

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

22 WRIT PETITION NO.4318 OF 2018

SHIVRAM KASHIRAM RATHOD

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Umakant B. Deshmukh, Advocate for the
Petitioner.

Mr. P. V. Diggikar, AGP for Respondents-State.

Mr. Nitin S. Kadam, Advocate for Respondent Nos.2
and 3.

...

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATED : 05th FEBRUARY, 2019.

PER COURT:-

1. Mr. Deshmukh, learned counsel for the petitioner submits that the petitioner was working as para teacher. Abruptly on 21.06.2012, the petitioner was terminated on the ground that the criminal case is filed against him. The petitioner is acquitted in the criminal case on or about 01.08.2015. According to the learned counsel without any enquiry the petitioner was terminated. As per the scheme of the Government the para teachers are to be absorbed as regular teacher. The order of termination is bad in law and illegal. The petitioner time and again after acquittal, was

representing the authorities, but cognizance is not taken by the authorities of the representation made by the petitioner. As per the Government Resolution dated 01.03.2014, so also the Government Resolution dated 27.09.2011, the petitioner is entitled for being appointed as regular teacher. The petitioner possesses the necessary qualification.

2. Mr. Kadam, learned counsel for respondents submits that on the day when the petitioner stood terminated, the petitioner was not possessing the necessary qualification. He was not D.Ed. According to the learned counsel the petitioner was not in service as on the date when the scheme came into force. The said scheme is applicable only to the persons who are working with concerned Vastishala as para teachers.

3. We have considered the submissions canvassed by the learned counsel for the respective parties.

4. It is not disputed that since June 2008, the petitioner was working as para teacher. The petitioner has rendered service as para teacher for almost four years. Those para teachers who had rendered services of two years or more they are entitled to be considered for absorption as regular teachers.

5. The Government Resolution dated 01.03.2014 lays down the scheme of absorption of the Vastishala para teachers as Primary Teachers in Zilla Parishad Primary School. Admittedly the petitioner is acquitted in the criminal case filed against him on or about 01.08.2015. The termination was only on the ground that the criminal case is filed against the petitioner. No other enquiry was made.

6. It will also not be equitable to grant the benefit to the petitioner of the past years. The age limit is also not prescribed as per the Government Resolution dated 01.03.2014. More particularly, clause 5 specifically states that age limit is not applicable to such cases.

7. Subsequently, the petitioner has also acquired the qualification of D.Ed.. Even, if the candidate did not possess the D.Ed., he should be considered as an untrained teacher as per the Government Resolution dated 01.03.2014.

8. Considering all the aforesaid aspects of the matter, we pass the following order:

ORDER

- (i) The impugned order of termination of the petitioner is quashed and set aside.
- (ii) As per the availability of the posts and if there is no other impediment, the

respondents may absorb the petitioner as Primary Teacher. His service shall be counted from the date the petitioner is absorbed. The petitioner will not get any monetary benefits of the past service nor be entitled to any wages till the date of his absorption.

(iii) Writ Petition accordingly disposed of. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE