

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

WRIT PETITION NO. 12089 OF 2019

Vimlabai W/o Bhagwan Jadhav,
Age; 50 years, Occ; Household,
Wife of Let Bhagwan Sangha Jadhav,
Ex-Primary Teacher (S.S.C. Pass untrained)
Zilla Parishad, Hingoli,
R/o; Tamti Tanda, Taluka Aundha (Nagnath),
District; Hingoli.

...PETITIONER

V E R S U S

1. The State of Maharashtra,
Through it's Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Secretary,
School Education Department,
Mantralaya, Mumbai-32.
3. The Chief Executive Officer,
Zilla Parishad, Hingoli.
4. The Chief Accounts and Finance Officer,
Zilla Parishad, Hingoli.

...RESPONDENTS

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Advocate for the petitioner : Mr. Shrikant K. Patil
AGP for Respondent Nos. 1 & 2 : Mrs. Vaishali N. Patil (Jadhav)
Advocate for Respondent No. 3 : Mr. Avinash D. Aghav
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AND

WRIT PETITION NO. 9562 OF 2019

1. Baliram s/o Annasaheb Garud,
Age; 59 years, Occ; Retired Primary

Teacher,
Zilla Parishad, Parbhani,
R/o; At Post Daithana,
Tq. and Dist. Parbhani.

2. Ashok s/o Kundlikrao Wadhe,
Age; 60 years, Occ; Retired Primary
Teacher,
Zilla Parishad, Hingoli,
R/o; Kamlanagar, Near Gayatri Mandir,
Hingoli, Tq. & Dist. Hindoli.

...PETITIONERS

V E R S U S

1. The State of Maharashtra,
Through it's Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Secretary,
School Education Department,
Mantralaya, Mumbai-32.
3. The Chief Executive Officer,
Zilla Parishad, Parbhani.
4. The Chief Executive Officer,
Zilla Parishad, Hingoli.

...RESPONDENTS

...
Advocate for the Petitioners : Mr. Shrikant K. Patil
AGP for Respondent Nos. 1 & 2-State : Mr. Vaishali N. Patil (Jadhav)
Advocate for Respondent No. 3 : Mr. V.V. Bhavthankar (Absent)
Advocate for Respondent No. 4 : Mr. Santosh B. Pulkundwar
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 07.09.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

3. The short issue that arises for our consideration in the present petition is, whether the untrained teachers appointed after July, 1972 are entitled to pension and pensionary benefits. The issue arises on account of the provisions of the Government Resolution dated 04.10.1983 under which one time exception has been made to treat untrained teachers appointed prior to July, 1972 as deemed trained teachers for the purpose of pension and the pensionary benefits. The petitioner's husband was appointed as teacher on 27.12.1985 in Zilla Parishad Parbhani (now Hingoli) with qualification of S.S.C. On account of fact that he was appointed as untrained teacher after July, 1972, he has been denied pension and pensionary benefits.

4. The issue involved is no more res integra. In **Smt. Gokula Vilas Patil Vs. The Education Officer (Primary) and Ors. Writ Petition No. 5110 of 2012 decided on 13.12.2017** the Division Bench of this Court held that, the classification made by the Government Resolution dated 04.10.1983 between the untrained teachers appointed before and after July, 1972 is an artificial classification. This Court, therefore, proceeded to allow the claim of

the petitioner therein, who was appointed as Assistant Teacher on 01.06.1979 for pension and pensionary benefits. In **Smt. Umabai W/o Ramkrishna Deshmukh, Vs. The State of Maharashtra and Ors. Writ Petition No. 6143 of 2016 decided on 04.07.2019**, another Division Bench of this Court held as under :

“12. The Pension Rules read in its entirety nowhere stipulates that if a person is appointed on substantive post by following due selection process and completes 10 years or more service till the date of his superannuation and against whom no departmental or judicial proceedings are pending is dis entitle for pension on the ground that on the date the employee was appointed and retires on attaining age of superannuation was untrained.

13. It is not disputed by respondents that, the petitioners were duly appointed on a substantive and sanctioned posts. They have completed the minimum period of qualifying service. In fact, most of the petitioners have completed more than 30 years of service and honourably retired on attaining age of superannuation. They were treated as regular employees, were paid the regular salary, their appointments are approved as per their qualification. No rule exists in the Pension Rules that would deny the petitioners right to claim pension. The posts these petitioners were holding, were never declared to be non pensionable or that the posts created by it shall not be qualifying service for pension. In absence of any rules, denying the right to get pension to the petitioners will not be permissible.

14. The Government Resolution dated 04.10.1983 prescribing that those appointed prior to the cut off date i. e. 01.07.1972 and possessing only S.S.C. qualification would be deemed trained teachers not those appointed till the date of Government resolution is unreasonable classification as is observed by the Division Bench of this Court under judgment and order dated 13.12.2017 in a case of Smt. Gokula Vilas Patil Vs. The Education Officer (Primary) Sangli and others referred to (supra). The Division Bench of this Court

at its Principal Seat at Bombay in the said case has observed that, the cut off date for making the pensionary benefits applicable to the untrained teachers as on 01st July, 1972 cannot be said to have any nexus with the object sought to be achieved. This Court in the said judgment further observed that, it would have been a different matter, had the State Government notified the date of Government Resolution or subsequent date as a cut off date for making the pensionary benefits applicable. However, by the 1983 Government Resolution the State could not have gone backward by nine years to provide a cut off date.

15. The provisions of the Government Resolution dated 04th October, 1983 are self eloquent. It has been observed in the said Government Resolution that these teachers have rendered laudable service and during their tenure the educational institutions have prospered and the results of such institutions are also excellent. The Division Bench in the case of Smt. Gokula Vilas Patil Vs. The Education Officer (Primary) Sangli and others (supra) further observed that, cut off date provided does not have any rational and one could have considered, if the cut off date provided was the date of Government Resolution or the subsequent date and in clear words observed that the Government Resolution does not have any nexus with the object. The Division Bench further observed that, by the 1983 Government Resolution, the State could not have gone backward by nine years to provide a cut of date.

17. As these petitioners were treated as regular employees working and officiating on substantive vacant posts till the age of their retirement, they were allowed to be honorably retired on attaining age of superannuation. Some of them have been promoted as Head Master. Thereafter the respondents could not have come with the case that these petitioners are not entitled for retiral benefits and pension on the ground that they did not possess necessary qualification. It would be too late in the day for the State to contend that, these petitioners would not be entitled for retiral and pensionary benefits on account that they did not possess the required

qualification.”

5. Mr. Patil, appearing for the petitioners has placed on record letter dated 09.02.2022 issued by the School Education & Sports Department conveying that the Special Leave Petitions, Review Petitions and Curative Petitions filed by the State Government challenging similar decisions, have been rejected by the Apex Court. It is, therefore, directed to implement all the orders passed by this Court in similar matters.

6. We therefore, allow the present petition directing that the case of the petitioner's husband be considered for pension and pensionary benefits and the same shall not be rejected only on the ground that the petitioner's husband did not possess necessary qualification. If the petitioner's husband is held eligible for grant of pension and pensionary benefits, such benefits be paid to the petitioner in respect of the period from the date of retirement till the death of her husband. Thereafter, the petitioner be paid family pension in accordance with the rules. The Writ Petitions are allowed in the above terms.

7. Rule is made absolute.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE