

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12248 OF 2015
(Ganesh Somsing Rathod Vs. The State of Maharashtra
and others)

Mr. Ramesh R. Imale, Advocate for the petitioner
Mr. S.G. Karlekar, A.G.P. for respondent Nos.1 to
3/State
Mr. V.P. Golewar, Advocate for respondent Nos.4 and 5
Mr. Prakash K. Suryawanshi, Advocate for respondent
No.6

CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.

DATE : 26th NOVEMBER, 2018

ORDER :

Mr. Imale, learned counsel for the petitioner submits that the services of the petitioner for the period from 2001 to 2007 were approved under order dated 9th February, 2015, as a trained graduate teacher. Subsequently, the said order has been withdrawn by the Authority. It has also been held that the petitioner is not entitled for grant of approval from the year 2007-08 onwards. The learned counsel submits that the Authority does not have power to review the order granting approval. The respondents are bound to implement the order dated 9th February,

2015. The learned counsel further submits that the qualification of B.P.Ed. with one teaching subject is on par with the qualification B.Ed. He submits that as per order dated 9th February, 2015, even three months' salary was paid to the petitioner. The petitioner is transferred to Secondary Division of the school in the year 2008-09. The learned counsel prays that the impugned order may be quashed and set aside.

2. Mr. Golewar, learned counsel appearing for respondent Nos.4 and 5 – Institution supports the petitioner.

3. The learned A.G.P. submits that the petitioner does not possess D.Ed. qualification. The petitioner even does not possess B.Ed. Qualification. Learned A.G.P. submits that there are other teachers senior to the petitioner in the category of `trained graduate teacher. He submits that the impugned order has been rightly passed.

4. If the petitioner possesses B.P.Ed. qualification with one teaching subject, he would be considered on par with the teachers possessing B.Ed. qualification. The school, in the present case, appears

to be for the classes/standards from 1st to 7th. 25% posts would be available to the teachers possessing B.Ed. (B.P.Ed. with one teaching subject). Here, reliance can be placed on the decision in the case of ***State of Maharashtra and others Vs. Tukaram Tryambak Chaudhari and others 2007 AIR SCW 1321.***

5. The impugned order nowhere speaks of as to whether there are other senior teachers possessing B.Ed. qualification and approval has been granted to their appointments. The Authority will have to consider the same.

6. Considering the above, we quash and set aside the impugned order. The Authority concerned shall consider the case of the petitioner for grant of approval afresh.

7. In case there are other teachers senior to the petitioner and who have already been granted approval as trained graduate teacher and the posts are not available in the category of "trained graduate teacher", then the Authority – respondent Nos.2 and 3 shall consider the Govt. Resolution dated 11th November, 2011, issued by the School Education and Sports Department and shall explore

the possibility as to whether the petitioner can be considered in D.Ed. Scale.

8. The petitioner and the Management may represent themselves by appearing before the Authority concerned on 5th December, 2018. The Authority shall thereafter take decision expeditiously, after considering the number of posts available in B.Ed. Scale, the Govt. Resolution dated 11th November, 2011, so also such other Govt. Resolution/s holding the field. The Authority shall conclude the aforesaid exercise expeditiously and preferably within three months from today.

9. With the above directions, the Writ Petition is disposed of. No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

npj/wp12248-2015