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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 WRIT PETITION NO.82 OF 2020

Tejerao s/o Suryakant Pawar,
Age: 43 years, Occ : Nil,
R/o. Society Tanda, Tq. Mukhed,
Dist. Nanded

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary, Education Department,
Mantralaya, Mumbai-32
2. The Deputy Director of Education,
Maharashtra Prathmik Shikshan Parishad,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road, Mumbai-400 004
3. The Chief Executive Officer,
Zilla Parishad, Nanded
4. Education Officer,
Zilla Parishad, Nanded
5. Block Education Officer,
Panchayat Samiti,
Zilla Parishad, Nanded

...RESPONDENTS

WITH
WRIT PETITION NO.97 OF 2020

Narayan Vishwambhar Kurhade,
Age: 40 years, Occ: Nil,
R/o. Dhanora TM, Tq. Naygaon,
Dist. Nanded

..PETITIONER

VERSUS

(2)

1. The State of Maharashtra,
Through the Secretary, Education Department,
Mantralaya, Mumbai-32
2. The Deputy Director of Education,
Maharashtra Prathmik Shikshan Parishad,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Charni Road, Mumbai-400 004
3. The Chief Executive Officer,
Zilla Parishad, Nanded
4. Education Officer,
Zilla Parishad, Nanded
5. Block Education Officer,
Panchayat Samiti,
Zilla Parishad, Nanded

...RESPONDENTS

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Smt. S. A. Dhumal (Tambat), Advocate for petitioners;
Mr S. B. Yawalkar, A.G.P. for respondent Nos.1 & 2;
Mr S. B. Pulkundwar, Advocate for respondent Nos.3 to 5

AND

913 WRIT PETITION NO.3767 OF 2020

Yuvraj Fulsing Rathod,
Age: 46 years, Occu: Service,
R/o: Shekapur, Tq. Mahur,
Dist. Nanded

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Chief Executive Officer,
Zilla Parishad, Nanded

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3. The Education Officer (Primary),
Zilla Parishad, Nanded
4. Block Education Officer,
Panchayat Samiti, Mahur,
Tq. Mahur, Dist. Nanded
5. Zilla Parishad Primary School,
Takli Navi, Tq. : Mahur,
Dist. Nanded,
Through its Head Master

...RESPONDENTS

Mr A. B. Kale, Advocate h/f Mr V. S. Panpatte, Advocate for
petitioner;
Mr S. R. Yadav-Lonikar, A.G.P. for respondent No.1;
Mr S. B. Pulkundwar, Advocate for respondent Nos.2 to 5

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 28th September, 2021

ORAL JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally
with the consent of the parties.
2. We have heard the submissions of the learned Advocates for
the petitioners and on behalf of the respondents. With their
assistance, we have gone through the petition paper books and
several Government Resolutions relied upon.

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WRIT PETITION NOS.82/2020 AND 97/2020

3. In the first two petitions, both the petitioners were Para-Teachers prior to the issuance of the orders dated 20/09/2016, inducting both of them as untrained teachers in Panchayat Samiti, Naigaon. Both were only Higher Secondary Certificate holders and both neither held the D.Ed/D.T.Ed. qualification nor Diploma in Elementary Education (D.El.Ed.), the latter having been introduced in academic year 2017-2018 after postal D.Ed. courses were cancelled/abolished from the said academic year. Both were granted time upto 28/02/2019 to acquire D.El.Ed. qualification. The Government has clarified that the said date has been extended upto 31/03/2019.

4. In the first two cases preferred by Tejerao Suryakant Pawar and Narayan Vishwambar Kurhade, respectively, after they were appointed as untrained teachers on 20/09/2016 with the condition of acquiring D.Ed./D.T.Ed qualification, both got enrolled for the academic year 2017-2018 and 2018-2019 for the Diploma in Elementary Education (D.El.Ed.), as the postal D.Ed./D.T.Ed. courses were abolished from the academic year 2017-18 and the Central Government introduced D.El.Ed. When they were

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converted from Para-Teachers to untrained teachers on 20/09/2016, the academic year 2016-17 for the postal D.Ed. course had already commenced and it was too late for them to secure admission which was limited to the in-service postal D.Ed. course, for the academic year 2016-17.

5. The short issue raised before us in the above backdrop is, that both these petitioners appeared for their exams for the Diploma in Elementary Education, which is equivalent to D.Ed., on 15/03/2019 and 16/03/2019. Both passed the course on 22/05/2019 when their results were declared by the National Institute of Open Schooling. Since both of them were terminated, w.e.f 01/04/2019 as they did not acquire the requisite qualification, they approached this Court and have put forth prayer clauses (C) and (D) and (E) as under :

“(C) By issue of Writ of mandamus or any other writ or order in the like nature the impugned letter dated 01/04/2019 issued by the respondent no. 4 in respect of automatic termination of service of the petitioner may kindly be quashed and set aside.

(D) By issue of Writ of mandamus or any other writ or order in the like nature, it be declared and hold that

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the petitioner is entitled and eligible to be worked from 01/04/2019 as qualified teacher in the school run by respondent nos. 3 to 5;

(E) By issue of Writ of mandamus or any other writ or order in the like nature, respondent nos. 3 to 5 may kindly be directed to reinstate the petitioner with back wages from 01/04/2019 till its realization;”

6. Having considered the strenuous submissions of the learned Counsel for the respective sides, the issue that requires our attention is, whether these two petitioners can be terminated as they did not acquire the qualification on 31/03/2019, notwithstanding that they appeared for their final exams on 15/03/2019 and 16/03/2019, in the face of the impossibility to secure admission to the postal D.Ed. Course in 2016?

7. We are of the view that the petitioners cannot be faulted for the discontinuance of the postal D.Ed. course from 2017-18. They also cannot be faulted for the results of their exams having been declared after the cut-off date 31/03/2019. Earlier they were Para-Teachers and it was only after they were appointed as untrained teachers on 20/09/2016, that it became mandatory for them to acquire the D.Ed./D.El.Ed. qualification. There was no

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scope for them to belatedly acquire admission to the postal D.Ed. course for the academic year 2016-17 since it is the employer who forwards the proposal of an untrained teacher for admission and enrollment in the postal D.Ed. course which has limited seats. Having been appointed on 20/09/2016, it was humanly impossible even for their employer Panchayat Samiti, Naigaon, to secure them admissions for the academic year 2016-17.

8. The D.El.Ed. Course was introduced by the National Institute of Open schooling and Autonomous Institution under the Ministry of Human Resource Development, Government of India, which is a two years academic year course. It was beyond the control of these petitioners to decide as to when they could appear for the exams since the exam schedule was decided by the Autonomous Institute. We do find that initially the State Government, vide Government Resolution dated 31/03/2015, declared the cut-off date as 28/02/2019 and subsequently, clarified that the cut-off date would be 31/03/2019. If the result of the exams of these two petitioners was not declared prior to 31/03/2019, we do not find that these two petitioners could be blamed.

9. In view of the above, these two petitions are partly allowed by quashing their impugned termination orders dated 01/04/2019. Both the petitioners would, therefore, stand reinstated in service.

10. The learned Advocate representing the Zilla Parishad raises an issue that these two petitioners cannot be reinstated in service if they do not pass their Teachers Eligibility Test, which is purely an examination without requiring any admission to any post and which is annually conducted. The petitioners only have to appear for such examination.

11. Considering the above, we leave it to the Zilla Parishad to deal with these two cases and work out as to how they could appear for such exam since it is a mandate that these teachers cannot appear for the Teachers Eligibility Test without acquiring the D.El.Ed. qualification. The Zilla Parishad is at liberty to grant these two petitioners such number of attempts to appear for the Teachers Eligibility Test, as may be prescribed in law. Needless to state, the petitioners would not be entitled to back wages in the peculiar facts and circumstances of the cases, as they themselves

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could be blamed for having lesser qualifications and having not improvised the same even when they were appointed as Para-Teachers. Rule is made partly absolute accordingly.

WRIT PETITION NO.3767/2020

12. Insofar as the third petition is concerned, the petitioner Yuvraj Fulsing Rathod was first appointed as a Voluntary Teacher in 2006 with the Open School which was converted to regular primary school by the decision of the Government, dated 27/03/2008. He was aware of the date for acquiring the postal D.El.Ed. qualification till 28/02/2019, which was subsequently extended as 31/03/2019. He was appointed as a Para-Teacher on 31/07/2009, subject to acquiring the qualification. The Right of Children to Free and Compulsory Education Act, 2009 was introduced and was later amended in 2012. This petitioner was then issued with the order dated 22/08/2014, appointing him as an Assistant Teacher. He knew that he had to acquire the requisite qualification prior to 31/03/2019.

13. There is no pleading in the petition that the petitioner was enrolled for the postal D.Ed. course for the academic year 2014-

15 or 2015-2016 or 2016-2017. In our view, he wasted these crucial years. As the postal D.Ed. course was abolished and the D.El.Ed. course was introduced in 2017, the petitioner acquired admission to the said course through the online process on 27/09/2017. This petitioner failed in one subject in one semester and therefore, appeared for the final semester exam on 10th January, 2020 i.e. after 31/03/2019, from the October Batch and he passed the said exam on 09/03/2020. We would have considered his case had he appeared for his final exam as like the earlier two petitioners Tejrao and Narayan and passed the examination by May 2019. We are, therefore, of the view that his case cannot be equated with the earlier two petitioners and no discretion can be exercised in his favour.

14. The learned Advocate for the petitioner Yuvraj, has relied upon a judgment delivered by this Court on 11/06/2021 in Writ Petition No.4904/2020, filed by Sagar Gopichand Bahire vs. the State of Maharashtra and others and a large group of connected matters, wherein this Court has dismissed all the petitions since none of the petitioners were qualified. However, the reliance placed on these judgments by the learned Counsel is for the

reason that acquiring the Teachers Eligibility Test qualification was made mandatory from February 2019 and those untrained teachers, who were earlier working as Para-Teachers, prior to 31/03/2015, were exempted from the Teachers Eligibility Test examination. We do not find that this Court has accepted the said contention while dismissing the petitions vide judgment dated 11/06/2021. We are informed that the Hon'ble Supreme Court of India has directed status-quo to be maintained on 26/02/2021 while granting permission to file Special Leave Petition against the said judgment dated 11/06/2020.

15. In view of the above, the third petition filed by Yuvraj Fulsing Rathod, fails and the same is, therefore, dismissed. Rule is discharged.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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