

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

WRIT PETITION NO.10005 OF 2013

Arun S/o Ratiram Patil

At Mohane, Taluka-Kalyan,
District-Thane.

...Petitioner

V/s.

- 1. The State of Maharashtra**
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai-32.
- 2. The Director of Social Welfare**
Maharashtra State, Pune
- 3. The Special District Social**
Welfare Officer, Thane
- 4. Samaj Jagruti Va Seva Sangh**
Wasindh, Taluka Shahapur,
District-Thane.
Through its President/Secretary
- 5. The Headmaster**
Primary Ashram School (VJNT)
At Mohane, Taluka-Kalyan,
District-Thane.

...Respondents

Mr.N.V. Bandiwadekar i/b Mr.Abhijeet J. Kandarkar for the
Petitioner.

Mrs.R.M. Shinde, AGP for Respondent-State.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON : 11th DECEMBER 2018

PRONOUNCED ON : 21st DECEMBER 2018

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. Rule. Rule made returnable forthwith.

2. The present Writ Petition revolves around the short issue as to whether the qualification of S.S.C. A.T.D. would qualify the petitioner as a trained teacher and we note that the issue involved is no more res-integra as the Division Bench of this Court in case of *Ibrahim Ismail Tadkal Vs. Education Officer (Primary), Zilla parishad, Solapur and Ors*¹ has already put the controversy rest.

The petitioner in the present petition acquired qualification of S.S.C. A.T.D. (Arts Teacher Diploma) and with the said qualification of B.A. (Bachelor of Arts) he came to be selected by the duly constituted School Committee and was appointed as a trained teacher in the Primary School in the pay-scale of Rs.1200-2040.

3. The order placed at Annexure-A issued by the District Social Welfare Officer, Thane discloses that the appointment order of the petitioner effected in the Primary Ashram School, Mohane, Taluka-Kalyan, District-Thane is issued in the capacity of Assistant

¹ 2011 (4) Mh.L.J. 649

Teacher in the pay-scale of Rs.1200-2040 in the backdrop of the qualification of the petitioner namely S.S.C. A.T.D. Further by order passed on 01.08.1996 the approval was granted to the appointment of the petitioner from 13.06.1966 to 30.04.1997 and further by an order dated 23.07.1997 approval was granted to the the petitioner on permanent basis from 13.06.1997 to 30.04.1998.

The case of the petitioner is that he continued to enjoy the trained pay-scale till September 2000 however, from October-2000 he was placed in the pay-scale applicable to an untrained teacher and the salary paid to him from the year 1999-2000 in the pay-scale of trained teacher came to be treated as excess payment and the alleged excess payment was recovered from his salary. To demonstrate this fact the petitioner place reliance on the extract of the service book which is placed on record at Exhibit-D.

4. The grievance of the petitioner is that since the qualification possessed by him was S.S.C. A.T.D., it makes him entitle to hold the post of special teacher (Drawing teacher) in private School in terms of Schedule-F of the Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977 and Rules, 1981 (for short 'MEPS Act'). He has also placed reliance on a communication issued by the State Government addressed to the

Commissioner of the Tribal Development Department, Nashik, thereby informing that in the Primary Ashram School running classes from 1 to 7, the primary teacher possessing qualification A.T.D./B.F.A./G.D. Art as a professional qualification should be appointed against a D.Ed. Qualification. The petitioner seeks benefit of the said communication and canvas before us that since he was possessing ATD qualification, his appointment as an Art teacher made him eligible for a pay-scale of trained teacher and there was no lacuna in his appointment since the qualification possessed by him were in accordance with the MEPS Rules 1981. The petitioner subsequently acquired D.Ed. qualification and in the affidavit filed by the respondent No.1, Assistant Commissioner Social Welfare, Thane, it is categorically stated that in the year 1995 the petitioner was selected and appointed as trained teacher but the mistake committed was rectified when it was revealed that it is imperative for a primary teacher to possess B.Ed. Qualification and only those teachers who possessed qualification shall be treated as Trained Teacher. In terms of the Government Resolution dated 10.10.2000, the petitioner came to be treated as untrained teacher by respondent No.3 by an order dated 12.02.2001 and he was given time to acquire D.Ed. qualification. It is then stated that the petitioner has already been granted the approval as trained teacher

from 01.06.2003 on acquiring the requisite qualification of D.Ed.

5. On consideration of the facts involved in the present matter and after taking note of the judgment relied upon by the counsel for the petitioner we are of the explicit opinion that the case of the petitioner is covered by the said judgment. The Division Bench of this Court was dealing with the case of the petitioner who was appointed in the respondent No.5-school on 08.06.1994 since he possessed Arts Teacher Diploma which qualified him to teach subject drawing in primary school. The issue was whether he should be considered as trained or untrained teacher and the Division Bench of this Court examined the Scheme of MEPS Rules, 1981. It also considered the definition of the term “trained teacher” defined in Clause-K to mean a teacher who has secured a professional certificate, a Diploma and a Degree recognized by the department which qualifies him in the teaching post in school. The following observations would resolve the issue involved in the petition:-

“2. It is common ground that at the relevant time when the petitioner was appointed in the respondent No.5 School on 8th June, 1994, he possessed Art Teachers Diploma, which qualified him to teach subject Drawing in a Primary School. Whether the petitioner can be, therefore, considered

as trained or untrained teacher, will have to be examined in the context of the provisions in the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

Rule 2(k) defines the term “trained teacher”. It reads thus:

“2. Definitions – (1) In these rules, unless the context otherwise requires, (a) to (j)

(k) “trained teacher” means a teacher who has secured a professional certificate, a diploma or a degree recognised by the Department which qualifies him for a teaching post in a school.”

The expression “teaching post in a school” has not been defined. Going by the plain meaning of the above provision, it would mean that a teacher who possesses requisite qualification, may qualify himself/herself for the post of teacher in a school. Be it for a general subject or a special subject (to wit, arts, drawing, etc.). Further, it is beyond the pale of doubt that drawing is one of the compulsory subject in primary school. A teacher who possesses specified qualification will be competent to impart knowledge in the given subject. Suffice it to observe that the definition of “trained teacher” is wide enough to encompass such teachers who possess the specified qualification.

3. The qualification of primary teachers is specified in Schedule ‘B’ to the Rules. Insofar as Drawing teacher is concerned, clause I.2 provides as under:

“I. Qualification for Primary Teachers :

2. Appointment to the post of Special Teacher (Drawing Teacher) in Primary Schools shall be made by nomination from amongst candidates who have

passed S.S.C. Examination and possess Art Teachers Diploma or Drawing Teachers Certificate or Drawing Masters Certificate.”

4. *Considering the fact that the petitioner possessed Art Teachers Diploma, before he was appointed in a permanent post of the Drawing Teacher of respondent No.4 School on 8th June, 1994 after following necessary procedure, by no stretch of imagination, it can be said that the petitioner was an untrained teacher. As that is the sole reason stated in the decision of the Education Officer dated 23rd November, 1994 qua the proposal of the petitioner, the same cannot stand the test of judicial scrutiny. Accordingly, the same is set-aside.*

In light of the aforesaid decision it is clear that the petitioner possesses the qualification of Art teacher Diploma and therefore he is entitled to be treated as trained teacher.

6. During the pendency of the petition the petitioner has sought voluntary retirement with effect from 31.10.2017 and he is availing regular pension with effect from 01.10.2017 and it is informed by the learned AGP that the amount of his gratuity, general provident fund, commutation of pension amount has been received by him.

7. In light of the above settled position of law we have no hesitation in holding that the petitioner at the time of his appointment with the qualification of Arts Teacher Diploma is to be treated as trained graduate since the time of his appointment and he is entitled for permanent approval as a trained graduate teacher with effect from 10.06.1995. He is further entitled for the arrears accruing on account of the difference of the pay between the trained teacher and untrained teacher and the respondent Nos.2 and 3 are directed to calculate the said amount and disburse the same in favour of the petitioner within a period of six months. On account of the conferment of the trained teacher status on the petitioner, from the date of appointment if the respondent-authorities are required to reassess the pay-scale derived by him at the time of his retirement, respondent authorities are directed to do so within stipulated period of three months. With the aforesaid directions writ petition stands disposed of. Rule made absolute in the aforesaid terms with no order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)