

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

WRIT PETITION NO. 3572 OF 2006

1. Anandrao s/o Sakharam Rathod
Age : 28 years, occu.: nil
R/o Deola Tanda, Post Malakoli,
Tal. Loha, District Nanded Petitioner.

Versus

1. The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education
Research and Training Council,
Pune 30.
3. The Deputy Director of Education
Latur Division, Latur.
4. The Education Officer (Primary)
Zilla Parishad, Nanded, Taluka and
District Nanded.
5. The Head Master
Indira Gandhi Primary School,
Bhimwadi, CIDCO, New Nanded,
Taluka Nanded, District Nanded. Respondents

Mr. V.D. Gunale, Advocate for the petitioner.

Smt. M.A. Deshpande, Addl. G.P for respondent Nos.1 to 4.

Smt. Y.M. Kshirsagar, Advocate for respondent No.4.

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

Dated : 03-11-2017.

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :-

1. By this petition, the petitioner is aggrieved by the cancellation of his admission to the Postal D.Ed. by the impugned order dated 19.01.2006 passed by respondent No.4-Education Officer (Primary), Zilla Parishad, Nanded.

2. By order dated 29.06.2007, this Court had admitted the Petition and had granted interim relief to the petitioner by directing status-quo to be maintained with regard to his service conditions.

3. We have considered the submissions of the learned Advocate for the petitioner and the learned A.G.P. on behalf of respondent Nos.1, 2 and 3 and the learned Advocate for respondent No.4. Though respondent No.5 is served with Court notice, no appearance has been entered.

4. Upon considering the submissions of the learned Advocates, the undisputed factors are as follows.

- (a) Respondent No.5-School was recognised by the Government on 21.11.1986.
- (b) The petitioner was selected as an Untrained Teacher on a clear post on 16.06.1996.
- (c) Respondent No.5-School is grant-in-aid.
- (d) On 10.01.2001 the petitioner was selected for admission to the Postal D.Ed. Course.
- (e) The petitioner passed the Postal D.Ed. Course and the Competent Authority issued a certificate dated 04.07.2003 declaring that the petitioner has passed the Postal D.Ed. Examination.
- (f) A circular dated 28.08.2001 was introduced by the State listing out certain conditions as the eligibility criteria for the candidates to the Postal D.Ed. Course.
- (g) This Court delivered a judgment on 14.01.2004 in Writ Petition Nos. 5718 and 5719 of 2003 and Writ Petition No. 70 of 2004 concluding that the Circular dated 28.08.2001 introducing modified conditions for admission to the Postal D.Ed. Course would not apply retrospectively.
- (h) This Court delivered a judgment in about 77 Writ Petitions on 07.12.2010 considering the earlier Government Resolution dated 02.06.2000 in the matters of **Uddhav Bapurao Baswade and others Vs. State of Maharashtra and others.**

5. It is not in dispute that there were certain grievances about the admission of candidates to the Postal D.Ed. Course all over the State of Maharashtra. In the backdrop of the said grievances and

the allegations that some of the candidates have fraudulently acquired admissions to the Postal D.Ed. Course, the State of Maharashtra instituted a one-man Committee by appointing Shri Jagtap as the Enquiry Officer. The recommendations of Jagtap Committee vide its report dated 11.05.2005 have been reproduced in paragraph No.10 of the judgment dated 07.12.2010 delivered by this Court in a group of 77 cases. Paragraph No.10 of the said judgment reads as under :-

“10] We find that the State Government has totally misread the report submitted by Shri Jagtap, who had enquired into the matter. Shri Jagtap, who was on the verge of retirement and was likely to retire on 31st May, 2005, has submitted the report to the State Government on 11th May, 2005. The true translated version of the findings and recommendations of the said report are as under :-

[1] Out of total 1048 cases from 429 schools, 548 teachers from private primary schools have been found to be eligible whereas 308 teachers have been found to be ineligible in the enquiry. Similarly, out of total 192 matters of Ashram Schools, 23 teachers have been held to be ineligible in the enquiry.

. In respect of the ineligible cases, by taking immediate decision, an affidavit in reply will have to be filed before the High Court, Bench at Aurangabad before 15th June, 2005.

[2] *In respect of the ineligible cases, by taking a decision at the Government level, after taking into consideration the ambiguities in the Government Resolutions dated 2nd June, 2000 and 11th July, 2000, and the fact that the name of concerned teacher appears in the annual inspection report, the issue regarding relaxation of conditions in individual cases will have to be considered.*

[3] *In respect of the ineligible cases as per the Enquiry Report, as the concerned teachers, Management, Head Masters, Extension Officers and other Regional Officers are responsible, further action as per rules will have to be taken in that regard.*

[4] *The record taken in possession at the time of Enquiry are in my custody. As I am retiring on 31st May, 2005, it is requested that orders at Government level be issued, as to in whose custody the said records shall be handed over. If the records are handed over to the school, and matters are filed in court in respect of ineligible cases, ex-parte orders may be passed due to non-availability of evidence in the form of records or against the recommendations of the Enquiry Committee. Taking into consideration this fact, It is requested that I may be informed as to in whose custody, the records, documents in respect of these cases (about full two big cupboards) are to be handed over.*

. *From private primary schools, total 308 untrained teachers are found to be ineligible. However, out of them about 90% candidates have passed D.Ed. Examination, and since they were admitted for the postal*

D.Ed. Training, the concerned Education Officers of the respective Districts have given personal approval and there is a possibility that as on today all these candidates are included on the sanctioned posts.

. Approximately 80% candidates out of the above candidates are found to be ineligible only because they were not working on a sanctioned posts prior to 5th November, 1997. However, after 5th November, 1997, they are included in the sanctioned posts, which are sanctioned till today, for the various reasons (For example (1) increase in divisions (2) trained teachers leaving the school (3) vacancies on account of retirements. These candidates passing the D.Ed. Examination are working since last 2 to 3 years in the respective schools. Taking into consideration this aspect I am of the clear opinion that, the Government is competent enough to accord sanction to these ineligible candidates as a special case and to regularize their admissions, on fulfilling the following conditions :-

[1] If they are continuously working in the school through which their application forms for the Postal D.Ed. scheme are submitted ;

[2] If they have passed D.Ed. Examination;

[3] If there is approval by the Education Officer (Primary)

[4] If they are working within the present sanctioned strength.

Inasmuch as, Vide Government Resolution dated 2nd August, 2004, as a Special Case, the Government has regularized 52 schools on permanent no grant basis and the teachers

working therein. On the same basis, it is requested that the admissions of the ineligible teachers to the D.Ed. Course be regularized by imposing severe punitive and administrative action against them.”

6. The learned Division Bench of this Court in **Uddhav Bapurao Baswade** (supra) noticed that the Jagtap Committee had recommended regularisation of such ineligible candidates who were in employment in the School which recommended their cases, who had passed their D.Ed. Examination, who had been granted approval by the Education Officer (Primary) and they were working within the sanctioned strength. The aggrieved candidates approached this Court in the group of cases in **Uddhav Bapurao Baswade** (supra). By judgment dated 07.12.2010, these Writ Petitions were allowed and the orders passed by the Authorities cancelling the admissions of the petitioners were set aside.

7. By a subsequent order dated 01.10.2014 this Court allowed Writ Petition No. 6872 of 2012 involving identical set of facts vis-a-vis the matter in **Uddhav Bapurao Baswade** (supra).

8. We had an occasion to consider Writ Petition Nos. 1261 and 1267 of 2004 filed by identically placed aggrieved two petitioners and by judgment dated 31.10.2017, we have allowed the two petitions for the reasons that the said two petitioners had

completed their Postal D.Ed. Course and the Circular dated 28.08.2001 sought to be made applicable to them, could not have been made applicable with retrospective effect considering the view taken by this Court in **Kailas Hanumant Kunde Versus State of Maharashtra and others** by its judgment dated 14.01.2004.

9. In the instant case, the petitioner secured admission to the Postal D.Ed. Course on 10.01.2001. The Circular sought to be made applicable is dated 28.08.2001. For the reasons set out in the judgment dated 14.01.2004 in **Kailas Kunde** (supra), the said Circular could not have been made applicable with retrospective effect to the case of this petitioner. We, therefore, find no reason to deviate from the view taken by this Court in the case of **Kailas Kunde** (supra).

10. In addition to the above, it cannot be ignored that after the petitioner was granted admission to the Postal D.Ed. Course on 10.01.2001, he passed the said Course and the result was declared on 04.07.2003. For the first time, the petitioner received a show cause notice from respondent No.2-The Director of Education on 18.08.2003 when he had already passed the Postal D.Ed. Course.

11. Considering the overall effect of the aforementioned factors and keeping in view the law laid down by this Court in

Uddhav Bapurao Baswade (supra) and Kailas Kunde (supra), we find that this Petition can be allowed.

12. As such, this Petition is allowed. The impugned order dated 19.01.2006 cancelling the Postal D.Ed. admission of the petitioner is quashed and set aside. As observed in the matter of **Uddhav Bapurao Baswade (supra)**, all the consequences following the quashing of the impugned order of cancellation, shall follow.

13. Rule is made absolute in the above terms.

(**SUNIL K. KOTWAL**)
JUDGE

(**RAVINDRA V. GHUGE**)
JUDGE