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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6035 OF 2013**

Mrs. Medha Deepak Khobrekar & ors. ..Petitioners

Vs.

The State of Maharashtra & ors. ..Respondents

**WITH
WRIT PETITION NO. 5825 OF 2013**

Rajan Vishnu Bhosale & ors. ..Petitioners

Vs.

The State of Maharashtra & ors. ..Respondents

Mr. N.V. Bandiwadekar
a/w. Mr. Vinayak Kumbhar for
petitioners.

Mr. V.M. Mali, AGP for State.
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**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

RESERVED ON : 25th FEBRUARY 2019

PRONOUNCED ON : 27th JUNE, 2019

JUDGMENT (PER M.S.KARNIK, J.):-

Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2. The petitioners by these Petitions filed under Article 226 of the Constitution of India, pray for quashing and setting aside the order dated 24/10/2013 whereby it is held that as the petitioners are not D.Ed. qualified, their request to include their names in the seniority list of trained graduate teachers cannot be granted.

The petitioners have further prayed for quashing and setting aside the final seniority list of trained graduate teachers (D.Ed. and B.Ed.) as on 24/10/2013 and also the impugned final seniority list of graduate assistant teachers who are not D.Ed. as on 24/10/2013 published by respondent No.2 vide cover letter dated 24/10/2013.

The petitioners have further prayed for direction to include the names of the petitioners in the final seniority list of trained graduate teachers working in Primary Schools of

respondent No.2 School Board, and on that basis the names of the petitioners may be considered for promotion to the post of Block Education Officers.

The petitioners have thereby prayed for consequential direction to respondent Nos. 2 and 3 to pay to the petitioners salary in the pay scale of trained graduate teachers as revised under the 6th Pay Commission with effect from 1/1/2006 and to pay the arrears thereof.

3. Since common issues are involved, the present Petitions are decided by a common judgment. We have referred to the facts of Writ Petition No. 6035 of 2013.

4. In brief it is the case of the petitioners that since the petitioners possess the qualifications of trained graduate teachers, they are entitled to be placed/included in the final seniority list of trained graduate teachers working in the primary schools of respondent No.2.

5. The facts of the case in brief are as under :

The petitioners are B.A. B.Ed./M.Ed. They came to be appointed as Primary Teachers in the Primary Schools of respondent No.2 School Board. They were appointed on different dates vide order dated 7/8/1990, 13/8/1990, 20/8/1990, 14/1/1994 and 13/7/1994. The appointments were made in the pay scale of 1330-2776. According to the petitioners, on the basis of these qualifications the petitioners are eligible and qualified to be appointed as trained graduate teachers. Accordingly the petitioners were appointed in the posts of trained graduate teachers available in the Primary Schools of respondent No.2. The petitioners continuously worked in their posts without any break. After completing two years continuous service all the petitioners became permanent in service.

6. The respondents treated the petitioners as untrained teachers on the ground that they did not possess D.Ed. qualification and as such their annual increments were withheld. However, in the year 2002 as per circular issued by the Deputy

Director of Education (Primary) the increments withheld came to be released. The entries in this behalf are made in the service book of each petitioner.

7. The respondent No.2 published the seniority list of trained graduate teachers working in its Primary Schools for the first time in the year 2008. The petitioners were included in the seniority list. Against the name of petitioners the qualification of D.Ed. was also shown, although petitioners did not possess the said qualification. This mistake was brought to the notice of respondent No.2 by petitioners who assured to rectify the same.

8. In the seniority list as on 1/4/2010 published by respondent No.1, the petitioners were not included. The respondent No.2 assured the petitioners that the error would be rectified.

9. The respondent No.2 circulated provisional seniority list of trained graduates, but without including names of

petitioners. The teachers who are B.A./B.Sc. B.Ed and also D.Ed. are included in this list. As the petitioners do not possess D.Ed., they are treated as untrained primary teachers and hence not included in this list. The petitioners made representations to respondent No.2 and submitted their objections to the provisional seniority list.

10. Vide communication dated 31/10/2011 the respondent No.3 directed respondent No.2 to stay the promotions to the post of Block Education Officer since the provisional seniority list is yet to be finalized. The respondent No.3 heard the petitioners and others in respect of their objections to provisional seniority list on 16/11/2011. The respondent No.3 directed petitioners to make appropriate application to respondent No.2. On 18/11/2011, petitioners made application to respondent No.2 requesting him to include their names in final seniority list. The respondent No.2 informed petitioners on 11/5/2012 that respondent No.3 heard all the parties and therefore final seniority list has been submitted to

Municipal Corporation and the final decision is awaited.

11. It is the petitioners' case that as per GR dated 11/11/2011, the B.A./B.Sc. B.Ed. Teachers (who do not have D.Ed. qualification) working in primary schools are to be treated as trained teachers from the date of their appointment. On this basis, the teachers having qualifications of graduate plus B.Ed. made representation and requested respondent No.2 to include their names in final seniority list

12. It is the case of the petitioners that at the time of the appointment, each of the petitioner was possessing the qualifications of trained graduate teacher. After they came to be appointed in the Primary Schools of respondent No.2 School Board, they were allotted the teaching work for classes of Std. V to VII. The petitioners were never given teaching work for lower classes in the Primary Schools i.e. Std. I to IV. The School Board obtained salary grant from the State Government so far as petitioners are concerned, in the pay scale applicable to the

trained graduate teachers and not as Primary Teachers. It is the further case of the petitioners that they were appointed in the Primary Schools of the School Board as trained graduate teachers on the posts which are admissible and available in 25% quota for such teachers.

13. By the order dated 24/10/2013 the petitioners were supplied three seniority lists. The first seniority list is in respect of the teachers as on 24/10/2013 who are D.Ed and B.Ed. working in the Primary Schools of respondent No.2 School Board. The second seniority list is the final seniority list as on 24/10/2013 of the graduate teachers who are working in the Primary Schools of respondent No.2 School Board, but who are not D.Ed. The third seniority list is the final seniority list as on 24/10/2013 of the Science teachers working in the Primary Schools of respondent No.2 School Board and who are B.Sc. B.Ed.

14. The names of the petitioners are included in the second seniority list i.e. the graduate Assistant Teachers who are

not D.Ed. It is thus the case of the petitioners that they are sought to be treated as graduate but untrained teachers on the ground that they are not D.Ed.

15. The respondent Nos.2 and 3 filed an affidavit dated 12th August, 2014 opposing the Petitions. A stand is taken by respondent Nos. 2 and 3 that the petitioners are Science teachers and are qualified as B.Ed. It is further stated that none of the petitioners have been appointed in the Primary Schools run by respondent No.2 School Board in the category of 25% as alleged by the petitioners. It is stated that the petitioners are not entitled to be placed in the final seniority list pursuant to the G.R. dated 11th August, 1986. According to respondent Nos. 2 and 3, as per G.R. dated 11th August, 1986, for the Primary Schools, trained graduates and undergraduates on the basis of seniority-cum-merit and in the ratio of 75 : 25 percent are required to be appointed. As the petitioners do not possess the D.Ed. qualification and hence in the light of G.R. dated 11th August, 1986, they cannot be considered for inclusion of their

names in common seniority list of trained graduate teachers. According to respondent Nos. 2 and 3, though G.R. dated 11/11/2011 postulates that a B.Ed. teacher should be treated as a trained teacher for Primary Schools run by the Municipal School Boards and by Private Managements, but as the earlier G.R. dated 11th August, 1986 remains in force and appears to have not been superseded by the subsequent G.R. dated 11/11/2011, the respondent No.2 has rightly not included the names of the petitioners in the seniority list which is published for the trained graduate and undergraduate primary teachers and has maintained a separate seniority list for B.Ed. Teachers.

16. By way of an additional affidavit dated 4/4/2017 the respondent Nos.2 and 3 again reiterated that though G.R. dated 11/11/2011 directs that the teachers who are in the 25% category and who are B.Ed. and are working in Primary School for V to VII standard divisions should be given benefit of seniority, but it is further stated in this additional affidavit that G.R. dated 11/8/1986 postulates the manner in which the

seniority of the teachers is to be kept is indicated. It is thus the stand of respondent Nos. 2 and 3 that in view of G.R. dated 11/8/1986 the candidates who are exclusively B.Ed and do not possess D.Ed. qualification cannot be included in the common seniority list. According to respondent Nos. 2 and 3 the category of such teachers is altogether a different category and separate seniority list for B.A., B.Ed. candidates is to be prepared. It is stated by respondent Nos. 2 and 3 that the impugned order dated 24/10/2013 passed by the Education Officer is in consonance with G.R. dated 11/8/1986.

17. Learned Counsel for the petitioners would submit that the petitioners are trained graduate teachers working in respondent No.2 School Board from the respective dates of appointment. On the basis of G.R. dated 11/11/2011 it is incumbent that in the Primary Schools run by the Municipal School Boards and by Private Managements, a B.Ed. Teacher should be treated as a trained teacher. The petitioners are thus entitled to the benefits of G.R. dated 11/11/2011. Learned

Counsel submits that the impugned order proceeds on a complete misreading and misinterpretation of the G.R. dated 11/11/2011. Learned Counsel would submit that Clause A of the G.R. provides that a graduate teacher in the Primary School having qualifications of B.A./B.Sc. and B.Ed. and appointed on 25% post and even if he does not have D.Ed. Qualification, he should be treated as a trained teacher from the date of initial appointment and he should be granted pay scale of trained graduate (B.Ed.). He further would submit that Clause B of the G.R. lays down that the graduate and B.Ed. teacher (not holding D.Ed. qualification) if appointed on any other post of Primary Teacher, apart from the 25% post available for trained (B.Ed.) graduate teacher in the Primary School, such teacher should be treated as trained teacher from the date of his appointment. It is thus the case that for being treated as trained graduate teacher working in a Primary School, either on the 25% post or in any other post in the Primary School, it is not necessary for the teacher to have also D.Ed. qualification in addition to B.Ed. qualification. According to him, the impugned order is therefore

illegal. Learned Counsel would rely upon the decision of this Court in the case of **Shamrao Gyanbarao Bagate vs. State of Maharashtra and anr.** reported in **2016(3) Bom.C.R. 442** in support of his submission that the petitioners are entitled to the benefits as provided by the G.R. dated 11/11/2011.

18. Heard learned Counsel for the parties. Perused the pleadings and the exhibits annexed to the Petitions. We have also gone through the affidavit-in-reply and the additional affidavit filed on behalf of the respondent Nos. 2 and 3.

19. There is no dispute that the petitioners are B.A. B.Ed./M.Ed. The petitioners did not possess D.Ed. qualification at the time of their appointments. The petitioners were appointed on various dates vide order dated 7/8/1990, 13/8/1990, 20/8/1990, 14/1/1994 and 13/7/1994. In our opinion, the case of the petitioners is squarely covered by the G.R. dated 11/11/2011. The G.R. provides that if a trained graduate teacher is appointed in the Primary School having

standard I to VII, even in respect of those trained (B.Ed. Graduate teachers), who are appointed in the post of teachers other than 25% post to which such trained graduate teachers are eligible to be appointed, then even such teachers (not having D.Ed. qualification) should be treated as trained teachers.

20. In the present case, the petitioners were having B.A. B.Ed./M.Ed. qualification on the date of their initial appointments and were already appointed as Assistant Teachers in the pay scale of graduate primary teachers by virtue of these qualifications. In the light of the G.R. dated 11/11/2011 even these teachers are entitled to be considered as trained teachers from the date of their initial appointments. In our opinion, the petitioners are squarely covered by the G.R. dated 11/11/2011 and are entitled to be considered as trained graduate teachers even though they are not D.Ed.

21. We accordingly hold and declare that the petitioners are entitled to placement in the seniority list of trained graduate

teachers at the appropriate position on the basis of their initial dates of appointment so also in accordance with the Rules.

22. The impugned communication dated 24/10/2013 by which it is held that since the petitioners are not D.Ed. qualified, their request to include their names in the seniority list of trained graduate teachers cannot be granted, is quashed and set aside.

23. It is directed that the petitioners' names be included at the appropriate position in the seniority list of trained graduate teachers on the basis of the date of their initial appointments since they are possessing requisite qualifications at the time of initial appointment itself.

24. However, in the facts of the present case, as the petitioners are entitled for relief on the basis of the G.R. dated 11/11/2011, we direct that the petitioners shall be granted arrears with effect from 1/12/2011 but the seniority of

the petitioners be notionally fixed in the final seniority list of trained graduate teachers working in the Primary School of respondent No.2 School Board from the date of their initial appointments. The petitioners are held entitled to consequential benefits as a result of the placement of the petitioners in the seniority list in terms of the above directions.

25. Both Writ Petitions are allowed.

26. Rule is made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)