

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.8054 OF 2005**

Shams Tabriz Mohammad Shaban,
Age 40 years, Occ.Service,
presently working as Assistant
Teacher, National Urdu High
School, Dhule,R/o Dhule,
Dist.Dhule. ... Petitioner.

Versus

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

2. The Director (Postal D.Ed.
Scheme), Maharashtra Educational
Research and Training
Institute, Pune.

3. The Education Officer
(Secondary), Zilla Parishad,
Dhule.

4. Anjuman Faroge Talem,
MaulawiGanj, Dhule, through
its President.

5. The Principal,
National Urdu High School,
Azad Nagar, Dhule,
Dist.Dhule. ... Respondents.

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Mr.S.R.Barlinge, advocate for the petitioner.
Mrs.A.V.Gondhalekar, Additional Government
Pleader for the State.

Mr.S.P.Brahme, advocate for Respondent Nos.4 and
5.

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**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 14.08.2017.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. The petitioner assails the order dated 6.9.2005, passed by the Respondent No.2 cancelling the admission to the postal D.Ed.

2. Mr.Barlinge, learned counsel for the petitioner submits that though the petitioner was appointed as a Peon, the petitioner was allowed to take classes on honorary basis. Resolution to that effect was also passed by the Management. The learned counsel submits that thereafter permission was granted to the petitioner for taking postal D.Ed. course. The petitioner passed his postal D.Ed. and got the D.Ed. certificate. After 16 years of passing the D.Ed. course, the Respondents cancelled the postal

D.Ed. admission. The petitioner since 5.1.1996 is functioning as an Assistant Teacher. Once having given the admission in the postal D.Ed. course, after 16 years it is not permissible to cancel the same. The learned counsel relies on the judgment of the Apex Court in the case of **"Shri Krishan Vs. The Kurukshetra University, Kurukshetra"** reported in **AIR 1976 Supreme Court 376**. Learned counsel also relies on the judgment and order passed by this Court in group of petitions dated 7.12.2010 in W.P.No.572/2006 (Shaikh Majid Ali S/o Liyakat Ali and others Vs. The State of Maharashtra and others) (**Coram :B.R.Gavai and R.M.Borde, JJ**).

3. Mr.Brahme, learned counsel for the Respondents in fact supports the argument of the learned counsel for the petitioner and submits that Respondents had allowed the petitioner to discharge the duties of a Teacher, however, the said duty was additional one. On 6.10.1985, Resolution was passed by the Management to permit the petitioner to acquire qualification of D.Ed. by post.

4. Learned Additional Government Pleader submits that fraud is committed by the petitioner and the Management and such an admission can not be protected. The petitioner was not entitled to be admitted to the postal D.Ed. course. After making necessary inquiry and getting the inquiry report from the Education Officer (Primary), so also Divisional Deputy Director of Education, the show cause notice was issued to the petitioner and admission was cancelled.

5. It appears that initially the petitioner was appointed as Peon on 1.4.1981. On or about 1985-86 as per the case of the petitioner and the Management, the petitioner was additionally allowed to take classes, he being HSC qualified. The Management claims to have passed a Resolution to that effect. The petitioner was permitted by the authority to appear for postal D.Ed. and in 1987-88 got the qualification of postal D.Ed.

6. In the meantime, the petitioner was promoted as Junior Clerk on or about 1.8.1994 and

thereafter is appointed as Assistant Teacher on 5.1.1996.

7. This Court had directed the parties to maintain statusquo. The impugned order was not implemented. The petitioner today also is performing his duties as Assistant Teacher but because of the pendency of the Writ Petition, is not granted approval as Assistant Teacher.

8. The Management appears to have passed a Resolution allowing the petitioner to complete postal D.Ed. The petitioner has successfully completed postal D.Ed. course. After having completed postal D.Ed. course and after a long slumber of 16 years had passed by, the Respondents ventured to cancel the admission of the petitioner of postal D.Ed. This Court in W.P.No.572 of 2006 (Shaikh Majid Ali S/o Liyakat Ali and others Vs. The State of Maharashtra and others) (**Coram : B.R.Gavai and R.M.Borde, JJ.**) under judgment and order dated 7.12.2010 has considered the said aspect in similar set of facts and had allowed the the Writ Petitions of

the petitioners therein.

9. Considering above and the petitioner is similarly situated, the impugned order is quashed and set aside.

10. The petitioner pursuant to the present order may approach the authorities for redressal of his grievance and consequential benefits, if any.

11. Rule accordingly made absolute in above terms. No costs.

Sd/-

(MANGESH S. PATIL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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