

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 879 OF 2019**

1. Laxman Gangaram Dodmani
Son of Gangaram Dodmani,
Age 35 years, Ex-Serviceman,
Resident of House No.123/A,
Bomdamol, Fatorpa,
Quepem Goa.

2. Manoj Kumar Pandey,
Son of Late Shri Bramhanand Pandey,
Aged 47 years, Ex-Serviceman,
Resident of House No.289,
Opposite Gomes Bakery,
Drivers Hill, Vasco da Gama,
Goa.

... Petitioners

Versus

1. State of Goa,
Through Chief Secretary,
Having office at Secretariat,
Porvorim Goa.
2. Director of Education,
Through its Director,
having office at Directorate of
Education,
Porvorim Goa.
3. Department of Sainik Welfare,
Through its Secretary,
Government of Goa,
Collectorate Building,
Panaji Goa.

4. Department of Personnel and Training
Ministry of Personnel,
Public Grievances And Pensions,
New Delhi, India.
5. The Director General of Employment
and Training,
Ministry of Labour and Rehabilitation,
Shram Shakti Bhawan, 2 & 4,
Rafi Marg, New Delhi – 110001.
(Deleted as per order dated 02.12.2019)
6. Commander in Charge,
Naval Pension Office,
Release Centre,
Sion Trombay Road,
Mankhurd, Mumbai,
Maharashtra,
400 088

... Respondents

Mr. Preetam Talaulikar, Advocate for the Petitioners.

Mr. Pravin N. Faldessai, Additional Government Advocate for
Respondent Nos. 1 to 3.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.**

Date:- 10th February, 2020

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. P. Talaulikar, learned counsel for the Petitioners
and Mr. P. Faldessai, learned Additional Government Advocate for

Respondent Nos.1, 2 and 3.

2. The Respondent No.5 has already been deleted from the cause title. The Respondent Nos.4 and 6 are already served. Since, no relief as such is claimed as against the Respondent Nos.4 and 6, their presence may not be necessary for disposal of this petition.

3. We issue Rule. Rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

4. The Petitioners seek appropriate writ to the Respondent No.2 to appoint as Government Primary School Teacher (Marathi Medium) in pursuance of selection process which commenced with issuance of advertisement dated 21.08.2018 which is to be found at Exhibit 15 (page 58) of the paper book to this petition.

5. There is no dispute that both the Petitioners are Ex-servicemen since they were with the Indian Navy for a period of more than 15 years.

6. In so far as the Petitioner No.1 is concerned, the Indian Navy has issued him a certificate dated 31.07.2018, which is styled as "*Equation of Educational Qualification Graduation Certificate*". This

certificate certifies that the Petitioner No.1 who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force, pensioner, who has put in more than 15 years of service in the Indian Armed Forces and is eligible for the appointment where essential educational qualification is Graduation for appointment to any reserved vacancy in Group 'C' posts where the work experience of technical or professional nature is not essential; or though non-technical professional work experience is prescribed as essential, yet the appointing authority is satisfied that Ex-Serviceman is expected to perform the duties of the post by undergoing on the job training for a short duration. This certificate itself states that the same is issued in accordance with the Government of India, Ministry of Personnel Public Grievances and Pensions (Department of Personnel & Training) Letter No.15012/8/82/Estt.(D) dated 12 February, 1986 and the Gazette of India No.9 dated 01 March, 1986. Even the mark list in respect of Petitioner No.1 is reflected in the said certificate and indicates that the Petitioner No.1 has secured 417 marks out of 500 marks.

7. The Petitioner No.1 has further placed on record yet another Certificate dated 31.07.2018 titled as "*Equivalent of Naval Trade Certificate*". This certificate certifies that the Petitioner No.1 of the Indian Navy has requisite qualification for the following Civil Trades according to the provision notified under National Classification of Occupation

(NCO) Scheme by the Director General of Employment & Training, Ministry of Labour, Rehabilitation Letter DGE&T-5/1/07-VG/01 dated 26th September, 2012. One of the Civil Trades so specified in the certificate itself at listing 3312.1 is that of Primary School Teacher. The certificate states that experience of Petitioner No.1 to the listed posts is to be counted from 21st July, 2003.

8. Similarly, the Petitioner No.2 has also produced similar certificate dated 31.01.2018, being Graduation Certificate and equivalent of Naval Trade Certificate. The Naval Trade Certificate dated 31.01.2018 produced by the Petitioner No.2 lists against the number 2412.40 Civil Trade of Vocational Teacher and against the number 3312.1 the Civil Trade of Primary School Teacher. This certificate states that experience of the Petitioner No.2 to the aforesaid posts is to be counted from 7th January, 1988.

9. By advertisement dated 21st August, 2018, the Directorate of Education i.e. Respondent No.2 invited online applications from the eligible candidates for filling up of 182 vacancies in the post of Government Primary School Teachers (Marathi Medium) in the Pay Matrix Level-6 on temporary basis. Out of these, 91 vacancies were towards unreserved category. The Note below the advertisement clearly states that from out of total 182 vacancies, 12 vacancies were reserved for

Ex-servicemen.

10. The advertisement speaks about guidelines for filling up of 182 vacancies and prescribes the eligibility conditions as well as the age limit. In the present case, we are really not concerned with the age limit, since it is not even the case of the Respondents that the Petitioners do not fulfill the requirement as to the age limit considering the relaxation which is permissible to them under the orders issued by the Government from time to time. The Respondents have contended that two Petitioners do not fulfill the eligibility requirement, inasmuch as they do not possess two year Diploma in Elementary Education/Diploma in Education or its equivalent by whatever name known.

11. The eligibility requirement as set out in the advertisement reads as follows :

“ELIGIBILITY

(a) Educational and other Qualifications

Essential

1(a) Higher Secondary School Certificate (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education/Diploma in Education or its equivalent by whatever name known.

OR

Higher Secondary School Certificate (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary

Education/Diploma in Education (or its equivalent) by whatever name known, in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Higher Secondary School Certificate or its equivalent with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed.)

OR

Higher Secondary School Certificate or its equivalent with at least 50% marks and 2-year Diploma in Education (Special Education)

AND

(b) Teacher Eligibility Test (TET) certificates recognized by the Government of Goa.

2 Knowledge of Konkani

Desirable: *Knowledge of Marathi*

N.B:

Candidates who do not possess the essential educational qualification at 1(b) above but fulfilling essential educational qualification at 1(a) and other qualification at 2 above may also apply for the post.

However, such candidates shall be considered for selection and appointment to the post of Government Primary School Teacher only in the event that candidates possessing the essential educational qualification at 1(b) above are not available. If such candidates are appointed to the post of Government Primary School Teacher, they should acquire the “Teacher Eligibility Test (TET)” qualification within their probation period of 02 years at their own cost, failing which, their appointment to the post shall stand terminated.”

12. Mr. Faldessai, learned Additional Government Advocate points out that apart from the Higher Secondary School Certificate or its equivalent with 50% marks or 45% marks or two year Diploma in Elementary Education/ Diploma in Education or its equivalent by whatever name known is an essential eligibility requirement, which both the Petitioners in the present case do not possess. He points out that even the Teacher Eligibility Test (TET) is an essential requirement. He submits that even if it is assumed that the Petitioners, can acquire TET qualification within their probation period of two years at their own cost, in the present case, in the absence of Diploma in Elementary Education/Diploma in Education, two Petitioners will also not be eligible to enroll even for the TET and acquire the said qualification within a period of two years. He submits that it is basically for this reason that no appointments orders were issued to the Petitioners. He submits that the certificates placed on record by the Petitioners, at the highest, entitle them to claim a graduation qualification, which can be further construed to include qualification of Higher Secondary School Certificate or its equivalent. However, none of the certificates entitle the Petitioners to claim equivalent in so far as the Diploma in Elementary Education or Diploma in Education is concerned. He therefore, submits that there is absolutely no arbitrariness or illegality involved in the matter and the petition accordingly deserves to be dismissed.

13. On the other hand, Mr. P. Talaulikar, learned counsel for the Petitioners submits that the certificates placed on record by the Petitioners establish that they are technically qualified to be appointed to the post of Primary School Teachers and consequently, treat the certificates which they possess is to be regarded as equivalent of two year Diploma in Elementary Education or Diploma in Education. He submits that the Petitioners have cleared the written test and also fulfilled the requirement relating to knowledge of both Konkani as well as Marathi. He therefore submits that there is no justification in denying the Petitioners appointments to the post of Government Primary School Teachers. He relies on ***Ranbir Singh Vs D. S. S. S. B., and Anr.***¹ and ***Lajja Ram Bhardwaj and others Vs Municipal Corporation of Delhi and others***² in support of his contentions. He also relies on the ***State of Orissa Vs Mohd. Yunus and others***³ to submit that lower standards have to be accepted for ex-servicemen so that reservation provided for them do not become illusory. He however hasten to add that in the present case, even without lowering the standards the Petitioners fulfill the eligibility requirements in terms of certificates produced by them on record.

14. The rival contentions now fall for our determination.

1 2002 IIIAD Delhi 537

2 2002(63) DRJ 547

3 1994 Supp (2) SCC 55

15. If the eligibility criteria as set out in the guidelines for filling up of 182 vacancies to the post of Government Primary Teachers (Marathi Medium) is perused then, it is clear that the Applicant must have Higher Secondary School Certificate or equivalent 50% marks or 45% and two year Diploma in Elementary Education/Diploma in Education or its equivalent by whatever name known.

16. In the present case, the Petitioner No.1 has Higher Secondary School Examination Certificate and the Petitioner No.2 has Graduation qualification. In any case, there is no dispute that by virtue of Graduation certificate issued by the Indian Navy, both the Petitioners fulfill the requirements regards possessing Higher Secondary School Examination Certificate. Both the Petitioners admittedly do not possess any two year Diploma in Elementary Education or Diploma in Education.

17. The eligibility requirement however refers not merely to the two year Diploma in Elementary Education or Diploma in Education but also makes specific reference to “*its equivalent by whatever name known*”. Therefore, the concerned Respondents, were duty bound to consider the qualification which the Petitioners possesses can be legitimately regarded as equivalent.

18. Both the Petitioners as noted above, have produced on record

the equivalent of Naval Trade Certificate. These certificates certify that both the Petitioners have requisite qualifications for specified Civil Trade according to the provision notified under National Classification of Occupation (NCO) scheme by the Director General of Employment & Training, Ministry of Labour, Rehabilitation letter DGE&T-5/1/07-VG/01 dated 26th September, 2012. One of the posts specifically referred to in the certificate is that of the Primary School Teacher.

19. Now the qualification of Diploma in Elementary Education/Diploma in Education which is prescribed as eligibility conditions in the advertisement is a technical qualification. The certificates declaring equivalence of Naval Trade Certificate which both the Petitioners have placed on record very clearly state that the Naval Trade Certificate which they have secured is a requisite qualification for the post of Government Primary School Teacher in terms of NCO scheme by the Director General of Employment & Training, Ministry of Labour, Rehabilitation letter DGE&T-5/1/07-VG/01 dated 26th September, 2012.

20. According to us, there is no good reason not to accept the contention of Mr. Talaulikar and to treat this equivalence of Naval Trade Certificate placed by the Petitioners on record as qualification equivalent to two year Diploma in Elementary Education/Diploma in Education having regard to the provisions in eligibility conditions, which is pointed

out earlier, speak of equivalent qualification “*by whatever name known*”.

21. It is necessary to note in the present case, though 12 posts were reserved for Ex-servicemen, hardly three candidates applied or in any case, cleared written test prescribed in the guidelines. All the three candidates which include the two Petitioners who have instituted this petition have not been issued appointment orders only on the ground that they did not possess two year Diploma in Elementary Education or Diploma in Education. If the equivalence of Naval Trade Certificate which, both the Petitioners have placed on record, is taken into account then, it cannot be said that the Petitioners do not possess the equivalent qualification of two year Diploma in Elementary Education or Diploma in Education. Denial of appointments to the Petitioners was therefore not proper and warrants interference.

22. In *Lajja Ram Bhardwaj (supra) and Ranbir Singh (supra)*, the learned Single Judge of Delhi High Court (Sanjay Kishan Kaul, J, as His Lordship then was) in similar circumstances has held that in order to facilitate army personnel who retire from service and seek employment, equalisation procedure has been prescribed and recognised by the Government of India. It is pursuant to this equalisation procedure that the Petitioner is granted a certificate equating his qualifications to a Teacher Training Certificate. In these circumstances, it was not open to the

Respondents to hold that the Petitioner in the said petition was not qualified. The purpose of such equalisation is that since the army personnel has been in service for number of years and in that process acquire different qualifications, equalisation certificates and degrees be issued to them. A writ of mandamus was thus issued directing the respondent No. 2 appoint the Petitioner to the post of primary teacher treating the Petitioner as qualified for the said post along with all consequential benefits of seniority as well as monetary benefits. According to us, both these decisions assist the contentions raised for and on behalf of the Petitioners in the present petition.

23. Similarly, in *Mohd. Yunus* (supra), the Division Bench of the Hon'ble Supreme Court has held that though three posts have been reserved for ex-servicemen, if a candidate who belongs to ex-servicemen gets eligibility by securing 780 minimum marks, irrespective of the fact whether he/they comes by general selection or not, by virtue of reservation made to the ex-servicemen, he/they become eligible for consideration. This relaxation has been made in contradistinction with other general candidates but for which the respondent would be ineligible. The fixation of the general standard marks prescribed for the general candidates would undoubtedly be a handicap to the ex-service personnel who are made to compete with youngsters after several years of service put in the defence service. The State Government and the Public Service Commission are

directed to consider the desirability to fix a lesser standard than that of the general candidates as ex- servicemen have served the nation in its defence and in the process they may not come on a par with the general candidates. Therefore, some relaxation in their behalf would be necessary to meet the exigencies of coping up with the reservation given to them. Otherwise, reservation would be illusory. The State Government in consultation with the Public Service Commission was directed to decide this issue within a period of three months from the date of the receipt of order and thereafter consider the case of the respondent accordingly.

24. The observations in the aforesaid decision of the Hon'ble Supreme Court assist the Petitioners though in the present petition, we are satisfied that the Petitioners were eligible for appointment to the post of Primary School Teachers even without necessity of seeking any relaxation in the standards. This is by virtue of the equation of educational certificates/graduate certificates and equivalent of Naval Trade Certificates placed by the Petitioners on record, the combine effect of which is to treat the Petitioners as qualified for the appointment to the post of Primary School Teachers.

25. The eligibility requirement further necessitates the possession of Teacher Eligibility Test (TET) certificate recognized by the Government of Goa. In this regard, it is pointed out by Mr. Faldessai that even though

the candidature of the Petitioners were to be considered for appointment against the vacancies reserved for Ex-servicemen, because there were no other candidates with TET certificates, no useful purpose will be served in issuing appointment orders to the Petitioners because the TET are required to have Diploma in Elementary Education/Diploma in Education, which, the Petitioners do not possess. He further submitted that in such matters the interest of students are also required to be taken into consideration and any waiver as regards the TET certificate will be contrary to the public interest as well as the interest of the students, which, the Primary Teachers should require to nurture and teach.

26. According to us, the concern expressed by Mr. Faldessai deserves to be addressed. As noted earlier, the advertisement itself had made it clear that the candidates who do not possess essential educational qualification (1)(b) i.e. the qualification of Teacher Eligibility Test (TET) but fulfilling essential qualification at 1(a) and other qualification at (2) are also entitled to apply for the post of Government Primary School Teacher (Marathi Medium). However, the advertisement itself suggest that such candidates shall be considered for selection and appointment to the post of Government Primary School Teacher only in the event the candidates possessing essential educational qualification at (1)(b) are not fulfilled. Further, if such candidates are appointed to the post of Government Primary School Teacher, they should acquire Teacher

Eligibility Test (TET) qualification within their probation period of two years at their own cost failing which their appointment to the post stands terminated.

27. Now there is no dispute that as against 12 posts reserved for Ex-servicemen only three Ex-servicemen had applied. This means that there were no sufficient number of candidates as against the Ex-servicemen category. In such a situation, the advertisement itself permits the consideration candidature of Applicants who do not possess the Teacher Eligibility Test (TET) qualification but possess the other qualifications prescribed in the advertisement. Therefore, there was nothing wrong in the Petitioners applying and the Respondents permitting the Petitioners to take part in the selection process, which involved, written test. There is no dispute that the two Petitioners have already cleared the written test which incidentally includes Part I in English language on General Knowledge, current affairs and Part II in Marathi language on Teaching Skills and Methodology as per syllabus of D. Ed. course.

28. Therefore, there can be no objection to the appointment of the Petitioners to the post of Government Primary School Teachers (Marathi Medium) *qua* the post reserved for Ex-servicemen. Upon such appointment, however the Petitioners, as provided in the advertisement

will have to acquire the Teacher Eligibility Test (TET) qualification within their probation period of two years at their own cost failing which, their appointments to the said post is liable to be terminated.

29. The objection that the two Petitioners will not be entitled to acquire the Teacher Eligibility Test (TET) because the Applicants who seek to acquire TET qualification must have a Diploma in Elementary Education or Diploma in Education, cannot in the peculiar facts and circumstances of the present case, be accepted. This is because we have already held that the Equivalence of Naval Trade Certificate produced by the two Petitioners on record entitle them to claim a qualification equivalent to two year Diploma in Elementary Education or Diploma in Education. Once this equivalence is established, there can, in the peculiar facts and circumstances of the present case, be no difficulty in allowing the Petitioners to undertake the Teacher Eligibility Test (TET). The Authorities concerned, in the peculiar facts and circumstances of the present case and taking into consideration the certificates produced on record by the Petitioners will, therefore, have to allow these Petitioners to take the Teacher Eligibility Test (TET) within their probation period of two years, no doubt, at their own cost.

30. It is made clear that in case, the two Petitioners fail to acquire the Teacher Eligibility Test (TET) qualification within a period of two

years from the date of their appointment on probation, at their own cost, their services shall stand terminated.

31. According to us, the aforesaid course of action is not only quite consistent with the guidelines set out in the advertisement but further, the aforesaid course of action will address concerns of both the Petitioners as well as the students whom the Petitioners are required to teach consequent upon their appointment as the Government Primary School Teachers (Marathi Medium). We agree with Mr. Faldessai that there is no case made out to grant any relaxation to the Petitioners in so far as the acquisition of Teacher Eligibility Test (TET) qualification is concerned, save and except to clarify that the equivalence certificates produced on record by the Petitioners are to be treated as sufficient compliance of requirement of having two year Diploma in Elementary Education or Diploma in Education, assuming that this is a pre-condition to undertake the Teacher Eligibility Test (TET).

32. For all the aforesaid reasons, we dispose of this petition by making the following order :

(a) The Respondent Nos.1 and 2 are directed to issue appointment orders as Government Primary School Teachers (Marathi Medium) to the Petitioners against the Ex-servicemen category based upon

selection process already completed, subject to compliances of other usual terms and conditions as may be applicable. Such appointment orders have to be issued within a period of two months from today;

(b) The appointment orders, as aforesaid, shall appoint the two Petitioners on probation for a period of two years. During this period of two years, the Petitioners will have to obtain the Teacher Eligibility Test (TET) qualification failing which, their appointments shall stand terminated;

(c) The Respondent Nos.1 and 2 to permit the Petitioners to undertake the Teacher Eligibility Test (TET) on the basis of equivalence certificates already produced on record by the Petitioners and thereby not insisting upon any fresh two year Diploma in Elementary Education/Diploma in Education, in the peculiar facts and circumstances of the present case;

(d) The appointment orders will have to be effective from 1st April, 2020. However, the Petitioners in the peculiar facts and circumstances of the present case will not be entitled to any back wages or other

consequential benefits;

(e) Rule is made absolute in the aforesaid terms.

There shall be no order as to costs.

33. All concerned to act on the basis of the authenticated copy of this order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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