

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10301 OF 2017

Vitthal s/o Pralhad Borkar,
Age: 42 years, Occu: Service,
R/o Sant Namdev Primary Ashram
School, Gangalwadi, Tq. Aundha
Nagnath, Dist. Hingoli.

...Petitioner

Versus

- 1] The State of Maharashtra
(Through its secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai-32)
- 2] The Director,
V.J., N.T., O.B.C and S.B.C. Welfare,
Maharashtra State, Pune-1.
- 3] The Regional Deputy Commissioner,
Social Welfare Department, Latur.
- 4] The Assistant Commissioner,
Social Welfare Office, Hingoli

...Respondents

...
Mr. Vijay A. Dhakne, Advocate for petitioner
Mr. G.O. Wattamwar, AGP for respondent - State
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 06-08-2019

ORAL JUDGMENT (*PER – SUNIL P. DESHMUKH, J.*) :

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

2. There is no dispute that petitioner had been appointed initially in 1997 under order dated 01-08-1997 as Assistant Teacher in primary ashram school having classes from 1st to 7th standard. Petitioner had been possessing educational qualification B.A. B.Ed. at the time of his appointment. Since the petitioner did not possess diploma in education, a qualification which is considered to be relevant one for being considered as trained teacher, his services were being considered as that of untrained teacher and approval to the same had been given accordingly from time to time.

3. Learned counsel for petitioner submits, during the period of employment, several government resolutions have been issued pursuant to which petitioner's appointment ought to have been considered as that of trained teacher. He submits that several orders have been passed from time to time by this high court at the principal seat as well as at its bench at Nagpur, taking into account various orders passed by high court as well as decision of supreme court in the case of *State of Maharashtra and others Vs. Tukaram Tryambak Chaudhari and others* reported in 2007 AIR SCW 1321. The petitioner had been after the respondents to pay to him the salary in the pay scale as would be applicable in the case of trained

primary teachers. Said requests were not being heeded and, as such, has approached this court under present writ petition.

Prayer clauses (B) and (C) thereof read thus,

“ (B) To direct the respondents no. 3 and 4 to grant the pay scale of trained primary teacher to the petitioner from the date of his initial appointment and to pay the arrears of the salary to the petitioner on account of difference of salary between a trained primary teacher and untrained primary teacher since his initial appointment with all other consequential benefits within two months, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

C) To direct the respondents no. 3 and 4 to pay and release the salary of trained primary teacher to the petitioner regularly in each months from 1.05.2014, pending hearing and final disposal of this writ petition. ”

4. During pendency of this writ petition, an order came to be passed by respondent no. 3 – The Regional Deputy Commissioner, Social Welfare Department, Latur refusing to grant permanent approval to appointment of petitioner as trained graduate teacher and in view of the same, prayer clause (E) was added under amendment reading thus,

“ E) To quash and set aside the impugned order dated 20.01.2017 passed by the respondent no. 3 Regional Deputy Commissioner, Social Welfare Department, Latur thereby refusing to grant permanent approval to the petitioner as trained primary teacher, by issuing a writ of Certiorari or any other appropriate writ, order or direction as the case may be. ”

5. Learned counsel for petitioner refers to order dated 11-10-2012 in writ petition no. 478 of 2011 passed by a Division

Bench of this court wherein a case of primary teacher working in ashram school having classes 1st to 7th standard was under consideration. Petitioners therein were selected and appointed as assistant teacher when they were possessing B.A. B.P.Ed. qualification. In said case, it appears that initially the petitioners were being treated as trained graduate teacher, however, subsequently, they were being considered as untrained teachers for want of possessing B.Ed. qualification and were being paid in the pay scale of untrained graduate teacher from 2000.

Relying upon decision in the case of *State of Maharashtra and others Vs. Tukaram Tryambak Choudhari and others* (supra) and orders passed in writ petitions no. 6437 of 2007 and 121 of 2012 and connected writ petitions decided on 12-03-2008 and 20-03-2012, respectively, the petitioners had claimed trained primary teacher's pay scales.

In said decision, a resolution of State Government dated 11-11-2011 as well had been adverted to, observing that teachers holding trained graduate qualification were entitled to be paid trained teachers (D.Ed. pay scale). It was further observed that under the resolution, trained graduate qualification of teachers would entitle them to be paid in trained primary teacher's pay scale from the date of appointment.

In said order, paragraph no. 6 of decision in writ petition no. 6437 of 2007 has been quoted. Division Bench as such, in view of the decision and the background in the case of *State of Maharashtra and others Vs. Tukaram Tryambak Choudhari and others* (supra) as well as Government resolution dated 11-11-2011 has considered that petitioners were entitled to be paid pay scale of trained primary teacher and accordingly, writ petitions had been allowed, directing respondents to pay difference of pay admissible to each of the petitioners from the date of their entitlement in terms of Government resolution as well as decision of the Supreme Court as well as of this court, as expeditiously as possible.

6. Learned counsel during the course of submissions has also referred to following paragraph no. 4 from decision of division bench of this court dated 12-10-2010 in writ petition no. 6096 of 2010, reading thus,

“ 4] The issue is no more res-integra. The Apex Court, in the matter of “State of Maharashtra Vs. Tukaram Trymbak Choudhari,” reported in 2007 Air Scw 1321, has held that in such of the primary schools, to which 5th to 7th standards are attached, the teachers possessing B.A. B.Ed. Qualification will have to be considered as a trained primary teachers. ”

7. Learned counsel submits, another Division Bench of this Court has rendered decision dated 14-06-2016 in writ petition no. 7178 of 2015 and has passed following directions,

“

ORDER

(i) *The Writ Petition is allowed.*

(ii) *The respondents are directed to extend to the petitioner the benefit of trained teacher's pay scale from the date of his appointment i.e. 01.07.1999 and pay to the petitioner, the salary as applicable to the trained teachers on regular basis and pay the trained teachers on regular basis and pay to the petitioner the arrears from the date of receipt of the grants and extend to him all benefits of trained teacher from the date of his appointment for all purposes.*

(iii) *Rule is made absolute. No order as to costs. ”*

8. Learned counsel for petitioner submits that the parameters in the decision rendered by this Court referred to above are similar and analogous to the factual matrix involved in the present petition and, thus, urges to allow the writ petition.

9. Learned Assistant Government Pleader Mr. Wattamwar, however, purports to have a different perspective of the matter, submitting that B.P.Ed. would not be a qualification much less a trained one for appointment to post of assistant teacher in primary school. He purports to submit that in the case of *State of Maharashtra and others Vs. Tukaram Tryambak Choudhari and others* (supra), question of equivalence of B.P.Ed. with D.Ed. was not under consideration. The case was with respect to B.Ed. and D.Ed. qualification. Thus, though the decisions have been rendered by several division benches of this court favouring petitioners, views expressed by

division benches in those matters would be required to be digressed from. He submits that in the present case, it may have to be considered that petitioner would not be able to claim that he had been appointed in ashram school having classes from 1st to 7th since bifurcation of the classes into primary and secondary has taken place and the petitioner is working in school having only 1st to 4th standard classes. He submits that even resolution of 2011 (supra) having regard to aforesaid factual aspects would not be applicable to petitioner's case. He further refers to that under the resolution of 11-11-2011, relaxation to untrained primary teacher would hardly be possible since it would not be a case wherein requirements under said resolution can be said to have been satisfied in the present case. He, therefore, submits that a different view be taken from the one which had been hitherto taken in several decisions by this Court. Learned Assistant Government Pleader during submissions has purportedly adverted to that the post for a person holding qualification B.P.Ed. would not be available in V.J.N.T. ashram school.

10. Although learned Assistant Government Pleader has with perseverance submitted as aforesaid, we do not think it appropriate that there should be any divergence in the decisions on account of the aspects which have been referred to by learned Assistant Government Pleader about bifurcation of school or for

that matter, B.P.Ed. would not be a degree. It emerges that such situations have been considered in the decisions and the resolutions of the Government. The orders passed by Division Benches of this court would show that similar factual parameters were involved in the writ petitions, particularly in writ petition no. 478 of 2011 and writ petition no. 7178 of 2015. Writ petition no. 7178 of 2015 in particular is quite exhaustive and there being no particular distinguishing factor available to digress from the view taken by Division Benches of this court, we are disinclined to accede to submissions made by learned Assistant Government Pleader on behalf of the respondents.

11. Taking overall view of the matter, we deem it appropriate to allow the writ petition. The writ petition, in the circumstances, stands granted in terms of prayer clauses (B), (C) and (E) and is disposed of. Consequences and benefits incidental to and ancillary shall accrue and be given to petitioner as expeditiously as possible. Rule is accordingly made absolute.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/