



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4009 OF 2024

Ashok s/o Ramdas Chaudhari .. Petitioner

versus

The State of Maharashtra & others .. Respondents

Mr. R. D. Bhalerao, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for the State.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

RESERVED ON : 17th APRIL, 2024.

PRONOUNCED ON : 3rd MAY, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. The Petitioner has filed this Petition with following prayers :-

B) Record and proceedings of the impugned act of the respondents under challenge in this Writ Petition may kindly be called for in order to examine its legality, validity and propriety from the office of respondent – Additional Commissioner, Tribal Development Department, Nashik as well as Project Officer, Integrated Tribal Development Project, Yawal.

C) By issuing an appropriate writ, order or directions in the like nature, the respondent No. 2 – Commissioner,

Tribal Development Department, Nashik may kindly be directed to consider the petitioner's pending representation dtd. 1-12-2023 (Annexed at Exh. A), in accordance to law as well as in its proper perspective as early as possible and within a stipulated period of time.

D) By issuing an appropriate writ, order or directions in the like nature, the impugned erroneous approval dtd. 15-1-2009 issued by the respondent no. 3 – Additional Commissioner, Tribal Development Department, Nashik (Annexed at Exh. G) is being illegal, improper, unfair and unjust one may kindly be quashed and set-aside.

2. It is the case of the Petitioner that he is qualified and appointed as "Primary Ashram School Teacher" and his appointment is duly approved. The Petitioner is aggrieved by the act of non-consideration of his pending representation dated 01.12.2023 by Respondent No. 2- Commissioner, Tribal Development Department, seeking cognizance of his service proposal dated 18.03.2020, filed by the school seeking relaxation of the impugned pre-condition of completion of B.Ed course by order of the Additional Commissioner on 15.01.2009 while granting approval to the permanency of the Petitioner.

3. It is the case of the Petitioner that since 03.06.2000, he is satisfactorily working as a “Primary Ashram School Teacher” in an aided educational institution run by Jai Tulja Bhavani Bahu-Uddeshiya Shikshan Prasarak Mandal, Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon. The Petitioner claims to have acquired qualification of D.Ed. (H.S.C. Arts) in 1997. On 29.05.2000, he was appointed as a Primary Ashram School Teacher. On 28.01.2001, he completed B.A. (English) and D.Ed. His appointment was duly approved by the Project Officer on 29.01.2001. The employer-institution promoted the Petitioner as ‘Graduate Primary Ashram School Teacher’ with effect from 07.04.2004. His employment was regularised on 10.10.2006.

4. It is the case of the Petitioner that unwarrantedly, on 15.01.2009, Additional Commissioner imposed pre-condition to complete additional educational qualification of B.Ed. within 5 years and temporarily approved the Petitioner’s services. As a result of which, the salary increments though were indicated in his record, were not actually granted and this has resulted into causing of injustice to him. He, therefore, filed representation on 27.02.2020, with the employer-institution. On 18.03.2020, the proposal was forwarded to the Project Officer. However, since no action was taken

on the basis of the said proposal, the Petitioner filed representation dated 27.10.2023 of which, no cognizance was taken. Hence, this Petition.

5. The learned Advocate for the Petitioner submits that the Petitioner was holding the requisite qualification for appointment as a teacher in the primary school and as such, condition imposed by order of 2009 of acquiring qualification of B.Ed is unwarranted and illegal. It is his submission that though the said qualification was not acquired within 5 years, however, in the year 2020, he acquired the same. Thus, it is his contention that it is a fit case wherein the Petitioner is required to be given all the benefits of his appointment as if he was having the requisite qualification for the purpose of appointment.

6. The learned AGP opposed the said contention by drawing attention of the Court to the fact that order dated 15.01.2009 has not been challenged by the Petitioner till date. It is his submission that the qualification of B.Ed was essential for a “trained graduate teacher” and in absence thereof, the Petitioner is not entitled to seek any benefit.

7. Admittedly, the Petitioner was appointed in a primary school and by order dated 15.01.2009, he was granted conditional confirmation with the condition of acquiring B.Ed qualification within 5 years. The Petitioner has never challenged the said order and infact has made several attempts for acquiring the said qualification and ultimately got the degree of B.Ed in the year 2020. The fact of failure on the part of the Petitioner to challenge the said order and to acquire B.Ed qualification in order to comply with the said condition, shows that there is acquiescence on the part of the Petitioner to the said order. In our view, therefore, now it would not be open for the Petitioner to challenge the validity of the said order.

8. Now, the question arises as to whether the Petitioner can be denied the benefit of 'trained graduate teacher' for all the time on the ground that he has not completed the B.ed qualification in 5 years of the order. The relevant Government Resolution dated 11.08.1999 indicates that there would be 25% trained teachers for V to VII standards. Thus, even on acquisition of qualification of B.Ed, a teacher would not be entitled to receive higher scale but shall be entitled to the same as per his seniority. Though the Petitioner did

not obtain the said qualification within 5 years however, admittedly, the said qualification has been obtained by him in the year 2020.

9. The Division Bench of this Court, in case of Vithal Fakruji Madavi & others vs. Zilla Parishad & another, **2006(3) Bom.C.R. 348**, after considering Government Resolution dated 11.08.1994, has observed that :

11. Even otherwise the stand taken by the State Government is in consonance with the said Government Resolution. Clause 3 of the said Government Resolution reads thus :

“(3) The posts of the primary teachers thus converted into higher pay scale of Rs. 365-760 should be from the category of primary teachers only. On such converted posts the Local Self Governing Bodies should appoint the primary teachers working full time in their bodies and holding educational qualification mentioned elsewhere in this order. These appointments should be made according to the seniority of the concerned teachers from the category of primary teachers. Such appointments shall not be the appointments by promotion.”

It can, thus be seen from the said clause that the local bodies should make the appointments to higher scale of the teachers possessing the requisite qualifications mentioned elsewhere in the said G.R.

12. The relevant portion of Clause (5) of the said Government Resolution reads thus :

“(5) On the posts of primary teachers converted into higher pay scale of Rs.365-760, the Primary teachers falling in the undermentioned categories of the Graduate Primary Teachers in service (Graduate teachers having completed the training course prescribed for primary teachers) be appointed on the following conditions :-

(1) Trained primary teaches who have done graduation in Arts, Science offering at least one subject taught in the primary schools and also who hold B.Ed. degree in education or (Primary teachers) of commerce faculty.

(2) Trained primary teachers who have not offered any of the subjects taught in primary schools, but who have done graduation in other subject. The primary teaches under this category be given the new higher pay scale on the condition that within 5 years of their appointment on the post of this higher pay scale of Rs. 365-760 (unrevised) they should, at their own expense, acquire

degree offering at least one subject taught in the primary schools, if this condition is not followed the increments in the new pay scale be withheld for next five years till they acquire this degree.

(3) To the primary teachers under the category of trained primary teaches who have done graduation in other subject, without offering a subject taught in the primary schools, and who have not acquired degree in education i.e. B.Ed. be given the new higher pay scale on the condition that they should at their own expense, acquire a degree offering at least one subject taught in the primary schools within 5 years from the date of their appointment. Similarly, they should acquire degree in education i.e. B.ed. also. If this condition is not followed, the next increment of such teachers in the new pay scale be withheld till they acquire these degrees.

(4) If the other graduate primary teachers holding other equivalent degrees working in the primary schools, fulfil other terms and conditions as above, they are also entitled to be appointed as eligible degree holder teachers.

(5) The primary teachers from the primary schools on the pattern of 5th to 7th standard from the secondary schools who were in service prior to 1-10-1970 and who held university degree prior to 17-4-1979, (such teachers)

are not required to acquire B.Ed. degree within 5 years for being appointed in the trained graduate pay scale (eligible degree holders).

As above, to the graduate primary teachers who have been appointed on the post of eligible degree holder on the condition that they shall acquire B.Ed. degree within 5 years from the date of their appointment and who have not acquired B.Ed. degree within the extended period i.e. till 30th June, 1994, withheld regular increments be released from the month next to the month in which they have actually acquired B.Ed. degree after 30th June, 1994.”

It can, thus be seen from the conjoint reading of Clause 3 and 5 that the seniority and possessing the requisite qualifications will be a criteria for grant of higher pay scale. Sub-clause (1) of Clause 5 would show that first preference has to be given to such of the teachers who have obtained degree of graduation in Arts or Science stream, in one of the subjects which is taught in the school along with a degree in teaching I.e B.Ed. It also includes a trained teacher in Commerce faculty. Sub-clause (2) of Clause 5 would show that second preference will have to be given to such of the trained graduates possessing a degree of B.Ed. but not possessing a degree in graduation in one of the subjects taught in the primary schools. However, the higher placement has to be

granted to such of the teachers on the condition that they obtain degree of graduation in one of the subjects taught in the school, within a period of five years.

13. Third preference has to be given to such of the teachers who do not possess a graduate degree in one of the subjects taught in the school and also do not possess B.Ed. qualification. Such of the teachers will also be granted higher pay scale on the condition that they shall obtain a degree of graduation in one of the subjects taught in the said school so also degree of B.Ed. within a period of 5 years.

14. Sub-clause (4) specifies that such of the primary teachers who are possessing equivalent qualifications and who also qualify the other terms and conditions, would also be entitled to be given higher pay scale of trained graduate teachers. Sub-clause (5) of the said Government Resolution exempts such of the teaches who were in service prior to or on 1st October, 1989 and who have obtained a graduate degree prior to 17-4-1979, from obtaining the degree of B.Ed. within a period of 5 years as provided herein above. The said Government Resolution further provides that such of the teachers who have been granted graduate teachers scale on the condition of obtaining B.Ed. degree and who have not obtained B.Ed. degree within the prescribed period, would not be entitled to increment and their increment

would be released only after they acquire the B.Ed qualification.

[Emphasis supplied]

The Authorities, therefore, need to take into consideration the aforestated observations of this Court, while deciding the representation of Petitioner.

10. In view of the above, we find it appropriate to direct the Respondents to consider the Representation dated 01.12.2023, filed by the Petitioner, in the light of the judgment delivered in Vitthal Fakruji Madavi (supra), within a period of 90 days.

11. The Petition stands partly allowed in the above terms.

(R. M. JOSHI)
JUDGE

dyb

(RAVINDRA V. GHUGE)
JUDGE