

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

902 WRIT PETITION NO.13499 OF 2018

**MAHENDRAKUMAR SHALIGRAM TAYDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Syed Azizoddin R.
AGP for Respondent Nos.1 & 2 : Mr. S.B. Pulkundwar
Advocate for Respondent Nos.3 & 4 : Mr. A.J. Patil
Advocate for Respondent No.6 : Mr. V.G. Salgare
...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 17th JULY, 2021

PER COURT:-

1. By this petition, the petitioner had put-forth several prayers. However, it is informed on instructions that the petitioner would now press only prayer clause (F) and (F-1) which read as under:

“F. This Hon’ble Court may be pleased to direct the respondents to award the petitioner benefits of Trained Graduate Teacher w.e.f. 01.12.2016 on the sanctioned vacant post.

F-1. This Hon’ble Court may be pleased to quash and set aside the approval dated 15.05.2019 issued by respondent no.3 in favour of the respondent no.6 which is Exhibit-’R’.”

2. Having heard the submissions of the learned advocates for the respective sides and having considered the petition paper book threadbare, this case can be dealt with in relation to two issues. Firstly, whether respondent no.6 can be said to have been rightly granted the benefits of the trained graduate teacher by superseding the petitioner and

secondly, whether the petitioner can be held to be eligible to teach any subject for the VIII to X standards keeping in view that he is B.A, with Economics as a special subject in the final year of B.ed.

3. It is undisputed that a teacher by name Icharam Patil has retired and his post has fallen vacant. He was teaching Marathi and Hindi for the students taking education in the VIII to X standards. The management contends that due to fall in the strength of students, the post occupied by Icharam Patil is now not available as it has lapsed. Icharam Patil was a graduate in Arts with Marathi and Hindi as his subjects for the final year.

4. While considering the prayer clause (F-1), which is aimed at taking away the approval dated 15.05.2019 granted in favour of respondent no.6, we find from the record that respondent no.6 - Sanjeev Dhansing Sonawane, was an Art teacher and therefore termed as a Special teacher. Icharam Patil was not a special teacher and was not teaching Art/Craft to the students in the VIII to X standards. Consequentially, the approval granted to Icharam Patil is not by impigning upon the rights of the petitioner. In these circumstances, prayer clause (F-1) stands refused.

5. The second issue that survives in this petition is whether the petitioner could have been appointed in place of Icharam Patil after his superannuation, provided the post has not lapsed. The education officer has addressed a communication to the learned AGP dated 16.07.2021 stating therein that respondent no.6 is an ATD teacher. There is no vacant post, requiring the qualification of B.ed, in the concerned

Nyanganga Madhmyamik Vidyalaya Raipur, Taluka Raver. If such a post is subsequently available and the management forwards the proposal of the petitioner, the same could be granted approval by following the due procedure of law. We have taken the copy of the said letter dated 16.07.2021 on record and it is marked as 'X-1' for identification.

6. Rule-66 of the Secondary School Code reads as under:

“66. The requirement to teaching staff for classes of standards V to VII (or any of them) and for classes of standards VIII to X (or any of them) shall be calculated in accordance with rule 73.2 to 73.6. The total No. of graduate and under graduate teachers admissible to classes of standards V to VII (or any of them) shall be in the ratio of 25:75. However, while calculating the No. of graduate and undergraduate teachers for these standards, the total work load of special teachers in Craft, Music, Drawing and Physical Education for these standards, shall be excluded. These special teachers shall be held eligible for pay scales on the basis of their qualifications even if the No. of graduate teachers for these standards i.e. V to VII (or any of them) exceeds the ratio prescribed for these standards. The work-load of the special teachers in Hindi and Sanskrit shall, however, be taken into consideration for purpose of calculating the No. of graduate and undergraduate teachers for standards V to VII (or any of them). If any graduate or trained graduate teachers above this limit of 25% are employed for teaching classes of standards V to VII (or any of them), the expenditure on their pay and allowance prescribed for under graduate or trained undergraduate teachers as the case may be, shall only be held admissible for salary.

All the teachers for standards VIII to X (or any of them) shall be graduate.”

7. Taking into account Rule-66, it is clear that, while calculating the number of graduate and under graduate teachers for standards V to

VII and VIII to X, the total workload of special teachers in Craft, Music, Drawing and Physical Education for these standards, has to be excluded and these special teachers have to be held eligible for pay scale on the basis of their qualification even if the number of graduate teachers for these standards i.e. V to VII, exceeds the ratio prescribed for these standards. As such, respondent no.6 would not come in way of the petitioner.

8. We find from Annexure-B to the Government Resolution dated 07.02.2019 placed on record that, any teacher who desires to teach the students in the VI to VIII standards, shall have the graduate degree with the subject that he desires to teach, as a subject for his final year of graduation in which he has scored a minimum of 50% marks. Annexure-C indicates the same qualification for teaching the IX and X standards. Admittedly, the petitioner had Economics as his special subject for his final year of graduation and the said subject is not in the syllabus at the secondary and higher secondary education level. From this angle, unless the subject of Economics is available for VIII to X standards, the petitioner, who is presently teaching at the V to VII standards, cannot be upgraded.

9. The learned advocate for the petitioner submits on instructions that Icharam Patil was B.A. in Economics and yet was teaching Marathi and Hindi at VIII to X standards level. We find that there is no specific affidavit in this context on record, in as much as, the learned advocate for the management submits that Icharam Patil did not have Economics as his special subject for the final year B.A. graduation course.

10. Be that as it may, even if it is assumed for the sake of assumption that Icharam Patil was B.A. Economics and the management either committed a mistake or was mischievous in permitting him to teach Marathi and Hindi in the VIII to X standards, we cannot grant our approval to such an act of the management by ordering that the management should continue to commit such mistake or play mischief by now engaging the petitioner in place of Icharam Patil so as to teach Marathi or Hindi subject.

11. The petitioner has placed before us a copy of the affidavit in reply dated 05.08.2019 sworn by Mr. Bhaskar Jagannath Patil, Education Officer (Secondary). The said affidavit is marked as 'X-2' collectively for identification. Nevertheless, the learned AGP submits that the said affidavit was kept ready, was drafted by him and the affidavit was sworn on 05.08.2019. However, the same was not filed in this Court though an advance copy of the affidavit was given to the learned advocate for the petitioner. It is therefore contended that as the said affidavit was not tendered in the Court and even today is not on the file of the Court, the same may be ignored.

12. We thus find from the fact situation that we cannot approve the engagement of the petitioner to teach any subject other than Economics to the students of VIII to X standards, merely because the management or the education officer may have earlier committed a mistake or a mischief or may have indulged in an irregularity or an illegality.

13. In view of the above, this petition is dismissed.

14. We however make it clear that this order is restricted to the reliefs sought in this petition and we have not touched the issue of whether the petitioner is eligible to acquire the trained graduate teachers pay scale from the 25% quota in the primary section category or that, if any post is vacant, whether the petitioner could be considered for the said post.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)