

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1728 OF 2007

Shri. Yeshwant Rupchand Kolhe,

Age: 36 years, Occu.:Nil,

R/o. Bamnoth, Tq. Yawal,

Dist. Jalgaon

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai

2. The Additional Commissioner,
Aurangabad

3. The Chief Executive Officer,
Zilla Parishad, Jalna

4. The Education Officer, (Primary),
Zilla Parishad Jalna.

5. The Maharashtra State Examination
Board, Pune,
17 Dr.Babasaheb Ambedkar Marg,
Pune-1

... **RESPONDENTS**

WITH**WRIT PETITION NO.7248 OF 2007**

Vishnu S/o. Bhagwan Jadhav
Age:32 years, Occu.:Nil,
R/o. Samarth Colony, Near Salve
Flower Mill, Tq. and Dist. Jalna

...PETITIONER**VERSUS**

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Additional Commissioner,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Jalna.
4. The Education Officer (Primary)
Zilla Parishad, Jalna.
5. The Maharashtra State Examination
Board, Pune,
17 Dr.Babasaheb Ambedkar Marg,
Pune-1

... RESPONDENTS

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Shri. V.D. Sapkal, Adv. h/f. K.M. Nagarkar, Adv.
for Petitioner;

Shri. S.P. Tiwari, AGP for State;

Shri. V.R. Sonwalkar, Advocate for Respondent
No.3;

Shri. A.R. Nikam, Advocate for Respondent No.5.

CORAM : P.R.BORA,J.

RESERVED ON: 3rd August, 2017

PRONOUNCED ON 22nd December, 2017

JUDGMENT:

1) Heard Shri V.D.Sapkal, learned Counsel appearing for petitioner in Writ Petition No. 1728/2007. Petitioner in Writ Petition No. 7248/2007 is appearing in person. He adopted the arguments advanced by Shri Sapkal, contending that his case is similar to the case of the petitioner in Writ Petition No.1728/2007. Learned AGP Shri S.P.Tiwari made submissions on behalf of the State. Shri V.R.Sonwalkar argued on behalf of Respondent No.3 in both these writ petitions, i.e. Zilla Parishad, Jalna. Advocate Shri

A.R.Nikam made submissions for Respondent No. 5 — Maharashtra State Examination Board, Pune, in both the writ petitions.

2) Since the issues involved in both the writ petitions are common, I deem it appropriate to decide both these writ petitions by a common reasoning.

3) Shri Yashwant Rupchand Kolhe, petitioner in Writ Petition No.1728/2007 was appointed as a primary teacher in Kendriya Prathmik Shala, Pikangaon, vide order dated 19th August, 1996 by Chief Executive Officer, Zilla Parishad, Jalna, whereas Shri Vishnu Bhagwan Jadhav, petitioner in Writ Petition No.7248/2007 was appointed as Un-trained primary teacher at Kendriya Prathmik Shala, Karjat, Tq. Ambad, District Jalna, vide order dated 4th August, 1998 issued by Chief Executive Officer, Zilla Parishad, Jalna.

4) The appointments of both the petitioners

were subject to the final outcome of Writ Petition No.5749/1995. At the time of his appointment, petitioner – Yashwant Kolhe was possessing the qualification of H.S.C. and had passed the Diploma in Teaching Examination from Dr. Hari Singh Gaur University, Sagar (Madhya Pradesh) whereas petitioner Vishnu Bhagwan Jadhav was having qualification of H.S.C. and Diploma in Teaching from Devi Ahilya Vishwa Vidyalaya, Indore (M.P.)

5) The services of both the petitioners came to be terminated vide order dated 9th March, 2001 passed by Chief Executive Officer, Zilla Parishad, Jalna. The orders dated 9th March, 2001 were passed by the Chief Executive Officer, Zilla Parishad, Jalna on the basis of the decision of the Division Bench of this Court rendered on 6th December, 2000 in Writ Petition No.5749/1995. It has to be stated that Writ Petition Nos. 5407/1997 and 4091/1999 along with certain other petitions were also disposed of in terms of the

order passed in Writ Petition No.5749/1995. The aforesaid writ petitions were disposed of in terms of the following order, -

" The petition is disposed of in terms of the following order.

(i) The candidates who were admitted to the Diploma in Teaching course under the Dr. Hari Singh Gaur Vishwa Vidyalaya, Sagar and Devi Ahilya Vishwa Vidyalaya, Indore, before 31st May, 1993 are eligible for appointment as Assistant Teachers (trained) in the primary schools in the State of Maharashtra.

(ii) The candidates who were admitted to the said course under the said two universities after 31st May, 1993 or during the academic year 1993-94 onwards are not eligible for appointment as Assistant Teacher in the primary schools in the State of Maharashtra notwithstanding the Government Notifications dated 8th March, 1995 and 10th December, 1998.

(iii) If such eligible candidates are presently in employment as Assistant Teachers in primary schools in the State of Maharashtra, their appointments shall be approved from the date of their initial appointment after they have acquired the Diploma in Teaching qualifications from the above mentioned universities.

(iv) Those candidates who are eligible and selected but could not be given appointment orders during the pendency of these petitions shall be issued appointment orders as Assistant Teacher subject, however, to the availability of vacancies in the said posts.

(v) Those candidates who were appointed as Assistant Teacher but were removed from service during the pendency of these petitions shall be reconsidered for appointment subject to availability of vacancies for the post of Assistant Teacher/Shikshan Sevak.

(vi) The eligible candidates, who are without employment as at present, shall be considered for appointment as Shikshan Sewak pursuant to the Government Resolution dated 10th March, 2000 and their cases may be considered for such appointment as per merit and subject to availability of vacancies.

Rule made partly absolute in terms of the above orders. No costs."

6) After the services of the petitioners were terminated, vide the aforesaid order, both the petitioners filed the appeals before the Divisional Commissioner, Aurangabad under Rule 14 of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. The appeal filed by Yashwant Kolhe was numbered as 51/2005, whereas the appeal filed by Vishnu Jadhav was numbered as 50/2005.

7) The learned Divisional Commissioner, vide order passed on 17th February, 2007,

dismissed both these appeals by delivering separate judgments in both these appeals. Though the learned Commissioner has delivered two separate judgments in both these appeals, the reasons, as are assigned by him in both the judgments are *ad verbatim* same. Aggrieved by the aforesaid decision of the learned Divisional Commissioner, Aurangabad, the petitioners have filed the present writ petitions.

8) During pendency of the present writ petitions, the petitioners sought amendment in their petitions in view of the judgment delivered by the Hon'ble Apex court in the case of Ramesh Rajaram Awchar Vs. State of Maharashtra and others in Civil Appeal No.7468/2008 on 8th September, 2015.

9) Shri V.D.Sapkal, learned Counsel appearing for the petitioner Shri Kolhe, submitted that the present writ petitions can be disposed of in view of the judgment of the

Hon'ble Apex court in the case of Ramesh Vs. State of Maharashtra, referred herein above. The learned Counsel appearing for the respondents opposed the submission made by Shri Sapkal and submitted that the said decision may not apply to the facts of the present petitions.

10) After having perused the judgment of the Hon'ble Apex court in the case of Ramesh Awchar, referred herein above and considered the facts involved in the present petitions in light of the said decision, it appears to me that both the present writ petitions can be certainly disposed of in view of the aforesaid judgment of the Hon'ble Apex court by passing similar order in the present writ petitions.

11) One Ramesh Rajaram Awchar had filed Writ Petition No.2195/2005 before this Court. Said Ramesh was possessing the qualification of Higher Secondary Certificate (H.S.C.) from Amravati Divisional Board and Diploma in Teaching from

"Devi Ahilya Vishwa Vidyalaya, Indore (M.P.)". The said petitioner had completed the said Diploma course during the period between 2.9.1994 to 3.4.1996. He was appointed as an Assistant Teacher in Swami Samarth Vidya Mandir, Jai Bhavani Nagar, CIDDO, Aurangabad w.e.f. 14.6.1999. After having got knowledge that teachers who completed the Diploma in Teaching from Devi Ahilya Vishwa Vidyalaya Indore (M.P.) were not being held entitled to be treated as qualified to be appointed as teachers in the State of Maharashtra, the said petitioner filed the aforesaid petition before this Court and along with the other reliefs, sought declaration to the effect that he, who was holding Diploma in Teaching from Devi Ahilya Vishwa Vidyalaya, Indore in the State of Madhya Pradesh, shall be treated as a trained teacher for all purposes.

12) The Division Bench of this Court (Coram: Naresh H.Patil & R.M.Borde,JJ.), which heard the said writ petition, vide order passed on 20th

December, 2006, rejected the said writ petition, relying on the earlier decision of the Division Bench of this Court in Writ Petition No. 5749/1995. Aggrieved by the aforesaid decision of the Division Bench of this Court, petitioner – Ramesh Awchar approached the Hon'ble Apex court by filing Civil Appeal No.7468/2008. During the course of hearing of the aforesaid appeal before the Hon'ble Apex court, a notification issued by the State of Maharashtra on 12th December, 2006 was brought to the notice of Hon'ble Apex court, which reads thus, -

“Having consulted with the Maharashtra Public Service Commission it was decided vide Govt. decision dated 10 December, 1998 that, the degree/diploma conferred by the Universities founded as per the laws of the Central and State Legislature, other Educational Institutions founded as per the laws of the parliament or the Deemed Universities declared under Part-3 under Universities Grants Commission Act 1956 and the degree in the

Medical and Related subjects included in the Appendix of Medical Board of India Act 1956 should be deemed as having received automatic sanction for the recruitment on the state service and posts barring teaching posts in the government colleges.

2. Now an up to date list from University Grants Commission recognized of Universities and Institutes is attached with the said order. The list mentioned in Govt. decision, General Administration Department, No.RGD-1398/Admin. No.67/98/13, dated 10 December, 1998 should now be deemed as revised as above and the degree/ diploma conferred by the Universities/Institutes mentioned in the said list should be deemed as having automatic sanction for the purpose mentioned in the above paragraph."

13) Similarly, it was also brought to the notice of the Hon'ble Apex court that in light of

the fresh list of recognition from University Grants Commission (UGC), Devi Ahilya Vishwa Vidyalaya, Indore finds place at Sr.No.125 and it stood recognized by the State of Maharashtra. It was also brought to the notice of the Hon'ble Apex court that the School Education & Sports Department, therefore, took the following the decision dated 16.12.2010, which reads thus, -

“ Whereas, the Central Administration Department vide Govt. Decision dated 12 December 2006 has issued orders that, the Degree/Diploma conferred by the Universities recognized by the University Grants Commission should be deemed having received automatic sanction for the recruitment on the services and posts in the State barring teacher's posts in government colleges. Accordingly, the Hon'ble High Court, Division Bench, Nagpur has given orders on dated 22 July, 2009 in connection with the Writ Petition No.4496/2008 that, the government should decide whether the Training Diploma outside the State of Maharashtra are valid

or not. There in inconsistency found in the said government decision taken by the School Education and Sports Department and General Administration Department. In order to do away with the said inconsistency the issue of determining the equivalency of Training Diploma outside the State of Maharashtra was under consideration of the government. In this behalf the decision has been taken as follows.

Govt. decision - Having superseded Paragraph No.3 in the Government Education Decision dated 31 May, 1993. All the D.Ed. Diploma Holders outside Maharashtra and the Diploma holders who have received Diploma from the Universities recognized by the University Grants Commission and approved by NCTE should be deemed equivalent with the Diploma in teaching/Education in the State. However, the said candidates would be eligible, subject to following conditions, for the Primary Teaching Staff Recruitment in the State, prescribed vide School Education and

Sports Department Govt. decision
No.Pre-2006 (4767)/PE-1, dated 16
December, 2009 -

(1) Such Diploma Holder candidate
should have domicile of Maharashtra
for at least 15 years.

(2) Such candidate would be required
to pass the examination of Marathi
Language of the prescribed Board
after being selected as Primary
Teacher staff.

(3) Such candidate would be required
to pass the computer examination of
the M.S.C.I.T. authorized by the
Maharashtra State Board of Higher
and Technical Education, Mumbai as
per Govt. decision No.- Training-
2000/Admin. No.61/2001 dated 7
August, 2001".

14) Attention of the Hon'ble Apex court was
also invited to Annexure-8 filed with
I.A.No.5/2014, which was a copy of order dated
30th September, 2011 passed by Chief Executive
Officer, Zilla Parishad, Aurangabad, disclosing
the benefit given to another teacher viz. Gaikwad
Yogendra Raghunath, who was treated as trained

teacher. It was submitted before the Hon'ble Apex court that petitioner – Ramesh Awchar stands on the equal footing with Yogendra Gaikwad and as such, he cannot be deprived of the benefit extended to said Shri Yogendra Gaikwad. Considering the aforesaid submissions, the Hon'ble Apex court on 5.11.2014 passed the following order, -

“ Regard being had to the said decision, we would like the Secretary, Department of Education, to take a decision on the basis of the aforesaid resolutions and keeping in view the doctrine of parity. This Court hopes and trusts that the decision to be taken by the State Government shall be an informed one and definitely indicating the spirit of equality, for it has extended the benefits to similarly situated persons which is *prima facie* demonstrable. Let the State Government take a decision within a period of eight weeks and file the decision before this Court.”

15) As has been observed by the Hon'ble Apex court in the judgment passed in Civil Appeal No.7468 of 2008, the Hon'ble Apex court was informed that the State Government had issued letter dated 03.06.2015 addressed to the Education Officer (Primary), Aurangabad, approving Diploma in Teaching obtained by Ramesh Rajaram Awchar from outside the Maharashtra as equivalent to D.T.Ed. Degree in the State. The Hon'ble Apex court in view of the developments, as aforesaid, directed the State Government to take further steps, giving appellant Ramesh Awchar the notional benefit with effect from the date he was appointed as Assistant Teacher in the school run by respondent no.6 i.e. Zilla Parishad, Aurangabad.

16) Shri Sapkal, learned counsel appearing for the petitioner, invited my attention to letter dated 03.06.2015 issued from the School Education and Sports Department of the State of Maharashtra, addressed to the Education Officer

(Primary), Zilla Parishad, Aurangabad. Perusal of the said letter reveals that the State Government has approved the Diploma in Teaching obtained from Devi Ahilya Vishwa Vidyalyaya, Indore and Dr. Hari Singh Gaur Vishwa Vidyalyaya, Sagar, as equivalent to the D.T.Ed. Degree in the State of Maharashtra.

17) After having considered the facts, as aforesaid, I am convinced that the cases of the present petitioners stand at par with the case of Ramesh Awchar and Yogendra Raghunath Gaikwad. As noted above, petitioner Yashwant Kolhe has completed Diploma in Teaching Course from Dr. Hari Singh Gaur Vishwa Vidyalyaya, Sagar whereas, petitioner Vishnu Bhagwan Jadhav has completed Diploma in Teaching Course from Devi Ahilya Vishwa Vidyalyaya, Indore. Both the petitioners were held not eligible for appointment as Assistant Teacher for the reason that they were admitted to the said course with the said universities after 31st May, 1993 when the said

degrees were not held equivalent to the degree of Diploma in Education in the State of Maharashtra in view of Government Resolution dated 31st May, 1993. Shri Ramesh Awchar had also completed the said course of Diploma in Teaching from Devi Ahilya Vishwa Vidyalaya, Indore in Madhya Pradesh State after 31st May, 1993, more particularly during the period between 02.09.1994 to 31.04.1996. Now, vide the letter dated 03.06.2015 the State of Maharashtra has approved the Diploma in Teaching obtained by Ramesh Awchar from Devi Ahilya Vishwa Vidyalaya, Indore as equivalent to the D.T.Ed. degree in the State of Maharashtra. In the said letter there is also reference to the degrees obtained from Dr. Hari Singh Gaur Vishwa Vidyalaya, Sagar. In the circumstances, the cases of both the present petitioners stand at par with Shri Ramesh Awchar as well as Shri Yogendra Gaikwad and both the petitioners deserve to be granted the relief which has been granted by the Hon'ble Apex court in the case of Ramesh Awchar.

18) For the reasons stated herein above, following order is passed:

ORDER

i) The decision rendered by the Divisional Commissioner, Aurangabad in Appeal Nos.50 of 2005 and 51 of 2005 is quashed and set aside. Consequently, the order dated 09.03.2001, whereby the services of the petitioners came to be terminated, is also quashed and set aside.

ii) The respondents are directed to reinstate the petitioners in the Schools run by Zilla Parishad, Jalna.

iii) The petitioners shall be paid salary w.e.f. 03.06.2015 in the pay scale, as admissible to the Assistant Teachers, who had obtained Diploma in Teaching from the recognized Institute / University.

iv) The respondents shall take necessary steps to give the petitioners notional benefits with effect from the date they were appointed as Assistant

Teacher in the Schools run by Zilla Parishad, Jalna.

v) For the pensionary benefits, if any, the petitioners be treated in service from the date of their initial appointment.

vi) Both the Writ Petitions stand allowed in the aforesaid terms.

vii) No order as to costs.

(P.R.BORA)
JUDGE

bdv/
fldr 19.12.17