale,
Age : 30 years, Occupation : Service,
R/o Chitegaon, Tq.Paithan,
District Aurangabad.

...in WP/1267/2004.

....PETITIONERS

-VERSUS-

- 1 The State of Maharashtra.
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2 The Deputy Director of Education,
Maharashtra State Education Research
and Training Council, Pune-30.
- 3 The Principal,
District Institute of Education and
Training (DIET),
Vaijapur, District Aurangabad.

....RESPONDENTS

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Advocate for the Petitioners : Smt.Asha S. Rasal.
AGP for Respondents 1 to 3 : Shri Y.G.Gujrathi.

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

DATE :- 31st October, 2017

Oral Judgment :

1 In both these petitions, the Petitioners pray for quashing of the letter dated 25.11.2003 issued by Respondent No.2/ Deputy Director, by which, the admissions of these Petitioners to the Postal D.Ed. Course for the academic year 2000-2001 has been cancelled after these Petitioners have cleared their first year and were appearing for few subjects in which they had failed.

2 This Court had heard the litigating sides on 20.07.2004 and had directed the Principal of District Education and Training Institute to accept the examination forms of the Petitioners and permit them to appear for the examination. It is informed that pursuant to the interim orders of this Court, the Petitioners have completed their D.Ed. course and have been awarded their Diploma Certificates. They have settled in employment in the last 13 years.

3 The learned AGP, while opposing the petitions, has pointed out the conditions introduced by the State Government vide the Government Resolution dated 02.06.2000, which have been reproduced by this Court in its judgment dated 07.12.2010 in Writ Petition Nos.610 and 258 of 2006 (Uddhav Bapurao Baswade vs. The State of Maharashtra and others). He specifically points out the seven conditions that have been reproduced in paragraph 3 of the said judgment. We find it apposite to reproduce the said seven conditions as under:-

- "1] *The school should be recognized.*
- 2] *The post which is held by the primary teacher should be sanctioned as per the criteria of strength of students.*
- 3] *The teacher appointed should not be a surplus teacher and he should have been appointed in regular scale as a full time teacher.*
- 4] *There should not be any break in service of the concerned teacher.*
- 5] *The appointment should be as per the roster points.*
- 6] *The proposal for approval of appointment of the concerned teacher should have been submitted by the institution to the concerned regional officer at least once fore 5th November, 1997.*
- 7] *On the date of appointment, the concerned teacher should have the requisite qualification for admission to the D.Ed. Course."*

4 The learned AGP, therefore, submits that the Petitioners who had acquired education till 10th standard in Marathi medium, could not have been granted admission to the D.Ed. course for English medium. He further submits that excess teachers were appointed by the Educational Institution and these Petitioners have been granted admission to the Postal D.Ed. course in an irregular manner. He, therefore, contends that this irregularity which would amount to an illegality, cannot be ignored by this Court.

5 The learned Advocate for the Petitioners places reliance upon the judgment of this Court dated 14.01.2004 delivered in Writ Petition Nos.5718, 5719 of 2003 and 70 of 2004 (Kailas Hanumant Kunde vs. The State of Maharashtra and others) to support the contention that identically

placed Petitioners have been permitted to complete the Postal D.Ed. course and this Court has not caused any interference in the said cases.

6 It is pointed out that the State had formed an enquiry committee and it was noticed in the enquiry that the candidates like these Petitioners had been granted admission to D.Ed. course in an irregular manner. It is based on the said Committee's report that these Petitioners were issued the impugned letters thereby, cancelling their admissions to the D.Ed. course.

7 The learned Advocate points out that these two Petitioners are amongst 308 persons whom the Enquiry Committee has blamed for having acquired admission to the Postal D.Ed. course de-hors the rules and the criteria laid down. Our attention is drawn to paragraphs 3, 3 (which should be 4) and 4 of the judgment dated 14.01.2004 when identical petitions were considered by this Court and the circular dated 28.08.2001 was held to be operable prospectively. It is, therefore, canvassed that as the cases of these Petitioners are identical to the cases of those Petitioners, who were handed down the judgment dated 14.01.2004, these petitions can be allowed.

8 We find that after the Enquiry Committee has given its findings pursuant to an enquiry, 308 persons were held to be ineligible for the Postal D.Ed. course. Few of them were before this Court in those Writ Petitions which have been allowed by the judgment dated 14.01.2004. It

would be apposite to reproduce the conclusions of this Court in paragraph 4 of the said judgment as under:-

"4. *The short question that falls for adjudication is, as to whether could the Government decision contained in the circular dated 28th August, 2001, could be operated retrospectively and the answer thereto, has to be an emphatic no. As per the qualifications and eligibility criteria prevalent in the year 2000, the petitioners had sought admission to postal D.Ed. course and were legally admitted. Any subsequent change in the eligibility criteria cannot in any manner adversely affect the admission granted to the petitioners to the said course.*"

9 Considering the above, it is apparent that this Court has taken a view that the circular dated 28.08.2001 by which, certain conditions were introduced while admitting the students to the Postal D.Ed. Course, was held to be operable prospectively and this Court has concluded that there cannot be a retrospective application of the circular to those candidates who were admitted to the Postal D.Ed. Course in the academic year 2000-2001. We, therefore, do not find any such circumstance which could convince us to take a different view in this matter.

10 Considering the above, these Writ Petitions stand allowed. The impugned letters dated 25.11.2003 stand quashed and set aside. Rule is made absolute accordingly.