

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

Writ Petition No. 7155 of 2004

* Krushnashankar s/o Gyanobaji Sawant,
Age 32 years,
Occupation : Service,
Assistant Teacher,
Kalvash Sheshraoji Chandrao Raut
Adivasi Ashram School, Mahadapur,
Post Savna, Taluka Hadgaon,
District Nanded. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
- 2) The Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
- 3) The Commissioner,
Tribal Development
Adivasi Vikas Bhavan,
Old Agra Road, Nasik,
District Nasik.
- 4) The Project Officer,
Integrated Tribal Development
Project, Kinwat, Taluka Kinwat,
District Nanded.
- 5) The Magas Vargiya Shetkari
Shikshan Prasarak Mandal,
Dolari, Taluka Himayatnagar,
District Nanded.

- 6) The Head Master,
Kalvash Sheshraoji Chandrao
Raut Adivasi Ashram Shala,
Mahadapur, Post Savna,
Taluka Hadgaon,
District Nanded.

.. Respondents.

Shri. S.R. Barlinge, Advocate, for petitioner.

Shri. A.S. Shinde, Assistant Government Pleader, for
respondent Nos.1 to 4.

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

Date: 13 June 2017.

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

1) The proceeding is filed for the relief of quashing and setting aside the Government Resolutions of the Maharashtra Government dated 10-3-2003 and 20-9-2003. The Government Resolutions are issued by the Tribal Development Department of the State Government. The petitioner is interested in protecting his service conditions as promised to him on the date of his appointment as a trained graduate teacher in Ashram School of respondent Nos.5 and 6 for 1st to 7th Standard, primary school. Due to the Government

Resolutions under challenge the Government authorities, respondent Nos.1 to 4 have refused approval to the appointment of the petitioner as trained graduate teacher. It is the contention of these respondents that at the most approval can be given to the appointment as untrained teacher in view of the requisite qualification viz. D.Ed. for trained teacher. Both the sides are heard.

2) Hundreds of writ petition were filed by the teachers of private schools and even of the local bodies as due to the aforesaid Government Resolutions, the concerned authorities had informed in similar way to the B.A./B.Sc. teachers who were holding B.Ed. degree. In Maharashtra Class 1st to Class 7th Standards of school form part of primary school and Class 8th to 10th Standards are treated as part of secondary school. However, Classes 5th to 7th Standard can be attached to secondary school also and so Class 5th to 7th Standards can be part of primary school as level II of primary school or part of secondary school. For Class 5th to 7th Standards there were graduate teachers holding B.Ed. qualification and but if these classes were part of primary

school, teachers of such schools were not getting salary of trained graduate teacher even when they were having qualification like B.A./B.Sc. and B.Ed. Such scale was available to 25% of the teachers having such qualification but employed in secondary school. To remove this disparity some Government Resolutions were issued by the State Government which include Government Resolutions dated 14-11-1979 and 26-10-1982. Due to such Resolutions first time some posts of teachers from primary school were upgraded and 25% posts were created as the posts of trained graduate teachers in primary school which had 5th to 7th Standard Classes. Many writ petitions were already decided by different Courts at Principal Seat and at the Benches and conflicting views were taken on the requirement of educational qualification for getting appointment in primary school having 1st to 7th Standard Classes. Ultimately the matter was referred to larger Bench and in the case reported as **2000(3) Bom.C.R. 803** (Full Bench) of this Court (**Smt. Jayashree Chavan v. State of Maharashtra and Others**) the point referred viz. "*whether the qualification B. Ed. is the requisite qualification for*

teaching the students in primary school" was answered in negative and it was held that D.Ed. is the requisite minimum qualification for teaching students in a primary school and B.Ed. qualification cannot be treated as equivalent thereto. This decision was given on 5-5-2000. In view of this decision of the Full Bench, the State Government issued two Government Resolutions under challenge viz. Government Resolutions dated 10-3-2003 and 20-9-2003 (by Tribal Development Department of the Government) and informed that D.Ed. was the requisite qualification for getting appointment as a trained teacher in primary school. There are different scales for untrained teacher, trained teacher and trained graduate teacher.

3) Respondent No.5 and 6, Ashram School, employer of the petitioner, private institution, had published advertisement in the year 2000 for the post of trained graduate teacher for primary school. This school is having 5th to 7th standard Classes. In response to the advertisement, the petitioner had applied for the said post and the petitioner came to be appointed on 11-8-2000 on this post. This post was having scale of Rs.5500 - 9000.

Approval by the competent authority like respondent No.4, Project Officer was accorded to the appointment though of temporary nature and for limited period. Similarly, subsequently approval was given even by the Commissioner, Tribal Development, for such appointment though on temporary basis and for limited period. It is the contention of the petitioner that necessary procedure prescribed for such recruitment was followed. After completion of the probation period satisfactorily, the petitioner came to be confirmed on this post by respondent Nos.5 and 6 on 1-5-2003. Proposal was then sent by the employer to the authority, respondent No.1 to 4, for approval of this confirmation. As till then there were Government Resolutions of State Government dated 10-3-2003 and dated 20-9-2003, the authority refused to give approval to the appointment of the petitioner on the post of trained graduate teacher and even as trained teacher. The previous approvals for the appointment were given for the years 2001, 2002 and part of the year 2003. Thus, approval is refused on the ground that the petitioner was not having requisite qualification like D.Ed. as mentioned in the Government Resolutions under challenge.

4) It is the contention of the petitioner that the two Government Resolutions under challenge are issued by the State Government due to misreading of the judgment delivered in Jayashree Chavan's case (cited supra). It is also the contention that the point involved in the said petition was different which is already quoted and there was no need to issue the Government Resolutions to the effect that the teacher having B.Ed. cannot be recognized as trained teacher. It is the contention of the petitioner that his appointment as trained graduate teacher was already approved and so the subsequent Government Resolutions could not have disturbed his service conditions.

5) It is not disputed that the rules which were used for Ashram Schools at the time of the appointment of the petitioner were given in Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 and there was no separate Code as such for Ashram Schools. Such Code came in force subsequently. There were previous Government Resolutions of State Government due to which some posts of teachers from primary schools

were upgraded to enable the teachers having B.A./B.Sc. and B.Ed. to get scale of trained graduate teacher. Such Government Resolutions like Government Resolutions dated 14-11-1979 and 26-10-1982 and the aforesaid peculiar circumstances of the present matter cannot be ignored while deciding the present matter.

6) The learned Assistant Government Pleader placed reliance mainly on the decision of the Full Bench delivered in Jayashree Chavan's case (cited supra) and he submitted that as D.Ed. is the requisite qualification for trained teacher in primary school and as D.Ed. is not equivalent to B.Ed., the petitioner cannot be treated as a trained graduate teacher. To answer this proposition, the learned counsel for the petitioner has placed reliance on a case reported as **2007 (2) ALL MR 933** (Supreme Court) (**State of Maharashtra & Others v. Tukaram**).

7) In the case of Tukaram (cited supra) the Apex Court has considered the old requirements of the Government Resolution dated 14-11-1979 and Government Resolution dated 26-10-1982 and also

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 relating to the dispute involved. The Apex Court has considered the ratio of the case of Jayashree Chavan (cited supra) and also the decision given by Division Bench of this Court in the case reported as **2003(2) ALL MR 951 (Kondiba Vs. State of Maharashtra)**. In the case of Kondiba (cited supra) the Division Bench of this Court had considered the decision of the Full Bench delivered in Jayashree Chavan's case (cited supra) and had held that the case of Kondiba can be distinguished from the case of Jayashree and the point involved in the Jayashree Chavan's case. It is true that in Kondiba's case (cited supra) the teacher involved was of local body, Municipal Corporation and separate rules of procedure and eligibility conditions can be there for such schools. The Division Bench in Kondiba's case considered the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the aforesaid Government Resolution of the year 1979. The Division Bench observed that even if it is presumed that Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 can be applied against Kondiba, in

that case also, a teacher having qualification like B.A. B.Ed. appointed as the trained graduate teacher can say that he was having requisite educational qualification. In that case the teacher was appointed in the year 1984. In Tukaram's case (cited supra) the Apex Court was considering the case of teachers appointed in or about the year 1988 in private primary schools. These teachers were having qualification as B.Ed. and the Apex Court held that they can be treated as trained teachers in view of previous Government Resolutions of the State Government. The Apex Court considered the situation created due to Government Resolutions of 14-11-1979 and 26-10-1982 and observed that scope was created to get appointment as trained graduate teacher even in private primary schools due to the Government Resolutions if there were 5th to 7th Classes attached to the primary school. Apex Court upheld the decision of High Court given in favour of such teachers by referring Kondiba's case cited supra.

8) In **Writ Petition No.7731 of 2005 (Pundlik v. The State of Maharashtra)** decided by another Division Bench of this Court on 3-10-2007 when a teacher of

Ashram School was involved, the Division Bench of this Court considered the aforesaid Full Bench case of Jayashree Chavan and also the case of Tukaram decided by the Hon'ble Apex Court (cited supra) and held that if the first appointment was as trained graduate teacher of person having B.A.B.Ed qualification he needs to be approved as trained graduate teacher of primary school having 1st to 7th Standard classes.

9) The present matter is contested by respondent Nos.1 to 4 on the basis of decision of the Full Bench of this Court in Jayashree Chavan's case (cited supra), the Government Resolutions under challenge and rules made in Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The learned Assistant Government Pleader, however, ultimately submitted that there is now separate Code for Ashram Schools and in view of those rules also D.Ed. is the requisite qualification for getting appointment in private Ashram School and as D.Ed. is the necessary qualification, the petitioner's appointment cannot be approved as a trained teacher. These contentions are already dealt with. No other ground

is raised by these respondents.

10) In view of the peculiar facts of this case which are already quoted and the ratios of the cases of Kondiba, Tukaram and Pundlik (cited supra) this Court holds that the petitioner is entitled to get approval to his appointment on the post of trained graduate teacher. Though the petitioner is entitled to such relief, there is no need to set aside the Government Resolutions under challenge. On facts of the matter the relief can be given to the petitioner and so the petition is partly allowed. Relief in terms of prayer clause (C) is granted to the petitioner. Rule made absolute in those terms only.

Sd/-
(SANGITRAO S PATIL, J.)

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

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