

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

Writ Petition No.2600 of 2004

* Madhumati Pralhadguru Toke,
Age 43 years,
Occupation : Service,
R/o Maharshi Kanad Vidyalaya,
Parali Vaijinath, Dist. Beed. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through its Secretary for Education,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Aurangabad Division, Aurangabad.
- 3) The Education Officer (Secondary)
Zilla Parishad, Beed.
- 4) The Secretary,
Maharshi Kanad Education Society,
Parali Vaijinath, Dist. Beed.
- 5) The Head Mistress,
Maharshi Kanad Vidyalaya,
Parali Vaijinath, Dist. Beed. .. **Respondents.**

Shri. Sachin S. Deshmukh, Advocate, for petitioner.

Shri. S.W. Munde, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. S.V. Mundhe, Advocate, for respondent Nos.4 and 5.

**Coram: T.V. NALAWADE &
SANGITRAO S PATIL, JJ.**

**Judgment reserved on : 21 June 2017.
Judgment pronounced on : 23 June 2017.**

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed for giving direction to respondent-authorities to treat the petitioner as secondary school teacher, trained graduate teacher. Both the sides are heard.

2) It is the case of the petitioner that on 30-6-1996 the school committee of respondent No.4-institution appointed her as an Assistant Teacher in respondent No.5-school on the scale of Rs.1400-2600. It is her contention that she is graduate in the subjects like Economics, Public Administration and Sociology. It is her case that by order dated 20-9-1997 she came to be appointed again but for the year 1997-98 and on the scale of Rs.1200-2040. It is the case that since her appointment made in June 1997 she continued to work on the scale of Rs.1200-2040 but she was initially appointed as secondary school teacher and

she was taking classes of 8th to 10th Standards. It is her case that her appointment was permanently approved by the Education Officer, respondent No.3 on permanent post. It is her case that though she was appointed in secondary section as trained graduate teacher, scale of primary teacher was paid to her from June 1997 and in spite of several requests made by her, the scale of secondary school teacher is not given to her. She did not make representation to the Education Officer and she directly filed present proceeding in February 2004. She has claimed arrears of salary for the period starting from June 1997.

3) The record produced by the petitioner herself shows that the first appointment made by order dated 30-6-1996 was on temporary post. It is the contention of the school that this appointment was made on leave vacancy and it was not as against permanent post and so it was for one year. The second appointment of the petitioner was against Scheduled Tribe category and it was on scale of Rs.1200-2040, a trained teacher in primary school. A copy of undertaking given by petitioner is produced to show

that in the year 1997-98 also the appointment was only for one year as it was against reserved category post. Scheduled Tribe post.

4) By reply-affidavit the school has denied that the petitioner was given appointment as against permanent post in the year 1996 or 1997 and the post was of trained graduate teacher. The Government has also denied this contention of the petitioner. No record like advertisement published and permission obtained of the Education Officer for publishing any permanent post is produced by the petitioner. The record of approval shows that for the year 1996-97 the appointment was only for one year starting from 1-7-1996 and the scale of Rs.1400-2600 was given. The second approval is with effect from 22-6-1998 on permanent post in the scale of Rs.1200-2040. It appears that resolution was passed by the school committee for giving such appointment on 22-6-1998 and it was treated as a trained teacher (D.Ed.). She has admitted that right from that year she received the salary in the scale of Rs.1200-2040. She never challenged this appointment and she never raised grievance of aforesaid

nature even before the Education Officer in the past. After giving of the appointment to the petitioner in the scale of primary trained teacher, at least three teachers came to be appointed in secondary school in the scale of trained graduate teacher but the petitioner did not raise grievance about their appointments and those appointments are not challenged. In view of this record and the circumstances that she accepted the appointment in the scale of Rs.1200-2040 and continued to work on that scale till the year 2004, till filing the petition, it is necessary to infer that she was appointed in the scale of Rs.1200-2040, on permanent post. This scale is the scale of primary trained teacher. There can also be point of subjects as secondary school is involved but there is no need to discuss that point.

5) The learned counsel for the petitioner placed reliance on the ratio of the case of the Supreme Court reported as **(2007) 9 SCC 201 (State of Maharashtra v. Tukaram Tryambak Chaudhari)**. The Apex Court has considered the Government Resolutions of 1979 and 1982 which were issued to see that the disparity between the

pay scales of graduates who were trained teachers working in primary school and the trained graduate teacher teaching for secondary school is removed. The scheme was framed and 25% of the posts of trained primary teachers were upgraded for giving scale of trained graduate teacher. Thus, if at all the petitioner wants to get the scale of trained graduate teacher in primary school, she can do so only by getting the scale as per the scheme of the Government shown in the aforesaid Government Resolutions. The facts of the reported case show that the Apex Court considered the views of this Court which can be found in the Full Bench decision in the case reported as **AIR 2000 Bom 394 (Jayashree Chavan v. State of Maharashtra)** and **2003 (Supp) Bom CR 372 (Kondiba v. State of Maharashtra)**. In the present matter, the petitioner got appointment on permanent post in primary school and on the scale of trained teacher in primary school as per her contention and the record. In view of these circumstances, she cannot claim the relief of direction to the respondents to the effect that the scale of trained graduate teacher needs to be given to her by treating her teacher of secondary school. Thus on facts,

there are no merits in the case of the petitioner.

6) The learned counsel for the petitioner placed reliance on some observations made by the Supreme Court in the case reported as **(2011) 2 SCC 94 (Safiya Bee v. Mohd. Vajahath Hussain)**. This is on the point of binding precedents. There cannot be dispute over the proposition made in the case of Tukaram (cited supra) and the proposition of Tukaram's case cited supra is binding on this Court. But in view of the facts of the present matter the petitioner cannot get the relief claimed.

7) Reliance was placed by the learned counsel for the petitioner on following reported and un-reported cases.

- (1) **(2005) 1 SCC 444 (U.P. SRTC v. State of U.P.)**
- (2) **(2016) 12 SCC 514 (Union of India v. Abhimanyu Tiwari)**
- (3) **(1997) 6 SCC 365 (Raj Pal Verma v. Chancellor of Meerut University)**
- (4) **2002 (3) Mh.L.J. 673 (Kakoli Shyamlal Sircar v. Nagpur University)**

- (4) **Writ Petition No.6437 of 2007 (Govind Narayan Gunajal v. The State of Maharashtra) dated 12-3-2008.**

In view of the facts of those cases the relief was given. In view of the facts of the present matter, the relief claimed cannot be given to the petitioner. In the result, the petition stands dismissed. Rule stands discharged.

Sd/-
(SANGITRAO S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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