

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1640 OF 2005

1) Nandkishore Shamrao Chavan,)
residing at K.L.Colony, M.G.Road,)
Thane (E))

2) Sanjay Shankar Kadam,)
residing at Raghunath Pandey Chawl,))
Hajuri Gaon, Road no. 15, Wagle Estate,))
Thane)

... Petitioners

Versus

1) The Principal,)
Rajiv Gandhi High School P & T Colony))
P K Road, Mulund Mumbai)

2) President/Secretary,)
Samajik Ekta Samiti having their office))
at Rajiv Gandhi High School P & T Colony,))
P K Road, Mulund, Mumbai)

3) The Education Inspector,)
North Zone, Chembur (E),)
Mumbai – 71)

4) State of Maharashtra,)
Through Govt. Pleader,)
O.S., High Court, Mumbai)

... Respondents

**WITH
CONTEMPT PETITION NO. 66 OF 2016
IN
WRIT PETITION NO. 1640 OF 2005**

1) Nandkishore Shamrao Chavan,)
residing at K.L.Colony, M.G.Road,)
Thane (E))

2) Sanjay Shankar Kadam,)
 residing at Raghunath Pandey Chawl,)
 Hajuri Gaon, Road no. 15, Wagle Estate,)
 Thane)

... Petitioners/
 Org. Petitioners

Versus

1) A.R. Upadhyau,)
 The Principal,)
 Rajiv Gandhi High School P & T Colony)
 P.K. Road, Mulund, Mumbai)

2) Sanjay K. Dubey,)
 The Secretary,)
 Samajik Ekta Samiti having office at)
 Rajiv Gandhi High School, P & T Colony,)
 P. K. Road, Mulund, Mumbai)

3) Anil S. Sable,)
 The Education Inspector,)
 North Zone, Mumbai)

... Contemnors/
 Respondents/Org.
 Respondents

Mr. Satyajeet Anil Rajeshirke for the Petitioners.
 Mr. Mayuresh Lagu for the Respondent Nos. 1 and 2.
 Mr. Kedar Dighe, AGP for the State-Respondent Nos. 3 and 4.

**CORAM: R. D. DHANUKA AND
 ABHAY AHUJA, JJ.**

DATE : 22nd NOVEMBER, 2021.

ORAL JUDGMENT (PER R.D.DHANUKA, J.) :-

. Rule in Writ Petition. Mr. Lagu, learned counsel for the respondent nos. 1 and 2 waives service. Mr. Dighe, learned AGP for

the respondent nos. 3 and 4 waives service. By consent of parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 14th March, 2005 passed by the respondent no.3 refusing to grant approval to the appointment of the petitioner and order dated 30th March, 2005 and order dated 2nd April, 2005 /4th April, 2005 refusing to grant approval to the appointment of the petitioners issued by the respondent no.2 and orders dated 14th March, 2005, 30th April, 2005 and order dated 2nd April, 2005 / 4th April, 2005 passed by the respondent no.3 refusing to grant approval to the appointment of the petitioner and also order dated 30th March, 2005.

3. The petitioner no.1 is qualified as B.Sc B.Ed and was initially appointed in the respondent no.1-school on 28th May, 2004 in Marathi medium school. At the relevant time, the respondent no.1 was running on non-grant basis. The grant-in-aid was given to the respondent no.1 for the first time in the year 2004-05. The services of the petitioner no.1 were terminated on 30th March, 2005. In view of the order rejecting the approval by the respondent no.3 by letter dated 14th March, 2005 on the ground that the petitioner no.1 was appointed on the post which was reserved for D.Ed candidate, the services of the petitioner were terminated.

4. Insofar as the petitioner no.2 is concerned, he is qualified as B.A. B.Ed and was initially appointed on 19th July, 1997 in the respondent

no.1-school and was appointed as Assistant Teacher in Marathi medium school w.e.f. 20th April 1998 vide letter dated 28th May, 1998. At the relevant time, the respondent no.1 was running on non-grant basis. The grant-in-aid was given to the respondent no.1 for the first time in the year 2004-2005. The respondent no.3 rejected the approval vide letter dated 14th March, 2005 on the ground that the petitioner no.2 was appointed on a post reserved for D.Ed candidate. Based on the said letter, the Management terminated the services of the petitioner no.2 by issuing letter dated 30th March, 2005. Being aggrieved by the orders passed by respondent no.3 and the Management, the petitioner have filed this writ petition.

5. During the pendency of the writ petition, the petitioner no.1 retired by superannuation.

6. Insofar as Contempt Petition No. 66 of 2016 is concerned, the petitioners have filed this petition for initiating an action against the respondent for not complying with the interim order dated 2nd May, 2005. On 27th June, 2005, this Court had continued the *ad-interim* order dated 2nd May, 2005. On 2nd May, 2005, this Court granted *ad-interim* in terms of prayer clause (c) of the Writ Petition thereby restraining the respondents from terminating the services of the petitioners in the respondent no.1-school pursuant to the letter dated 30th March, 2005 issued by the respondent no.2.

7. Mr. Rajeshirke, learned counsel for the petitioner on earlier occasion tendered an additional affidavit dated 4th August, 2021 and

would submit that in view of the averments made by the petitioner in the additional affidavit, Writ Petition may be disposed of. He invited our attention to the unreported judgment of this Court delivered on 27th June, 2019 in Writ Petition No. 6035 of 2013 filed by ***Mrs. Medha Deepak Khobrekar & Ors. v/s. The State of Maharashtra & Ors.*** and another companion writ petition and would submit that the rejection of the appointment of the petitioners in that writ petition was solely on the ground that the petitioners did not possess D.Ed qualification at the time of their initial appointments and was in issue before this Court. He submits that after construing the said Government Resolution dated 11th November, 2011, this Court held that even those teachers who had acquired B.Ed degree were eligible to be appointed on the said post reserved for D.Ed qualification.

8. Mr. Lagu, learned counsel for the Management states that this petition can be disposed of in line with the principles laid down by this Court in the said judgment in case of ***Mrs. Medha Deepak Khobrekar & Ors.*** (supra).

9. It is not in dispute that on the date of initial appointment of the petitioners, the petitioners were holding the B.Ed degree and not D.Ed. The approval to the appointment of the petitioners was rejected only on the ground that none of the petitioners were holding the D.Ed qualification though were holding the post of B.Ed.

10. This Court in the said judgment in case of ***Mrs. Medha Deepak Khobrekar & Ors.*** (supra) has considered various Government

Resolutions and has held that the teachers holding B.Ed qualification on the date of initial appointment also could be appointed on the post of reserved for D.Ed qualification. In the said judgment this Court, dealt with the Clause (b) of the said Government Resolution dated 11th November, 2011 and in paragraph 20 has held that in line of Government Resolution dated 11th November, 2011 even those teachers are entitled to be considered as trained teachers from the date of their initial appointments. In that matter, all the teachers who were the petitioners were appointed during the period between 7th August, 1990 and 13th April, 1994. However, in paragraph 24 of the said judgment, in the facts of that case, this Court directed that the petitioners therein were entitled to reliefs on the basis of Government Resolution dated 11th November, 2011 but the seniority thereof shall be notionally fixed in the final seniority list of trained teachers working in the primary school of respondent no.2-school from the date of their initial appointments. It is further directed that the petitioners shall be entitled to consequential benefits as a result of the placement of the petitioners in the seniority list in terms of those directions.

11. In our view, on plain reading of Clause (b) of the said Government Resolution dated 11th November, 2011, it is clear that all the teachers who were holding B.Ed qualification and though were appointed in excess of 25% quota prior to the date of the said Government Resolution were eligible to be appointed to the post of Assistant Teachers/Teachers though holding the B.Ed qualification on the post reserved for the candidates holding D.Ed qualification. These petitioners were thus entitled to be appointed to the said post though

were holding B.Ed qualification on the initial date of appointment and on the pay-scale payable to the Assistant teachers holding B.Ed qualification on the initial date of appointment.

12. Insofar as the petitioner nos. 1 is concerned, the petitioner has already retired by superannuation during the pendency of this petition. The petitioner also thus would be entitled to quashing and setting aside of the order of rejection of approval to the appointment on the said post though was holding B.Ed qualification from the initial date of appointment.

13. We accordingly pass the following order :-

- (a) Writ Petition is allowed in terms of prayer clause (a). The Education Officer is directed to grant approval to the appointment of the petitioners to the post hold by them from the initial date of appointment within four weeks from today.
- (b) The Management is directed to submit pay bills of both the petitioners by computing the pay-scale payable to these petitioners as B.Ed teachers from the date of termination within eight weeks from today. The Education Officer shall release the amount due to the petitioners in terms of the calculations that will be made by the Management within eight weeks thereafter. Insofar as the petitioner no.1 is concerned, he will be entitled to the

difference in pay and all consequential benefits till the date of his retirement by superannuation and the pension and other retirement benefits due on that basis.

- (c) Rule is made absolute in aforesaid terms. There shall be no order as to costs.
- (d) In view of the aforesaid order, the petitioner does not press for any reliefs in Contempt Petition and is accordingly dismissed.
- (e) Interim Application, pending if any in the writ petition is also disposed of as infructuous in view of disposal of writ petition. The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]

BIPIN
DHARMENDER
PRITHIANI

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by BIPIN
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