

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

WRIT PETITION NO.8143 OF 2013

Arjun Chandram Thorat	}	Petitioner
Vs		
State of Maharashtra through the	}	
Secretary and Ors.	}	Respondents

Mr.R.B.Deshmukh for the Petitioner.

Mr.S.B.Kalel, AGP for State-Respondent
Nos.1 to 3.

Mr.Anand S. Kulkarni for Respondent
No.4.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- FEBRUARY 14, 2019

P.C. :-

1. By this writ petition, the petitioner had sought a writ of mandamus or any other writ, order or direction to pay him the salary of trained teacher with effect from 1st June, 1994 to 4th July, 2003 and pay him the arrears of the said salary from that date. This benefit be granted to him in the light of the orders passed by several Division Benches of this Court. The other relief that is claimed is to grant higher pay scale immediately after completing 12 years qualifying service from the date of initial appointment by counting the service rendered as untrained teacher. On this petition and after its institution, it is apparent

that prayer clause (d) had been granted and, therefore, we need not consider it.

2. The controversy that remained or survived for adjudication is noted by us in our detailed order of 12th February, 2019. That order reads as under :-

1. Having heard both sides, we find that in this petition, there was a specific order. On 7th January, 2019, we have heard both sides. It was argued on that date that the petitioner has not been granted the higher pay scale. He contends that he is eligible to draw it on the basis of his educational qualification with effect from his initial date of appointment i.e. 1st June, 1994 to 4th July, 2003. Assuming there was a technical defect and the petitioner did not challenge the earlier order of 2010, why the benefit has been denied from 1st November, 2001 to 4th July, 2003 has not been explained to us and that is why on that date we granted time. On 22nd January, 2019 this petition was listed again and on that date, we passed the following order:-

“1 On 7th January, 2019, after hearing both sides, this Court passed the following order:-

“Having heard both sides, we find that Mr.Kulkarni raises an objection to this petition by urging that the petitioner has failed to challenge the legality and validity of the order dated 30th July, 2010, copy of which is at page 38 to the petition. We inquired from Mr.Kulkarni as to why after excluding the period 1st June, 1994 to 12th October, 2001, and thereafter for the balance two years, the petitioner has not been granted the higher pay scale. The grievance of the petitioner is that the petitioner is eligible to draw salary of a trained teacher with effect from his initial date of appointment i.e. from 1st June, 1994 to 4th July, 2003. Even if we accept the argument of Mr.Kulkarni that the petitioner has failed to challenge the order of 30th July, 2010, copy of which is at page 38, why from 1st November, 2001 to 4th July, 2003, the benefit of the increased salaries or revised pay has been denied to the petitioner has not been clarified to us. On such an inquiry, Mr.Kulkarni seeks

time to take instructions and at his request, we post this matter on 15th January, 2019 on the "Supplementary Board".

2 The instructions have been received by Mr.Kulkarni and he says that the petitioner has drawn the salary of untrained teacher. Let Shri Kulkarni appearing for respondent No.4 file an affidavit and justify why the petitioner is not entitled for the benefit of increased salary or revised pay. This affidavit be filed within two weeks from today with advance copy to Shri Deshmukh.

3. The writ petition being of the year 2013, is listed on 12th February, 2019. It shall be listed on the "Supplementary Board."

2. Despite this clear order, we find that no affidavit is filed on behalf of the Education Officer (Primary), Zilla Parishad, Solapur, District Solapur. Let this Education Officer remain present in this court with all original records on 14th February, 2019 at 3.00 p.m.

3. Stand over to 14th February, 2019 at 3.00 p.m."

3. Pursuant to that order, the writ petition was placed today and Mr.Sanjaykumar Rathod, Education Officer (Primary), Zilla Parishad, Solapur has filed an affidavit. In that affidavit he says that the petitioner, at the time of initial appointment, was having B.P.Ed. qualification. Thereafter on 12th October 2001, he desired to appear for D.Ed. Course and after the sanction was given, the petitioner completed the D.Ed. Course. However, he was an untrained teacher and got pay scale 3200-4900 as untrained teacher for the period 12th October, 2001 to 3rd July, 2003.

4. After the petitioner completed D.Ed. Course on 4th July, 2003, he became entitled to pay scale as an trained teacher with

effect from 4th July, 2003. That is how an order was passed on 3rd December, 2003.

5. Though the Management-respondent No.5 has forwarded the proposal, but the Education Officer had passed an order on 30th July, 2010 and that order has not been challenged. In addition, on 27th December, 2018, the petitioner was granted the time bound promotion on completion of twelve years' service.

6. Thus, the argument is that once the petitioner has accepted the order of 30th July, 2010, then, all the more the relief should not be granted.

7. Mr.Deshmukh appearing for the petitioner, on the other hand, would submit that on 12th February, 2019, this Court had clearly noted that after exclusion of the period 1st June, 1994 to 12th October, 2001, for which the benefit has already been granted, for the balance period, namely, from 1st June, 1994 to 4th July, 2003 the higher pay scale has not been granted though the petitioner is eligible to draw the salary of a trained teacher with effect from his initial date of appointment, namely, 1st June, 1994 to 4th July, 2003. Thus, this Court accepted the argument of the petitioner on the footing that even if it accepts the stand of the Education Officer-respondent No.4, then, why benefit from

November 2001 to 4th July, 2003 was denied has not been clarified to this Court.

8. Additionally Mr.Deshmukh would submit that this Court proceeded on the without prejudice contentions, but did not express a final opinion thereon. It was not able to express the final opinion in the absence of the affidavit in reply filed on behalf of respondent No.4.

9. After hearing both sides, we noticed that today the affidavit in reply has been filed on behalf of respondent No.4 which is taken on record.

10. It is common ground that the order at page 38 of the paper-book purports to deal with the Management's proposal to approve the appointment of the petitioner. That proposal is dated 1st April, 2009. A copy of that proposal is at pages 18 and 19 of the paper-book. The Management has not held back anything from the authorities, but has informed that the petitioner was working in this school (Sadguru Dhuleshwar Maharaj Vidyalaya) from 1st June, 1994. He was employed as an Assistant Teacher from 1st June, 1994 upto 4th July, 2003 on untrained scale. From 4th July, 2003, he has been treated as an trained teacher.

11. The Management pointed out that the petitioner completed his B.P.Ed. in 1995. He completed his D.Ed. in 2003. But the Maharashtra Government has already held that B.Ed. and B.P.Ed. are qualifications on par with each other. The school was aided to the extent of 80% upto 2000 and thereafter from 2001, it is 100% aided school.

12. The request of the Management was that the petitioner should be treated as a trained teacher from 1994 till 4th July, 2003.

13. The reply given in terms of the order of 30th July, 2010 does not deal with anything regarding the qualification, but says that the petitioner completed the qualification required for the trained scale and that is why from 4th July, 2003, he has been recognised as trained teacher and his appointment was approved on that basis. The order further says that the petitioner's services, rendered from 1st June, 1994 to 12th October, 2001 are also approved, but he would not be granted any salary and allowances or differential pay.

14. It is common ground that several judgments of this Court have been rendered on the point as to whether B.P.Ed., B.Ed. are qualifications on par with each other. In other words, they are

equivalent qualifications or not. It is also a common ground that there was a Full Bench judgment rendered by this Court and that Full Bench judgment was rendered in the case of *Smt. Jayashree Sunil Chavan Vs. The State of Maharashtra and Ors.* reported in *2000(3) All Maharashtra Reporter 465*. That decision took a view that for being employed as a primary teacher, the requisite qualification was D.Ed. and B.Ed. cannot be treated as equivalent thereto. However, in the subsequent judgment rendered in the case of *Kondiba s/o Dattarao Mirashe Vs. State of Maharashtra and Ors.* reported in *2003(2) Maharashtra Law Journal 432*, a Division Bench of this Court held that Assistant Teachers possessing the qualification B.A. B.Ed. are trained teachers. The decision in the case of *Kondiba* (supra) was carried before the Hon'ble Supreme Court as that decision was followed in several judgments rendered at the Principal Seat.

15. The matter was ultimately decided by the Hon'ble Supreme Court and the Hon'ble Supreme Court observed that (*In the case of State of Maharashtra and Ors. Vs. Tukaram Tryambak Chaudhari and Ors.*) (*AIR 2007 Weekly 1321*) the decision rendered in *Kondiba's* case (supra) is closer to the facts in *Tukaram's* case (supra). It is also because the Full Bench decision was rendered without noticing the Government Resolution dated 12th November, 2001.

16. The whole controversy, therefore, was revisited in the light of this judgment and when the Management, in the instant case respondent No.5, relied upon the Government Resolution dated 11th November, 2011, copy of which is at page 94 and 95 of the paper-book, we perused it with the assistance of Shri Kulkarni and Shri Deshmukh.

17. We find that this Resolution is touching the primary teachers who are working in the schools or educational institutions, managed and administered by local bodies as also private primary schools. While it is true that a primary section is now known as section having standard 1st to standard 7th, but previously it was only standard 1st to standard 4th which was recognised and accepted as a primary school. Insofar as these schools are concerned, in the event in any such primary schools for the trained teachers posts and excluding a particular quota, if any graduate and B.Ed. teacher with D.Ed. is appointed, then, from the date of appointment of such teachers, they should be reckoned as trained teachers. For such trained teachers, the pay scale at the time of their appointment and which was admissible to a D.Ed. trained teacher would now be admissible. Such teachers, if holding the post of Shikshan Sevak, after they complete the period necessitated by law as Shikshan Sevak, the

benefit of trained teacher scale should be made admissible (See clause (b) of the Government Resolution dated 11th November, 2011 at pages 94 and 95 of the paper-book).

18. A perusal of all this material would denote that none of these are in dispute. Even in the affidavit in reply filed by the fourth respondent, there is no dispute that the Government Resolution of 11th November, 2011 would have to be read in its entirety. When its paras are read together and harmoniously, then, one can draw the conclusion as above. In fact, it is the only conclusion which can be drawn. By an order passed during the pendency of this petition dated 27th December, 2018 career advancement progression scheme benefit has already been granted. The only reason why the benefit for the period noted by us hereinabove has been denied is on account of the order dated 30th July, 2010 and that having not been challenged by the petitioner.

19. However, we have perused that order and we do not find it is adverse to the petitioner to such an extent as is projected before us by Shri Kulkarni. In fact, this order purports to deal with the proposal of the Management dated 1st April, 2009. It is not an order as such, but it is a communication. Even that communication fails to note the purport of the Government

Resolution dated 12th November, 2001. If that Resolution has now been put in place and clears the position of untrained teachers, who did not possess the D.Ed. scale, but brought them on par with the graduates with B.Ed. scale and granted them the benefit of trained teachers pay scale, then, we cannot see how the then Education Officer (Primary) Zilla Parishad Solapur could have addressed such a communication. In any event, one cannot force a primary teacher or, for that matter, anybody employed or working in the State, to accept any terms and conditions contrary to the statutory prescription. The Government Resolution dated 11th November, 2011 and the prior Resolution of 12th November, 2001 binds the authorities. They cannot contract out of the same or force any primary teacher like the petitioner to contract out of the same. Once this is the clear position emerging from the communication of 30th July, 2010, copy of which is at page 38 of the paper-book, then, we cannot accept the arguments of Shri.Kulkarni.

20. However, there is much substance in the argument of Shri.Kulkarni that though the petitioner was a graduate at the time of his initial appointment, but he did not acquire or possess the qualification of Bachelor of Education (B.Ed.) at the time of his appointment. That he acquired later on. He acquired that

qualification, according to the petitioner himself, in 1995. According to Shri Kulkarni, therefore, from the date of his appointment till the date he acquired that qualification, the pay scale of a trained teacher cannot be made admissible to the petitioner. We find much substance in this argument and we do not intend him to grant the benefit in its entirety. We grant the petitioner the benefit of the pay scale of a trained teacher from the date he acquired the qualification of B.Com B.P.Ed. Mr.Kulkarni does not dispute that B.P.Ed. and B.Ed. are the qualifications brought on par or treated as equivalent qualifications and that is to be found in the earlier Government Resolution of 2001, which is referred to in the recent Government Resolution of 2011, copy of which is at pages 94 and 95 of the paper-book. In fact the affidavit filed in reply also does not dispute this position. It is apparent that the pay scale of 3200-4900 as untrained teacher, was granted and sanctioned to the petitioner by the earlier order. None can deny him the benefit of trained teacher's pay scale from 1995 to the period stipulated, namely, 4th July, 2003.

21. The attempt to deny it would clearly contravene the Government Resolution of 2001 as also several judgments rendered by this Court.

22. We are, therefore, of the view that the writ petition must succeed to the extent indicated above as also in our orders of 22nd January, 2019 and 12th February, 2019. We have noted in those orders that the petitioner was not granted the pay scales of a trained teacher from 1st June, 1994 to 12th October, 2001 and thereafter, for balance two years. The grievance was also noted that the petitioner is eligible to draw salary of a trained teacher with effect from 1st June, 1994 to 4th July, 2003. Once the affidavit has been filed, but which does not deal with the essential factual issue nor it controverts the factual position, then, by excluding the period from 1st June, 1994 till the petitioner acquired the equivalent qualification of B.P.Ed., the writ petition must succeed. The petitioner says that he is B.Com, B.P.Ed. That qualification he acquired in 1995. So the relief shall be granted to him from the date of acquisition of the B.Com, B.P.Ed. qualification and till the date stipulated above. The further relief has already been granted. Now the differential pay shall be released by the Education Officer directly to the petitioner and without insisting on any formal proposal or request from the Management. This order is passed because we have taken the factual position emerging from the proposal of the Management, copy of which is at pages 18 and 19 of the paper-book. Nothing additional should now be insisted to be forwarded by the Management. That would

only delay the agony of the petitioner for he has already waited for the fruits of the favourable orders of this Court from 2013 till today. At the time when the petition was filed, the petitioner was 49 years of age. Now it is stated that he will be retiring within two years. Hence, in the facts peculiar to this case and without treating this order as a precedent, we have directed the Education Officer to release the benefit to the petitioner. This order does not mean that in every such cases, the insistence on a written proposal from the Management is dispensed with. That would be the requirement and which is essential as well for Accounting purpose.

23. With the aforesaid directions, the writ petition is allowed. There will be no order as to costs.

24. However, our order and direction does not mean that the petitioner can insist on the pay scales on the basis that he has completed the period of twelve years necessary for the Assured Career Progression Scheme. He will not be entitled to take the benefit of our directions and insist on payment of the amount in respect of the above scheme from 1995 till 2003.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)