

jsn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW APPLICATION (ST.) NO.23057 OF 2010
IN
WRIT PETITION NO.1655 OF 1998**

Mrs. Meena Kumaji Shinde ... Applicant
V/s.
State of Maharashtra & Ors. ... Respondents

Mr. Vipul Bodhare for the Petitioner.
Mr. Mihir Desai, Amicus Curiae.
Mr. V.S. Gokhale, 'B' Panel counsel for State / Respondent Nos.2 to 4.

**CORAM: A.A.SAYED &
R. I. CHAGLA, JJ.
DATE: 3RD APRIL, 2019.**

PC:-

1. This Review Petition is filed impugning the order dated 11th March, 2010 passed by this Court in Writ Petition No.1655 of 1998. The impugned order erroneously proceeds on the basis that the Petitioner had acquired B.Ed qualification in the year 2002, when as a matter of fact at the time of her appointment itself i.e. on 1st December, 1987 she was possessing the degree of B.Ed.
2. The Review Petitioner was appointed as an Assistant Teacher in the Primary School run by Respondent No.6 with effect from 1st December, 1987 and she has been in continuous service with Respondent No.6 and continues to be in service even as of date. Her appointment was approved by the Respondent No.3

Education Officer on 7th February, 1994. The Petitioner was placed in the pay scale of Rs.1200 – Rs.2040 which was the pay scale for the undergraduate 'trained' teachers w.e.f. 3rd June 1994.

3. The Government of Maharashtra vide Circular dated 5th November, 1997 directed that the teachers not holding the D.Ed degree should be treated as 'untrained' teachers and they be placed in the scale of Rs.975 – Rs.1600. Pursuant to the said Circular, the Review Petitioner was placed in the reduced pay scale of Rs.975 – Rs.1600 from the pay scale of Rs.1200 – Rs.2040 w.e.f. 1st January, 1998 as the Review Petitioner did not possess the degree of D.Ed. Aggrieved by the reduction in a pay scale, the Review Petitioner filed Writ Petition No. 1655 of 1998 challenging the order passed by the Respondent Nos.2, 3 and 4 reducing her pay scale from Rs.1400 – Rs.2600 to Rs.975 – Rs.1600 and sought directions to be placed in the pay scale of Rs.1400 – Rs.2600 w.e.f. 3rd June, 1994 i.e. from the date she had been placed in the pay scale of undergraduate. On 22nd November, 2004, the Respondent No.5 vide his letter granted pay scale for graduates to the Review Petitioner with retrospective effect from 1st June, 2002, since the Review Petitioner had also acquired the degree of D.Ed. on 30th May, 2002. By the impugned

judgment and order dated 11th March, 2010, this Court dismissed the Writ Petition No. 1655 of 1998. Hence the present Review Petition.

4. We have heard the learned Counsel for the Review Petitioner and the learned AGP for the State. We have also heard learned Senior Counsel Mr. Mihir Desai, *Amicus Curiae*, appointed by the Court who has supported the case of the Review Petitioner.

5. We have perused Affidavit-in-Reply filed by the Deputy Education Officer (Primary), Zilla Parishad, Pune in the Writ Petition, wherein in paragraphs 3 and 4 it has been stated thus:

“3. I say that the Judgment and Order passed by the Hon'ble High Court at its Bench at Aurangabad in Writ Petition No.3006 of 1991, decided on 3.12.1991 and Writ Petition No.6605 of 1999, decided on 6.5.2004, made clear that the teacher who are already trained graduate and working within 25% of sanctioned post for classes V to VIIth need not acquire D.Ed qualification.

4. I say that the Judgment and order passed by the Hon'ble Supreme Court of India, in Civil Appeal No.863 of 2007, decided on 20th February, 2007, made clear that standard 5 to 7th attached to primary school. The Petitioner was entitled to be appointed and continued as trained teacher in B.Ed scale.

(emphasis supplied)

6. We find that there is error apparent on the face of record. The order under Review dated 11th March, 2010 erroneously proceeds on the basis that the Review Petitioner acquired B.Ed

qualification only in the year 2002. The Affidavit-in-Reply has been overlooked while passing the order under Review. We find that the judgment of the Supreme Court in ***State of Maharashtra & Ors. V. Tukaram Trayambak Chaudhari & Ors.***, also supports the case of the Review Petitioner. In any event, in view of the categorical admission in the Affidavit-in-Reply, we allow the Review Petition and recall order dated 11th March, 2010 in Writ Petition No. 1655 of 1998. The Writ Petition shall stand allowed in terms of prayer clauses (b) and (c), which read as under:

“b) the Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ direction or order quashing / setting aside the order of the respondent Nos. 2, 3 and 4 in reducing the petitioner's scale from the degree scale of Rs.1400/- – Rs.2600/- to the scale of untrained undergraduate teacher of Rs.975/- – Rs.1600/-.

c) The Hon'ble court be pleased to direct the respondents to place the petitioner in degree scale i.e. Rs.1400-Rs.2600/- from 3-6-1994.”

7. The Review Petitioner shall be paid the arrears of salary from 3rd June, 1994 to 30th May, 2002 within 3 months from the date this order is uploaded. We record our appreciation for the assistance rendered by the learned *Amicus Curiae*.

(R. I. CHAGLA, J.)

(A.A.SAYED, J.)