

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

WRIT PETITION NO. 2424 OF 2006

**SHAILAJA BABURAO BHUTKAR @ SHAILAJA ANIL SADAVARTE
VERSUS
THE STATE OF MAH & ORS**

Mr.Chandrakant K. Shinde, Advocate for the
petitioner
Mr.P.S.Dighe, Advocate for respondent Nos. 7 and 8
Mr.S.K.Tambe, AGP for the respondent/State

**CORAM : S.V. GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 06.10.2018

P.C. :-

. The petitioner seeks direction against
respondent No.3 to promote the petitioner in the
payscale of trained graduate teacher w.e.f.
03.12.1987.

2. Mr. Shinde, learned counsel for the
petitioner submits that since the date of
appointment of the petitioner on 26.11.1987 the
petitioner was possessing the qualification of
B.A.B.Ed. However the petitioner was paid the D.Ed.
Scale. According to the learned counsel from 1995 to
1999 various persons were appointed on the post
meant for B.Ed. The petitioner was already working

with respondent institution. The petitioner ought to have been promoted on B.Ed. Payscale. It is illegality committed by the Management. The petitioner had earlier filed writ petition No.4541/1999, the same was withdrawn with liberty to approach before the Education Officer on 21.08.2002. The representation was given to the Education Officer. No communication was made by Education Officer to the petitioner as such the petitioner has filed the present petition. The Learned counsel submits that it is policy of the State that whenever a post for B.Ed. becomes vacant, the persons serving in the D.Ed. Scale and if possessing the B.Ed. Qualification has to be promoted on the B.Ed. post and fresh appointment from open market need not be made. Learned counsel relies on the letter dated 09.07.1987 and letter dated 27.04.1981 issued by the Director. According to the learned counsel seniority has to be counted from the date the qualification is acquired by the candidate. Learned counsel submits that the petitioner is appointed to teach 5th to 7th std and the appointment of an Assistant Teacher for 5th to 7th std is never subject wise. 25% post are required to be filled in of the persons possessing the B.Ed. Qualification. Illegality is committed

by the Management. Learned counsel relies on the judgment of Division Bench of this Court Saramma Varghese Vs Secretary/President, SICES Society and others reported in 1990 (1) Bom.C.R. 185 and in the case of Lakhwinder Kaur Gurai Vs Garison Children Education Society reported in 2006 (5) Bom.C.R.612 and in the case of Kondiba Dattarao Mirashe Vs State of Maharashtra and others reported in 2003 (Supp) Bom.C.R. 372.

3. Mr.Dighe, learned counsel for the institution submits that the petitioner is estopped by election. The petitioner was initially working with one Chatrapati Shivaji Vidyalaya on B.Ed. Scale. The petitioner resigned from that post. The application was made by the petitioner to appoint her on D.Ed. Pay scale with respondent Institution. Accordingly, the petitioner was appointed on D.Ed. Payscale. The petitioner accepted that appointment without any grievance. Now the petitioner cannot turn around and contend otherwise. Till the year 1999 the petitioner never made any grievance that she should be considered on B.Ed. scale. The petitioner wanted to reside at Shrirampur as such had resigned from the B.Ed. Post and on her own

volition accepted the D.Ed post.

4. We have considered the submissions.

5. It is a matter of record that the petitioner and her husband applied to the Institution to appoint the petitioner on D.Ed. scale. Pursuant thereto the petitioner is issued with the appointment order on the D.Ed. scale.

6. The petitioner at the relevant time was working on the B.Ed. Scale in another institution. However, as the petitioner it appears wanted to reside at Shrirampur resigned from the said post and accepted the posting on D.Ed.post.

7. Upon perusal of the petition and the annexure it does not appear that prior to 1999 the petitioner had made a grievance that she should be considered on the post meant for B.Ed. candidate and that fresh appointment need not be made. In between the year 1995 to 1998 the Institution had made following appointments on B.Ed. Scale.

Sr. No.	Teachers Name	Date of Appointment	Promotion Date	Year passing B.Ed.	of of	Remarks
1	Bhosle R D	25.08.88	01.12.98	-		Promoted though Political Science as main subject
2	Jagtap Bhaskar Prabhu	18.02.91	01.12.97	1985		B.P.Ed. Promotion
3	More Ramesh Sopan	22.08.92	01.11.95	1991		B.P.Ed. Promotion
4	Giri Somnath Jahalam	20.07.92	01.12.95	1991		-
5	Jadhav Sudam Shahurao	01.10.93	01.11.95	1987		-
6	Shelke Shivaaji Mahadu	20.08.93	01.11.95	1988		-
7	Sonwane Prakash Dashrath	18.08.93	01.11.95	1991		-
8	Ku.Pawar Vidya Babulal	03.08.94	16.06.99	1993		-
9	Sau Gadhe Vrushali Bhanudas	20.08.94	21.01.99	1991		-
10	Shinde G B	08.11.95	01.12.97	1993		-
11	Thube N H	26.02.96	01.12.97	1991		-
12	Ku Jadhav Rekha Dattatraya	09.03.96	01.12.97	1991		-
13	Kamble Mahipati Ganpati	04.03.96	01.12.97	1994		-
14	Shaikh Mehboob Abbas	16.03.96	01.12.97	1994		-
15	Shinde Vitthal Ramchandra	12.03.96	01.12.97	1995		-
16	Salve N S	07.03.96	01.12.97	1995		-
17	Hake R M	16.03.96	01.12.97	1994		-
18	Bhujbal A P	05.09.96	01.12.98	1995		-
19	Barge A P	29.08.96	01.12.98	1991		-
20	Chindhe B K	29.08.96	01.12.98	1992		-
21	Kasar B B	10.09.96	01.12.98	1994		-
22	Gund Subhash Piraji	14.12.96	21.01.99	1991		-

23	Aathre Kailas Kundalik	29.08.96	16.06.99	1994	-
24	Sonwane S S	28.07.99	New appointment	1995	-
25	Kumari Bhurtdak Y M	02.08.92	New appointment	1998	-
26	Mokal Bhima Karbhari	18.09.86	21.01.99	1986	Promoted though Economics as main subject
27	Veer Prakash Namdeo	-	01.12.97	1985	Promoted though B.P.Ed.
28	Smt. Bagaw Asha Popatrao	-	16.06.99	-	Promotion for B.Com B.Ed. Qualified
29	Bhoite Prakash Sarjerao	-	16.06.99	-	Promotion for B.Com B.Ed. Qualified

8. None of them are parties before this Court. Even for the sake of arguments if we accept the contentions of the petitioner that fresh appointment could not have been made from open market and the petitioner ought to have been promoted, still in absence of those persons as parties the said request cannot be considered. More persons than the sanctioned posts cannot be allowed to function on the B.Ed. Scale. If the petitioner is granted any relief with retrospective date, then that may result in imbalance of the post meant for B.Ed. candidates. Moreover, it does not appear that prior to 1999 the petitioner had made any grievance and from 1999 to

2001 it does not appear any candidate was appointed in B.Ed. Scale. The petitioner is granted B.Ed. Scale in the year 2001.

9. Considering the aforesaid facts and the conduct of the petitioner and that the petitioner has been granted B.Ed. scale from the year 2001. Request made by the petitioner cannot be considered.

10. The writ petition as such is disposed of. Rule discharged. No order as to costs.

[S.M.GAVHANE,J.]

[S.V. GANGAPURWALA,J.]