

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

WRIT PETITION NO.9091 OF 2019

Amrut Trimbakrao Bhamre,
Age : 50 years, Occu: Service
R/o. V.J.N.T. Ashram School, Akrale,
Tq. and Dist. Nandurbar

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through, Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai-32.
2. The Director,
V.J.N.T., O.B.C. & S.B.C.
Maharashtra State, Pune.
3. The Divisional Deputy Commissioner,
Nashik Division, Nashik.
4. The Assistant Commissioner,
Social Welfare Department,
Nandurbar, Tq. and Dist. Nandurbar.
5. V.J.N.T. Primary Ashram School,
Akrale, Tq. and Dist. Nandurbar
through its Headmaster.

... **RESPONDENTS**

...

Advocate for Petitioner : Mr. Ajay D. Pawar
AGP for Respondent/State : Ms. R.P. Gour
Advocate for Respondent No.5 : Mr. Chetan T. Jadhav

...

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 17.08.2022

ORAL ORDER : (SANDEEP V. MARNE, J.)

Leave to amend is granted to the petitioner to challenge the undated order passed by the Assistant Commissioner, Social Welfare, Nandurbar (Annexed as Exhibit-R2, Page 82 to the affidavit in reply filed by the respondent No.3). Amendment to be carried out forthwith.

2. By the present petition the petitioner is seeking a direction for treating him as trained teacher from the date of his initial appointment i.e. 28.10.1999 and to fix him in pay scale of the post of trained teacher from 28.10.1999 with all consequential benefits.

3. The petitioner was initially appointed as Assistant Teacher on 28.10.1999, with qualification of B.Sc., B.PEd. Subsequently, he acquired D.Ed qualification on 07.06.2004, from which date he has been treated as trained teacher and has been granted the pay scale of the post of trained teacher. The only controversy is in respect of period from 28.10.1999 to 07.06.2004.

4. Petitioner relies upon the decision of this Court in **Prabhakar Ananda Rajale Vs. The State of Maharashtra and Ors. (W.P. No.2079/2017 decided on 17.04.2017)** by which the another employee working in the same school has been granted the benefit of pay scale of trained teacher from the date of initial appointment by this Court.

5. Learned AGP Ms. Gour, appearing for the respondent State, has raised an objection that the proposal submitted by the Headmaster came to be rejected by the office of Assistant Commissioner, Social Welfare, Nandurbar by the undated order which has been placed at Exhibit-R2, page 82 of the reply. She submits that there is an alternate remedy of filing an appeal against the said order.

6. Learned advocate Mr. Pawar for the petitioner has relied upon the judgment of this Court in **Swati Shivaji Lawhare Vs. State of**

Maharashtra and Ors. (W.P No.940/2018 decided on 07.05.2021) in which it is held that the remedy of appeal is not available in respect of administrative orders.

7. After hearing the learned counsel for the parties, we cannot uphold the objection of alternate remedy raised by the learned AGP in view of the decision of this Court in **Swati Shivaji Lawhare** (supra).

8. Perusal of the undated order shows that the authority has refused to grant the benefit of treatment as a trained teacher to the petitioner from the date of initial appointment solely on the ground that the orders of this Court relied upon by him are applicable only to the petitioners therein. The appellate authority has not rejected the claim of the petitioner on merits.

9. In the circumstances, we feel that since the similarly placed teacher in the same school of the petitioner has already been granted benefit of treatment as a trained teacher from the date of initial appointment, we are therefore left with no other option but to allow the petition. Accordingly we proceed to pass the following order.

ORDER

- i. The impugned undated decision of the appellate authority is quashed and set aside.
- ii. Case of the petitioner be reconsidered for grant of pay scale of the post of trained teacher from the date of initial appointment i.e. 28.10.1999 and the same shall not be

rejected only on the ground that he did not possess D.Ed qualification. If there is no other legal impediment, the petitioner would be entitled to the pay scale of a trained primary teacher from the date of his initial appointment which is 28.10.1999.

10. The Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)