

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1792 OF 2021

- 1) Rajakumar Ramji Wankhede,
Aged about 47 years, Occu. - Asstt. Teacher,
R/o. Zilla Parishad School, Ranjeet Nagar,
Tal. Manora, Dist. Washim.
- 2) Bibichand Vishram Jadhav,
Aged about 47 years, Occu. - Asstt. Teacher,
R/o. Zilla Parishad School Dhoni,
Tal. Manora, Dist. Washim.

.... **PETITIONERS**

// VERSUS //

- 1) The State of Maharashtra,
through the Secretary, School
Education and Sports Department,
Mantralaya, Mumbai 32.
- 2) The Commissioner,
Maharashtra State, Council of
Examination, Pune 01.
- 3) The Zilla Parishad Washim,
through its Chief Executive Officer.

.... **RESPONDENTS**

Mr. J.R. Kidilay, Advocate for petitioners.
Mrs. N.P. Mehta, Assistant Government Pleader for respondent
No.1.
Mr. Vinay B. Rathi, Advocate h/f Mr. P.B. Patil, Advocate for
respondent No.2.
Mr. M.L. Vairagade, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ
DATED : MAY 02, 2023

ORAL JUDGMENT : (Per A. S. Chandurkar, J.)

1. **Rule.** Rule made returnable forthwith and heard learned Counsel for the parties.

2. The petitioners came to be appointed as Vasti Shala teachers in the year 2001. In view of the Government Resolution dated 01.03.2014 their services were absorbed with Zilla Parishad, Washim. Accordingly, they were issued appointment orders on 06.09.2014 with the condition that they were required to obtain the necessary training qualification in the form of Diploma in Elementary Education (D.El.Ed.). This was to be done within a period of three years of their absorption in view of the provisions of Section 23(2), second proviso of the Right of Children to Free and Compulsory Education Act, 2009. On 30.09.2014 the Chief Executive Officer issued a communication to the respondent No.1 seeking permission from the State Government with regard to fifteen untrained teachers who desired to appear for the said examination since the last date for submission of the forms had lapsed on 30.06.2014. Said permission however was not granted. In the next academic year again a request was made on 05.09.2015. Ultimately by a communication dated 03.05.2016 the petitioners were admitted in the postal D.El.Ed. course for academic session 2016-17. The petitioners pursued the said course and they were required to pass the said examination by 28.02.2019 which was extended till 31.03.2019.

The petitioners appeared in the said examination in June 2019 and results thereof were declared in August 2019. However, for failure to obtain the requisite training qualification by 28.02.2019, the services of both the petitioners came to be terminated. In this context, the petitioners have challenged the orders of termination dated 31.03.2021 primarily on the ground that they were not granted sufficient time and opportunity to clear the qualifying examination despite pursuing the matter since beginning.

3. We have heard the learned counsel for the parties and we have perused the documents on record.

4. It is not in dispute that pursuant to the absorption of the petitioners services with the Zilla Parishad they were required to obtain training qualification by 28.02.2019. The said date has been subsequently extended to 31.03.2019. However, in the light of the fact that the said examination was conducted only in June 2019 and results thereof were declared in August 2019 wherein the petitioners have cleared the said examination, the learned Counsel appearing for the Zilla Parishad was directed to obtain instructions as to whether any posts of trained teachers were vacant or not. The learned counsel for the respondent No.3 on instructions submits that the posts held by the

petitioners have been filled in but there are other posts of trained teachers that are vacant which could be taken into consideration.

5. We find in the facts of the present case that the petitioners were initially appointed in the year 2001 and after absorption of their services in the year 2014 they were required to obtain necessary training qualification. The D.El.Ed. course was required to be completed within a period of three years. Since the petitioners were admitted to the said course in the academic session 2016-17 coupled with fact that the examination for the final year of that course was conducted only in June 2019 which is after the cut off date of 31.03.2019, we find that the petitioners do not deserve to be deprived of their employment only on the ground that the two years course was completed after the cut off date. The petitioners alone are not to be blamed in view of the fact that they could not be admitted to the said course earlier.

6. In view of the aforesaid, the following order would serve the interests of justice :-

- (i) In the light of the fact that the petitioners have now acquired the training qualification and that being the only reason for terminating their services on 31.03.2021, the

orders of termination dated 31.03.2021 passed by the Chief Executive Officer, Zilla Parishad, Washim are set aside.

- (ii) The petitioners shall be reinstated on the post of Primary School Teacher with the Zilla Parishad, Washim within a period of four weeks on receiving copy of the judgment.
- (iii) The petitioners would not be entitled to any back-wages from 01.04.2021 till their reinstatement. However, their earlier services shall be taken into consideration for all other purposes including grant of retiral benefits.

Rule is made absolute in the aforesaid terms. No costs.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

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