

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5680 OF 2016

Satish S/o Nivruttirao Karad,
Age-37 years, Occu:Service,
R/o-C/o- Shri Nagnath Residential School,
Parli-Vaijnath, Tq-Parli-Vaijnath,
Dist-Beed.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through it's Secretary,
Social Welfare Department,
Mantralaya, Mumbai,
- 2) The Director,
Directorate of VJNT, OBC &
SBC Welfare, State of Maharashtra,
3, Church Road, Pune,
- 3) Special District Social Welfare Officer,
Beed, Dist-Beed,
- 4) Marathwada Ustod Kamgar Vikas Mandal,
Parli-Vaijnath, Tq-Parli-Vaijnath,
Dist-Beed.

...RESPONDENTS

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Mr.S.R. Barlinge Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondent Nos.1 to 3.
Mr.R.R. Bangar Advocate for Respondent No.4.

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**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 26TH SEPTEMBER, 2019

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Petitioner is before this court aggrieved by directions issued under the impugned communication dated 23rd March, 2016 whereunder point-wise decision appears to have been taken and petitioner's case figures at item 7 thereunder, whereunder it appears that it had been considered that the petitioner, since he possess B.Ed. degree not possessing D.Ed. qualification, he ought to be treated as untrained teacher and accordingly pay-scale ought to be given to him and it has purportedly been directed to move for recovery of excess amount. There is further direction in the said item, which reads thus:-

"तसेच सहाय्यक आयुक्त, समाज कल्याण, बीड यांचे शुद्धिपत्रक गेवराई कॅम्प दि. २५.९.२०१२ नुसार जर श्री. सतिष निवृत्ती कऱ्हाड यांना माध्यमिक विभागातून प्राथमिक विभागात दर्शविले तर यापूर्वीच प्राथमिक विभागातील कर्मचारी श्री. घुगे पोपट लक्ष्मण, भताने सदाशिव उत्तमराव व धनंजय भीमराव सातभाई यांच्या

अनुक्रमे ११.७.२००८, ११.७.२००८ व १५.६.२०१० नंतरची म्हणजेच २४.९.२०१० ची असल्याने त्यांची नियुक्ती अवैध ठरत असल्याने ती तात्काळ रद्द करण्यात यावी.”

3. Learned counsel Mr. Barlinge appearing for petitioner submits that impugned order in respect of item 7 referred to above is absolutely arbitrary, capricious and irrational. He submits that petitioner had been appointed by following due selection process as an assistant teacher in a school run by respondent No.4. In due course, his services, on completion of requisite period, had become permanent and approval accordingly had also been issued under order dated 25th September, 2012.

4. He submits that intriguingly while an enquiry has supposedly taken place, presumably at the behest of directions of director, VJNT, OBC and Special Backward Class Welfare, respondent No.3, it is as a fall out of the same, impugned order dated 23rd March, 2016 has been issued and with reference to the same, show cause notice on 5th April, 2016 had been issued by respondent No.4. He submits that show cause notice is absolutely untenable and is without jurisdiction. The so-called

enquiry which purportedly has taken place is without following principles of natural justice and is behind back of the petitioner. He submits that basic assumption of petitioner being untrained teacher is without any foundation. He submits that graduate teacher possessing B.Ed. degree is a trained graduate teacher. He refers to decision of the supreme court in the case of *State of Maharashtra and others vs. Tukaram Tryambak Chaudhari and others*, reported in (2007) 9 SCC 201 and points out head note thereunder, which reads thus:

“Service Law – Pay – Higher scale – Parity – Graduate trained middle school teacher – Though classes from 5 to 7 standards were attached to both primary schools as well as secondary schools but different standards were being followed for the two – While 25% of the teachers in 5th to 7th standards attached to the secondary schools who were graduate and had BEd degree were enjoying benefit of a higher scale of pay, for the same classes attached to the primary schools no such benefit was available – To remove such disparity, State Govt. resolved in 1979 to upgrade in-service trained primary teachers, having obtained degree in Arts or Science and also degree in education (BEd), to the higher scale to the extent of 25% of the posts – Respondent graduate teachers having BEd degree appointed as trained teachers of primary schools conducting classes upto 7th standard claiming higher scale – But appellants taking the stand that only in-service graduate primary teachers, inclusive of trained teachers who had completed stipulated training course (Diploma in Education) could be appointed to the converted posts in the increased pay scale and on that basis seeking to treat respondents as untrained teachers to pay their salaries accordingly

– Held, respondents entitled to be appointed and continued as trained teachers in BEd scale – Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, R.6.”

5. Learned counsel for the petitioner further submits that it is not the case of the respondents that the petitioner had ever been treated as untrained teacher. His appointment has been as a trained graduate teacher since beginning and while trained graduate teacher is a trained teacher and there is declaration to that effect by the supreme court, the impugned order dated 23rd March, 2016 under item 7 and show cause notice thereupon are absolutely untenable. The petitioner is a permanent employee occupying sanctioned post. The enquiry on the basis of which show cause notice has been issued, has been behind back of the petitioner and same shall not affect the permanent employment of the petitioner.

6. Learned AGP Mr. Dande, however, submits that in the enquiry it transpired that the management had appointed present petitioner in secondary school i.e. from 8th to 10th standards and in order to create vacancy in secondary school, the management has shifted the services of the petitioner to 5th

to 7th standards attached to primary school giving him benefit of government resolution of graduate pay-scale. Instead of preparing seniority-list and giving benefit to senior-most teacher who is graduate and senior in primary section, benefit is given to the present petitioner and in such a case the observations at item 7 as appearing as an appendage to the impugned order, would be justified.

7. Though this has been so submitted, learned AGP is not in a position to show that the petitioner would not be fitting in the seniority-list for the pay-scale of trained graduate teacher and as to who would be senior to him. It is undisputed that the petitioner, right from the beginning, all along continuously being considered to be trained graduate teacher employed in a school run by respondent No.4. Further, explanation appearing in the affidavit in reply and the reasons which are referred to at item 7 of the impugned order, do not seem to be compatible. Reasons in the affidavit appears to be different from the one appearing in item 7 of the impugned order. No explanation is coming forth in this respect. It is not shown as to how persons referred to under item 7 would impinge on petitioner. The reasons in impugned

order and affidavit in reply are quite apart leading to an unsustainable action in fact and in law.

8. For the reasons afore-stated, when petitioner has acquired status of permanent employee, it does not appear that impugned order dated 23rd March, 2016, particularly at item 7 and the show cause notice based thereupon can be said to be justifiable. In the circumstances, the impugned order being untenable, the petition is allowed in terms of prayer clauses (B) and (C) to the extent of petitioner and is disposed of. Needless to refer to that consequences shall follow. Rule is accordingly made absolute.

(S.M. GAVHANE, J.)

asb/SEP19

[SUNIL P. DESHMUKH, J.]