

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13854 OF 2016

Shri Swami Samarth Apang Seva Mandal,
Solapur And Anr. ... Petitioners
Versus
Madhukar Dashrath Ghodke and Ors. ... Respondents

Mr. T. D. Deshmukh, a/w. Mr. H. D. Chavan, Mr. Sagar Kursija for
Petitioners.

Mr. Ashok B. Tajane, a/w. Mr. Yogesh G. Thorat, Mr. Yuvraj A. Tajane
for Respondent No.1.

Mr. C. D. Mali, AGP for Respondent Nos.2 & 3.

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 26 OCTOBER 2023.
PRONOUNCED ON : 07 NOVEMBER 2023.

JUDGMENT:

1. **Rule.** Rule is made returnable forthwith and with the consent of the parties, petition is taken up for hearing.
2. Petitioner-Management has filed this petition challenging Order dated 03 October 2016 passed by the Appellate Authority-cum-Regional Deputy Commissioner, Social Welfare, Pune Division Pune setting aside oral termination of Respondent No.1 with effect from

01 May 2002 and directing his reinstatement with 50% backwages.

3. Facts of the case are in a narrow compass. Petitioner No.1 is a Trust registered under the provisions of the Maharashtra Public Trusts Act 1950 and also a Society registered under the provisions of the Societies Registration Act 1860. Petitioner-Trust has set up several schools for imparting training to disabled students. One such School established by Petitioner-Trust is Shri Swami Samarth Asthi Vyang Nivasi School, Akkalkot (**School**). During the years 1993 to 1995, the school was functioning on non-grant basis. Respondent No.1 held qualification Bachelor of Arts (**B.A.**) and was appointed as Special Teacher in the school on temporary basis on payment of honorarium. On 28 April 1995, grant-in-aid was extended to the Petitioner-School with one of the conditions that appointed teacher should be trained. On 30 May 1995, Respondent No.1 was given regular-temporary appointment for the academic year 1995-1996. The District Social Welfare Officer, Zilla Parishad, Solapur approved appointment of Respondent No.1 on 23 May 1996 subject to condition of acquiring necessary qualification in academic year 1996-1997. Accordingly, Petitioner-School issued letter to Respondent No.1 on 03 May 1996 calling him upon to acquire qualification of Diploma in Education (D. Ed) / Bachelor of Education (B. Ed.).

4. Special School Code for Handicapped, 1997 (**Special School Code**) came to be notified by the State Government in the year 1996, which provided eligibility criteria as D. Ed. for Trained Teachers for

physically disabled schools. The appointment of Respondent No.1 was continued for academic year 1997-1998. It appears that Respondent No.1 acquired B.Ed. qualification from Shivaji University, Kolhapur on 17 October 1998. He gave intimation of acquisition of B. Ed. qualification to the School on 08 January 1999. In the meantime, on 01 June 1998 the Petitioner-Management appointed one Shri. R. Y. Dandagule on the post of Special Teacher. According to Respondent No.1, there was no vacancy available for appointment of Shri. R. Y. Dandagule. He was appointed because he was relative of one of the trustees. On 29 May 1999, Commissioner, Social Welfare cancelled grant-in-aid of Petitioner-School on account of failure to appoint Trained Teachers. The grant-in-aid was however restored in the year 2001-2002 on condition of appointment of Trained Teachers. Respondent No.1 demanded that he be continued in service after restoration of grand-in-aid and he was issued appointment order on 08 April 2002 only for limited period from 24 January 2002 to 30 April 2002 which was approved. After 30 April 2002, the appointment came to an end and Respondent No.1 was never appointed thereafter.

5. Respondent No.1 filed Appeal No.114 of 2002 before School Tribunal, which allowed the Appeal on 29 April 2003 and ordered reinstatement of Respondent No.1 with backwages. Petitioner filed Revision No.5853 of 2003 in this Court challenging the decision of the School Tribunal, which came to be admitted and reinstatement Order came to be stayed. On 20 February 2015, this Court disposed of Writ

Petition No.5853 of 2003 holding that Appeal filed before the School Tribunal was not maintainable as the school was not recognised under the provisions of Maharashtra Employees of Private Schools Act (Conditions of Services) Regulation 1977. Respondent No.1 was therefore granted liberty to approach the Appellate Authority under the Special School Code, 1997.

6. Accordingly Respondent No.1 filed Appeal under Rule 86 of the Special Schools Code, 1997. By order dated 03 October 2016 the Appeal of Respondent No.1 came to be allowed by the Appellate Authority by setting aside the oral termination Order dated 01 May 2002 and directing Petitioner-Management to reinstate him on the post of Special Teacher with 50% backwages. Petitioner-Management is aggrieved by the Order dated 03 October 2016 passed by the Appellate Authority and has filed present petition.

7. Mr. Deshmukh, the learned counsel appearing on behalf of Petitioner-Management would submit that Respondent No.1 was not qualified to be appointed on the post of Special Teacher. That under the Special School Code, 1997 the requisite qualification for appointment on the post of Special Teacher is D. Ed., which is admittedly not possessed by Respondent No.1. That possession of B.Ed qualification by Respondent No.1 is irrelevant. That D.Ed and B.Ed. are separate qualifications. He would place reliance on the Judgment of Full Bench of this Court in *Smt. Jayashree Sunil Chavan Vs. The State of Maharashtra & Ors.*, 2000 (3) MhLJ 605 in support of his contention that persons

holding qualification of B.Ed. cannot be appointed against the posts notified with qualification as D.Ed. He would also rely on judgment of the Apex Court in ***Devesh Sharma vs. Union of India*** (2023) SCCOnline SC 985. He would further submit that Respondent No.1 neither enrolled with the Rehabilitation Council of India nor has been acquired Bridge Course. That therefore he cannot take the benefit of Government Circular dated 20 December 2014. Mr. Deshmukh would further submit that Appellate Authority could not have directed reinstatement of a untrained teacher. In this regard he would rely upon Judgment of Apex Court in ***Ram Sukh and others Vs. State of Rajasthan and others***, 1989 Supp (2) SCC 189. He would submit that untrained teacher cannot claim deemed confirmation and would rely on Judgment of this Court in ***Maharashtra Seva Sangh, Solapur and another vs. Shaikh Jamalchand and another***, 2009 (4) Mh.L.J. 198. He would submit that the Petitioner's school has been closed since the year 2017 and that therefore Respondent No.1 can no longer be reinstated. He would therefore pray for setting aside the Order dated 03 October 2016.

8. *Per Contra* Mr. Tajane, the learned counsel appearing for Respondent No.1 would oppose the petition and support the Order passed by the Appellate Authority. He would submit that Respondent No.1 has worked since 01 June 1993 till he was unceremoniously thrown out of service on 01 May 2002. That the Special Schools Code was notified in the year 1997 i.e. after the appointment of Respondent No.1 in the year 1993. That even other two employees working as Special

Teacher in the school possessed B.Ed. qualification. That Shri. Dandagule was appointed with qualification of B.Ed. and Respondent No.1 was terminated with a view to accommodate Shri. Dandagule, for whom there was no vacant post. Inviting my attention to letter dated 19 May 2015, Mr. Tajane would submit that all the teachers working in 05 Special Schools in Solapur district possessed B.Ed qualification. That their services were never terminated. He would submit that the Full Bench decision in *Smt. Jayashree Sunil Chavan* (supra) cannot be said to be laying down valid law in view of subsequent Judgments of the Apex Court in *State of Maharashtra Vs. Tukaram Tryambak Chaudhari & Ors.*, 2007 (2) All MR (SC) 933 and of this Court in *Namdeo Sukdeo Saptale Vs. The Chairman, Kai Ramchandra Patil Shikshan Sanstha & Ors.*, (2016) 3 Mh.LJ 827. He would therefore submit that the Appellate Authority has rightly set aside the termination and directed his reinstatement with full backwages.

9. Rival contentions of the parties now fall for my consideration.

10. The Petitioner-Management has challenged the Order of the Appellate Authority setting aside termination of Respondent No. 1 and directing his reinstatement with 50% backwages essentially on the ground that he did not possess requisite D.Ed. qualification prescribed under the Special Schools Code. There is no dispute to the position that under the Special Schools Code, the qualification for appointment on the post of Special Teacher is D.Ed. It is the contention of Petitioner-Management

that D.Ed. and B.Ed. are different qualifications and mere possession of Bachelors Degree in Education would not satisfy the requirement of possession of Diploma in Education. Reliance is placed on Full Bench Judgment of this Court in ***Smt. Jayashree Sunil Chavan*** in which the question referred to the Full Bench was '*weather the qualification of D. Ed. is a requisite qualification for teaching students in primary school ?*' The Full Bench answered the reference in negative by holding as under :-

26. The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the Society depends. In line with this principle, the State has enacted statutes and framed Rules and Regulations to control and regulate establishments running private schools at different levels. The State Government provides grants recognition and/or permission to run private schools with a view to exercise control over the institutions and to ensure that the standard of teaching does not suffer for want of academic control. It needs no emphasis that appointment of qualified and efficient teacher is a sine qua non for maintaining high standard of teaching in educational institutions. In order to achieve, maintain, high and proper standard of education at the entry point i.e. at the stage of primary education, if the State has formulated its policy only to appoint the teacher with requisite professional qualifications, no fault, in our opinion, can be found. The said obligation of the State stands reflected in section 16 of the Act which mandates the State to prescribe minimum qualifications for recruitment of teacher in private schools. The policy of the State reflects through Rule 6 which prescribes qualifications of primary teachers as mentioned in Schedule 'B' Part 1, whereas qualifications for secondary teachers are mentioned in Schedule B Part II of the Rules. Schedule 'B' Part I prescribes D.Ed. as the requisite qualification for primary teachers, whereas Schedule B Part II prescribes B.Ed. as a requisite

qualification for higher secondary teachers. Based on the aforesaid provisions, it is to be noticed that B. Ed is not requisite qualification for primary teachers. The syllabus for B.Ed. is entirely different. The syllabus for D.Ed. is better suited for imparting education to the students taking education in primary schools only whereas syllabus for B.Ed. is entirely distinct and better suited for the students taking education in higher standards. The factual position has been born out from the relevant material placed on record, reference of which have already been made by us in para 22 (supra).

11. The Supreme Court in *Tukaram Tryambak Chaudhari* (supra) has dealt with the issue as to whether persons holding qualification of B.Ed. can be appointed in primary schools. The Apex Court took note of the Government Resolution, which envisaged that Graduate Teachers employed in primary schools were also responsible for teaching students in standards 5 to 7. The Apex Court therefore held in paragraph 16 as under :-

“16. Mr Apte contended that the government resolution of 14-11-1979 had been duly noticed by the High Court in its correct perspective which was to bring about a parity between the facilities given to the teachers of 5th to 7th standards attached both with primary schools as well as secondary schools. In the resolution itself it was indicated that 25% of the teachers teaching in the 5th to 7th standards attached to secondary schools were enjoying the benefit of a higher scale of pay for the fourth teacher who was a trained graduate teacher being a graduate as well as having the BEd degree, while for the same classes attached to primary schools there was no such arrangement. It was noticed that all teachers in these classes of primary schools were with HSC and DED qualifications and that in these classes of primary schools there was no permission for appointing trained graduates as teachers. In order to remove the difference in the staffing pattern of these classes in these kinds of schools, the Government decided that in primary schools run by local self-

governing bodies and having 5th to 7th standard classes, 25% of the posts of approved strength of teachers in those classes should be converted into increased pay scale which was meant for those very classes in the secondary schools. It was submitted that the Government consciously provided for the appointment of trained graduate teachers for the 5th to 7th standards attached to primary schools.

12. The issue before the Apex Court in *Tukaram Tryambak Chaudhari* was entirely different. Apex Court has dealt with the issue of lethality of action of the State Government in treating Graduate Teachers posted to work in primary schools but who were teaching classes 5 to 7 as untrained teachers. The Apex Court upheld the judgment of this Court directing them to be treated as trained teachers. Thus the Apex Court did not determine the issue of equivalence of qualifications of B.Ed and D.Ed. The judgment of Apex Court in *Tukaram Tryambak Chaudhari* has been followed by Single Judge of this Court in *Abdul Jamey* (supra) in which this Court held in paragraph 12 to 15 as under :-

12.) Mr. Chaukidar has pointed out that the Honourable Supreme Court has ruled in the case of State of Maharashtra vs. Tukaram Tryambak Chaudhari and others, 2007 2 AIIMR 933, and others that the teachers possessing B.A/BSc. B. Ed. qualification are duly qualified and are eligible to continue to receive salary as trained teacher and that D.Ed. is not the minimum qualification. The Supreme Court had been taken through two decisions rendered by this court, the one by full bench in Jayashree's case and other by Division Bench in Kondiba vs. State of Maharashtra, 2003 2 All MR 951. It had been brought to the notice of the Supreme Court that the government resolutions dated 14.11.1979 had not been brought to the notice of the full bench. The Supreme Court had, therefore, observed in paragraphs 17 and 18 in the case of State of Maha. vs. Tukaram Tryambak as under:

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13.) The Supreme Court had adverted to the arguments on behalf of Tukaram referring to that the government resolution dated 14.11.1979 had not been brought to the notice of the full bench and that the resolution, reading in correct perspective, reveals that to bring about parity between the teachers teaching to the standards from 5th to 7th attached to both, primary school as well as secondary school, 25 per cent of the posts of the teachers teaching 5th to 7th standard attached to the secondary school were entitled to enjoy benefit of pay scale of trained graduate teachers. It had been further adverted to that the said government resolution was considered and dealt with by the Division Bench of Bombay High Court in Kondiba's case. The Supreme Court was thus impelled to observe that the decision rendered by the High Court in Kondiba's case was closer to the facts and, therefore, High Court's decision in Tukaram's case cannot be valid.

14.) A division Bench of this Court had distinguished the position emerging from the decision of said full bench where the MEPS Act has no applicability and held that the Assistant Teacher possessing B.A. B. Ed. qualification is a trained teacher and is entitled to be appointed as Head Master. The Division Bench had held that notwithstanding the full bench decision, policy of the State government under its resolution dated 14.11.1979 was not affected by the same and further held that the policy continues to apply to primary schools run by the municipal council from 1st standard to 7th standard. The Division bench held that the Assistant Teacher who possesses B.A. B. Ed. qualification and teaches in school imparting education to to 1st to 7th standard is a trained teacher and, therefore, is entitled to be appointed as Head Master.

15.) Petitioner has informed this court during the course of hearing that from 1.1.2004 to 31.11.2005, he has been paid salary as trained teacher and thereafter payment had been stopped by Respondents. The apparent reason for stoppage of salary had been cancellation of his performance in D.Ed course. Said action of the Respondents had been the subject matter of writ petition No.815 of 2006 at petitioner's instance which was decided on 7.12.2010 in his favour. In the interregnum, petitioner tendered resignation on 25.11.2008. The petitioner has pointed out the Government Resolution dated 11.11.2011 based on the judgment of the Apex Court in Tukaram's case providing for approval to appointment of a trained graduate teacher and has submitted that his case is squarely covered under the same.

13. It is relying on the judgments of the Apex Court in *Tukaram Tryambak Chaudhari* and of this Court in *Abdul Jamey* that Mr. Tajane has contended that the Full Bench judgment of this Court in *Jayashree Sunil Chavan* has lost its efficacy. However the latest judgment of the Apex Court in *Devesh Sharma* draws curtains on the entire controversy. The Apex Court has determined the issue of equivalence in qualifications of B.Ed and D.Ed and held as under:

30. The academic authority, which is NCTE considered the appointment of trained and qualified teachers as an absolute necessity in primary schools. It is for this reason that the qualification which was prescribed for a teacher in primary school was a diploma in elementary education (D.El.Ed.), and not any other educational qualification, including B.Ed. Apart from this the teachers eligibility test or TET would further test the skills of a candidate to handle students at primary level.

31. It must be emphasised that the pedagogical approach required from a teacher at primary level is in some manners unique. These are the initial formative years where a student has just stepped inside a classroom, and therefore needs to be handled with care and sensitivity. A candidate who has a diploma in elementary education (D.El.Ed.) is trained to handle students at this level, as he has undergone a pedagogical course specifically designed for this purpose.

32. The 'Academic Authority' which is NCTE is mandated by the Act to set up a curriculum and evaluation procedure for the all round development of a 'child', mindful of all the fears and anxieties which a child may have. Section 29 of the Act reads as under:—

29. Curriculum and evaluation procedure.—(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.”

33. As we can see the curriculum and evaluation procedure which the ‘Academic Authority’ is mandated to set up requires a pedagogical approach which can be best given by teachers who are trained to deal with child students.

34. A person who has a B.Ed. qualification has been trained to impart teaching to secondary and higher secondary level of students. He is not expected to impart training to primary level students.

35. In order to appreciate the difference between Diploma in Elementary Education (it is called by different names in each State), and Bachelor of Education (B.Ed.), we look no further than the Notifications issued by National Council for Teacher Education (NCTE) itself from time to time.

36. The Appendix 2 to the NCTE Regulations, 2009 spells out as to what is the aim of Elementary Education. It is stated to be as follows:

“1. Preamble

1.1 The Diploma in Elementary Education (D.El.Ed) is a two year professional programme of teacher education. It aims to prepare teachers for the elementary stage of education, i.e. classes I to VIII. The aim of elementary education is to fulfill the basic learning needs of all children in an inclusive school environment bridging social and gender gaps with the active participation of the community.

1.2 The elementary teacher education programme carries different nomenclatures such as BTC, J.B.T, D.Ed. and (Diploma in Education). Henceforth, the nomenclature of the programme shall be the same across all states and it shall be referred to as the 'Diploma in Elementary Education'(D.El.Ed)."

37. The same Regulation in its appendix 4 describes B.Ed as follows:

"1. Preamble

The Bachelor of Education programme, generally known as B.Ed., is a professional course that prepares teachers for upper primary or middle level (classes VI-VIII), secondary level (classes IX-X) and senior secondary level (classes XI-XII). The programme shall be offered in composite institutions as defined in clause (b) of Regulations 2."

38. It is therefore clear that a B.Ed. course is not designed for teaching at primary level.

39. Moreover, the inclusion of B.Ed. candidates for primary classes is in the teeth of several decisions of this Court, as this Court has consistently held that Diploma in elementary education (D.El.Ed.) and not B.Ed., is the proper qualification in Primary Schools.

40. In *Dilip Kumar Ghosh v. Chairman*¹², this Court had to decide on the question whether B.Ed degree candidate can be equated with a candidate who holds training in Primary School teaching or in other words who is trained specifically for Primary Schools. The Contention of the appellants (in the aforesaid case) who were B.Ed. candidates was that, their course (B.Ed.), equips them to teach Primary Classes. Their contention was rejected by this Court. In Para 9, it stated as under:

"In B.Ed. curriculum such subjects like child psychology are not found. On the other hand, the curriculum is of a generic nature and deals with subjects like the principle of educational-curriculum studies, educational psychology, development of education in modern India, social organization and instructional methods, etc."

41. Then again in Para 10 it was stated as under:

".....For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in B.Ed. degree are not necessarily to be equipped to teach the students of primary

class. They are not trained and equipped to understand the psychology of a child of tender age.”

42. In P.M. Latha v. State of Kerala¹³ the argument that B.Ed. qualification is a higher qualification than Diploma in Elementary Education (D.El.Ed.) was rejected. Again, it was a case before the Apex Court where B.Ed candidates, were claiming appointment as Primary School teachers on the basis of the claim that their educational qualification (i.e. B.Ed.) was even higher than the Diploma in Elementary Education (D.El.Ed.) which was held by the other candidates. In para 10 of the said case, it was stated as under:

“We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post.....”

43. These findings were reiterated by Supreme Court in Yogesh Kumar v. Government of NCT, Delhi¹⁴, holding that though B.Ed. is a well-recognized qualification in the field of teaching, yet it is a training which equips a candidate to teach higher classes, not classes at primary level.

44. B.Ed. is not a qualification for teachers at Primary level of schooling. The pedagogical skills and training required from a teacher at Primary level is not expected from a B.Ed. trained teacher. They are trained to teach classes at higher level, post primary, secondary and above. For Primary level i.e. class I to class V the training is D.El.Ed or what is known as diploma in elementary education. It is a D.El.Ed. training course which is designed and structured to impart skills in a teacher who is to teach Primary level of students.

45. Therefore, by implication the inclusion of B.Ed. as a qualification amounts to lowering down of the ‘quality’ of education at Primary level. ‘Quality’ of education which was such an important component of the entire elementary education movement in this country, which we have discussed in the preceding paragraphs of this order.

46. We are also conscious of the fact that, till the notification dated 28.06.2018, the consistent policy of NCTE had been to exclude B.Ed. candidates from the eligibility criteria of Primary School Teachers. In the 23.08.2010 notification - the first given by NCTE in its capacity as the “academic authority” under Section 23 of the RTE Act, which has been referred in the preceding paragraphs, B.Ed. qualified teachers were not considered for primary classes. All the same, purely in order to equip the various State governments to establish enough training colleges/centres for imparting spe-

cialised training centres for elementary teachers, the B.Ed. candidates were to continue for a very limited period.

47. This was during the initial period starting from the year 2010 onwards, when the Act and the subsequent order of NCTE laid down the qualifications for Primary School Teachers throughout the country. But essentially B.Ed. qualified teachers were kept out from the purview of the eligibility of the teachers in primary schools as B.Ed. was not considered a “qualification” for teachers at primary level.

48. The inherent pedagogical weakness in B.Ed. courses (for primary classes), is well recognised, and it is for this reason that in the impugned notification itself it is provided that B.Ed. trained teachers will have to undergo a six months training in elementary classes, within the first two years of their appointment.

49. In this background, the inclusion of B.Ed. candidates for primary level classes is beyond our comprehension.

14. Thus the position is now settled by the Apex Court judgment in *Devesh Sharma* that persons with B.Ed qualification cannot be appointed in primary school and the qualification of B.Ed cannot be considered equivalent to D.Ed. The Apex Court has frowned upon appointment of untrained teachers in *Ram Sukh* holding as under:

5. The contention, however, urged for the petitioners before us is that they should be absorbed in service and they should also be provided with facilities to undergo the prescribed training. We do not think that we could accept the contention. We cannot, at any rate, direct the government to put back the petitioners into service till they are trained. No doubt the High Court in Tamboli case [Civil Writ Petition No. 2795 of 1987] has directed the State Government to get the untrained teachers trained in phased programme to enable them to improve their prospects for employment. But that does not, however, mean that it is obligatory for the government to continue the untrained teachers till they are properly trained.

6. We are not less sympathetic to the petitioners who are out of job but we cannot forget the welfare of those who are not before the court. They are the

tiny tots who require proper handling by well trained teachers. This Court had an occasion to observe about the need for proper training to teachers in the interests of students. In *Andhra Kesari Educational Society v. Director of School Education* (1989) 1 SCC 392 to which one of us was a party, this Court made a passing reference:

“The teacher alone could bring out the skills and intellectual capabilities of students. He is the ‘engine’ of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefitter.”

7. These observations are equally relevant to primary school teachers with whom we are concerned. The primary school teachers are of utmost importance in developing a child's personality in the formative years. It is not just enough to teach the child alphabets and figures, but much more is required to understand child psychology and aptitudes. They need a different approach altogether. Only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained teachers. We are, therefore, unable to give any relief to the petitioners.

15. A Single Judge of this Court has held in *Maharashtra Seva Sangh v. Shaikh Jamalchand* that a persons appointed in relaxation of qualification cannot be claim permanency. This Court held:

A person appointed by relaxing the qualification as contemplated by clause (1) (d) of Part III of Schedule ‘B’ is not entitled to claim permanency merely because he was assured by the institution that he would be continued till he acquires the prescribed qualifications. Even if there is such assurance or undertaking given by the institutions, such assurance or undertaking would not bind the institution indefinitely and particularly in the cases where the trained teacher becomes available or the workload is not available. In the present case the petitioner-institution has denied that in 1995-96 respondent No. 1 was appointed as full timer in a clear permanent vacancy. It appears that there was reduction in workload and, therefore, he was appointed on clock hour basis.

16. I am therefore of the view that Respondent No. 1 could not have been continued on the post of Special Teacher in the School for not possessing the requisite qualification of D.Ed prescribed in the Special School Code. The Appellate Authority has glossed over this vital aspect and had directed reinstatement of Respondent No. 1. The Order of the Appellate Authority is thus unsustainable and is liable to be set aside.

17. Writ Petition accordingly succeeds. Order dated 03 October 2016 passed by the Appellate Authority-cum-Regional Deputy Commissioner, Social Welfare, Pune Division Pune is set aside. Writ Petition is accordingly allowed. Rule is made absolute. There shall be no orders as to costs.

SANDEEP V. MARNE, J.

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