

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4856 OF 1999

The Maharashtra Ashram Shala
Shikshak and Shikshaketar Karmachari
Sangh and others

... Petitioners

vs.

The State of Maharashtra
and others

... Respondents

....

Mr. A.J. Kandarkar for the Petitioners.

Mrs. K.R. Kulkarni. for the Respondent No.1.

....

Coram : **A.A.Sayed &
M.S. Karnik, JJ.**

Date : 5 July 2017

P.C. :

1. By this petition, the Petitioner-Union has sought the following reliefs:

- “(a) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other suitable writ in the nature of mandamus or any other appropriate writ, order or direction under Art.226 of the Constitution of India, thereby directing the Government of Maharashtra, Respondent No.1 herein, to treat the Petitioner No.2 and 3 as also other similarly situated teachers as trained and qualified to teach in the Ashram schools;
- (b) this Hon'ble Court be pleased to issue a writ of mandamus or any other suitable writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby setting aside the Order dated 20/7/1999 (Exh.C) hereto;
- (c) this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby directing the Respondent No.1 to frame a policy in respect of the

Petitioners so as to enable them to acquire further qualifications in a reasonable time frame as allowed to other similarly placed teachers in the State;

- (d) this Hon'ble Court be pleased to issue a writ of mandamus or any other suitable writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby restraining the Respondents from terminating the services of the Petitioners as also of other similarly situated teachers.”

2. The Petitioner Union has averred in the Petition that the petition is filed in representation capacity and it represents the interest of all teachers in Ashram School some of whose names are listed in Exhibit 'E' to the petition. It is the case of the Petitioner Union that the Assistant Teachers in Ashram School having qualification of B.Ed. were initially granted approval as a trained teacher, however, they are not being paid in the pay scale of trained teachers and thereafter, they are sought to be terminated since they are not holding D.Ed. qualification. Learned Counsel for the Petitioner states that by interim order dated 01st September, 1999, the services of the Assistant Teachers were protected and the Respondents were directed to pay them as per the pay scale of the trained teachers. Our attention is invited to this Affidavit in reply filed by the Respondent District Social Welfare Officer wherein it pointed out that pursuant to the Government Resolution (GR) dated 10 October 2000, the State Government had introduced a Scheme for such candidates to complete their D.Ed. course upto the year 2003 and many of the candidates have completed their D.Ed course also.

3. In **Sunil Mukundrao Kale & Ors. Vs. State of Maharashtra** (Writ Petition No.4458/2001 with other companion matters) by judgment and order dated 25th July, 2011, the Division Bench of this Court while considering the case of Assistant Teachers in

Ashram Schools, followed the judgment of the Apex Court in **State of Maharashtra Vs. Tukaram Tryambak Chaudhari (2007) 9 SCC 201**, wherein it was held that Assistant Teacher possessing degree of B.Ed are entitled to pay scale as trained teacher if they are employed in Primary Schools with Standards V to VII. The order dated 25th July, 2011 of the Division Bench reads as follows:

“1 Rule. The learned A.G.P. waives service on behalf of respondents.

2. As short question is involved, the petition is taken up forthwith for final disposal, by consent.

3. The petitioners are Trained Teachers. They are working in Ashram Schools. They have been selected by due process and appointed. They have qualifications of Trained Graduates. Their services were approved as Trained Teachers, and were being paid in the pay-scale available to Trained Teachers. However, the Authorities started paying the petitioners in the pay-scale of Untrained Teachers, on account of Government Resolution dated 18th September, 2000. Similarly placed persons challenged the said action of the Authorities.

4. The issue was considered by the Full Bench of our High Court, which held that requisite qualification for being employed as a Primary Teacher was D.Ed. The issue has now been settled on account of the decision of the Apex Court in the case of State of Maharashtra v. Tukaram Tryambak Chaudhari & Ors., reported in 2007 AIR SCW 1321. Since the petitioners possess necessary qualification, they are entitled to be considered as Trained Teachers, if they are employed with primary schools with Standards V to VII. Those petitioners, who were so employed, would be justified in demanding the pay-scale available to Trained Teachers.

5. Similar issue was raised in the case of Govinda Narayan Gunjal v. the State of Maharashtra, Writ Petition No. 6437 of 2003 dated 12th March, 2008 and companion cases, which were allowed on 12th March, 2008.

6. For the same reason, therefore, these petitions are allowed, the Rule is made absolute on the above basis in terms of prayer clauses (B) to (D).”

4. In **Govinda s/o Narayan Gunjal Vs. the State of Maharashtra**, Writ Petition No. 6337 of 2003, it has been held by the Division Bench of this Court that persons qualified as BA, B.Sc./B.Ed., B.P.Ed. are entitled to be considered as trained teacher, if they are employed with Primary School with standard 5th to 7th and entitled to pay-scale of trained teacher.

5. The learned AGP has fairly placed on record the Government Resolution (GR) dated 28 April 2014 and does not dispute that untrained Assistant Teachers in Ashram school who are graduate and have B.Ed. qualification teaching in Primary Ashram School in Std. V to VII are required to be treated as trained Assistant Teachers and granted benefits accordingly. The said GR makes reference to the judgment of the Supreme Court in State of Maharashtra Vs. Tukaram Tryambak Chaudhari, (supra) as well as the aforequoted judgment of the Division Bench of this Court.

6. In view of the above, the Petition is allowed. Rule is made absolute in terms of prayer Clause (a) & (b). The petitioner Nos. 1 & 2 shall be entitled to all monetary benefits as a trained teachers if they are teaching in Class V to VII of Primary Ashram Schools. It is clarified that this order shall apply to all the similar circumstanced graduate Assistant Teachers who are qualified as B.Ed. / B.P.Ed. appointed after following prescribed procedure and who are teaching in Class V to VII of Primary Ashram Schools.

(M.S. Karnik, J)

(A.A.Sayed, J.)