

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

WRIT PETITION NO. 2230 OF 2005

Smt. Shobhana Hanumant Bagal .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Anandsing S. Bayas, Advocate for the Petitioner.
Shri M. B. Bharaswadkar, A.G.P. for Respondent Nos. 1 to 3.
Shri R. V. Naiknavare, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 13TH JANUARY, 2017.

PER COURT :

. Mr. Bayas, the learned counsel for the petitioner submits that, the petitioner was appointed in July 1989 as an assistant teacher with the respondent No. 4/Municipal council, however, the services of the petitioner were never regularized. The petitioner is the second senior most teacher. The respondent No. 2 issued an order on 31.10.2001 regularizing services of near about 190 employees, junior to the present petitioner. The services of the employees whose names were also not recommended were regularized. The reasons for not regularizing services of the petitioner were never furnished. The learned counsel submits that, B. Ed. would be the legitimate qualification

for a trained teacher. The same is not considered. The petitioner was also not given regular salary as per the pay scale.

2. Mr. Naiknavare, the learned counsel for the respondent No. 4 submits that, those whose services were regularized have subsequently obtained D. Ed. qualification. D. Ed. qualification is requisite qualification for a teacher in a primary school. The school run by the Municipal Council is for Vth to VIIth standards. There were two teachers in B. Ed. qualification who were regularly selected. As such they exceeded quota of 25%. On 25.03.2009 the Divisional Commissioner passed an order, as new posts were not available the temporary teachers could not be regularized. The said order is not challenged.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. The judgment in a case of Kondiba Mirase Vs. State of Maharashtra of this Court reported in *2003(2) Mh.L.j. 432* and the judgment of the Apex Court in a case of State of Maharashtra and others Vs. Tukaram Tryambak Chaudhari and others reported in *(2007) 9 SCC 201* states that, even if Vth to VIIth standards are attached to Ist to IVth standards which forms primary school, 25% posts would be available to the teachers having B. Ed. qualification. It is observed from the

order passed by the Divisional Commissioner on 25.03.2009 that, there are 24 Municipal schools run by the Osmanabad Municipal Council. Considering the said aspect of the matter, 25% of the seats will have to be considered in a manner that, if there are 4 teachers, one seat will be applicable for a candidate possessing B. Ed. qualification and remaining three seats will be available for for a teacher possessing D. Ed. qualification.

5. We do not have the staffing pattern before us, so as to know the number of teachers in each municipal school. It appears that, when number of teachers were appointed, the posts were not sanctioned and subsequently the exercise of regularizing the teachers was carried out as and when the post became available. Now, if there are 24 Municipal schools, naturally the number of teachers would be more to accommodate teachers possessing B. Ed. qualification.

6. Considering the above, we pass following order.

7. The petitioner may approach the Divisional Commissioner, Aurangabad with her grievance. The Divisional Commissioner shall consider the grievance put forth by the petitioner with regard to regularization and other benefits, considering the fact that, the petitioner possesses B. Ed. qualification and ratio of 1 : 3 is to be maintained i. e. for every four teachers there should be

three teachers from D. Ed. qualification and one teacher from B. Ed. qualification. Considering the said ratio, staffing pattern, availability of posts, the decision shall be taken by the Divisional Commissioner on the representation that would be given by the petitioner. The said decision shall be taken within a period of six (06) months from the date of receipt of the representation. The petitioner may represent herself before the Divisional Commissioner. The Divisional Commissioner may consider the law laid down by this Court in a case of **Kondiba Mirase Vs. State of Maharashtra** and by the Apex Court in a case of **State of Maharashtra and others Vs. Tukaram Chaudhari and others** referred to supra.

8. The writ petition accordingly is disposed of. No costs. Rule discharged.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]