



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10117 OF 2021

Chhaya Pundalikrao Yemekar,
Age 56 yrs., Occ. Service as Assistant Teacher
in Saraswati Bhavan Primary School,
Brahmapuri, Tq. and Dist. Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai.
- 2 The Director,
Maharashtra State Education
Research and Training Council,
Pune – 30.
- 3 The Deputy Director of Education,
Latur Region, Latur.
- 4 The Education Officer (Primary),
Zilla Parishad, Nanded,
Dist. Nanded.
- 5 The Head Master,
Saraswati Bhavan Primary School,
Brahmapuri, Tq. & Dist. Nanded.

... Respondents

...

Mr. V.D. Gunale, Advocate for petitioner
Mr. S.K. Shirse, AGP for respondent Nos.1 to 3

Mr. Y.S. Thorat, Advocate for respondent No.4

Mr. S.L. Pansambal, Advocate for respondent No.5

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 12th MARCH, 2024

PRONOUNCED ON : 02nd APRIL, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The present petition has been filed for following relief :

“(C) By issuing writ of Mandamus or any other appropriate writ, order or directions, the respondent No.1 to 4 be directed to pay the regular monthly salary of the petitioner from April, 2019 onwards as a trained teacher which is wrongly withheld by the respondent No.4 and for that purpose necessary orders be passed.”

3 The factual matrix leading to the petition are that – petitioner had passed S.S.C. examination in 1990. Respondent No.5 school was recognized by the Government from the academic year 1994-95. Respondent No.5 had invited applications from the eligible candidates for the post of Assistant Teacher. The school was initially on non grant-in-aid basis and no

trained candidate was made available to respondent No.5, therefore, petitioner came to be appointed on the post of untrained teacher from 16.06.1994 on temporary basis. Later on she was appointed on the permanent post, which was clear and vacant. Respondent No.5 school receiving 100 % grant-in-aid in the year 2000. The school authorities had then forwarded the proposal of the petitioner and other staff for sanction of staff approval as well as grant of individual approval. The Education Officer granted the approval to the appointment of the petitioner as untrained teacher by letter dated 31.03.2003. Respondent No.1 had introduced a scheme of postal D.Ed. course for untrained primary teachers, those who are already working in the primary recognized school. Various Government Resolutions were issued from time to time on the said subject. As per the said Government Resolution the school should be recognized and the appointment of untrained teacher should be according to the staffing pattern. They should not be in excess and in continuation of service as well as as per the roster. The said Government Resolution further states that the proposal for approval should have been sent at least once to the Regional Officer before 01.11.1997. In view of the Government Resolution the petitioner fulfilled all the required conditions for admission to the postal D.Ed. course. Selection letter was issued to her for the year 2000-01. According to the petitioner, a condition was there that she should attend the class on the given

centre. She had attended the said course on the given centre and had completed the course. She was relieved from time to time by the school authorities for attending the said course as per the directions issued by respondent No.2. Even respondent No.2 had issued relieving letter after the completion of said training. She appeared for the examination but could not pass the 2nd Year Examination of the said course. The petitioner was surprised to receive show cause notice dated 26.07.2005 from respondent No.2 asking her as to why her admission for postal D.Ed. course should not be cancelled. She had immediately replied the same through her Head Master on 22.08.2005. No communication was thereafter received from respondent No.2. The petitioner was discharging her duties and was in continuous employment. However, inquiry proceedings were initiated by respondent No.2 in respect of alleged irregularities in the admission in the said postal D.Ed. course. Still she was allowed to appear for the examination which was held in 2006 in respect of 2nd Year. However, the result was not declared. Respondent No.5 school had given representation on 28.01.2009 that report of the inquiry has not been communicated to it. It was then communicated by respondent No.2 by letter dated 31.12.2005, thereby cancelling the admission given to the petitioner and others. The petitioner had approached this Court by filing Writ Petition No.910 of 2010 to challenge the said order/communication dated 31.12.2005. The said writ petition was

dismissed by this Court by granting liberty to the petitioner to file fresh petition with proper documents and explanation. Therefore, petitioner filed Writ Petition No.6872 of 2012. By order dated 01.10.2014 the order passed by respondent No.2 dated 31.12.2005 was quashed and set aside and the consequential order was passed. Respondent No.4 had granted approval for the continuation of the petitioner in the pay scale from 01.06.2005. Since the postal D.Ed. course itself was cancelled by this Court, the Principal of the college had forwarded the petitioner's examination form to the Commissioner, Maharashtra State Examination Council, Pune for D.T.Ed. Examination to be held between November-December, 2018. The petitioner says that she was not allowed to appear for the 2nd Year postal D.Ed. Examination from 2015 till 2018. Thereafter her name was recommended in June, 2019 for the said postal D.Ed. course and she cleared the said examination. Thereafter the proposal was submitted to respondent No.4 to release her salary grants. There was absolutely no fault on her part, but when she has now cleared every hurdle, she is entitled to receive the salary grants. Hence, the writ petition.

4 Reply has been given by one Sau. Savita w/o Sidgonda Birge, the Education Officer (Primary), Zilla Parishad, Nanded on behalf of respondent No.4. The factual aspect that the petitioner is currently working as Assistant

Teacher at Saraswati Bhavan Primary School, Brahmapuri, Nanded is not denied. Though the petitioner had joined the service on 16.06.1994; yet, in view of Government Resolution dated 09.02.2016 it was mandatory for her, who was an untrained teacher, to become trained within three years from the date of joining of the service. The said Government Resolution is binding on her. The said condition is the outcome of the minimum qualification decided by the National Council of Teachers Education. The petitioner has not cleared the necessary examination and has not become trained during the period prescribed. Adequate opportunity appears to have been given to the petitioner to clear the necessary examination. In view of the said Government Resolution dated 09.02.2016 which made it compulsory to get an untrained teacher trained; all the untrained teachers should have become trained up to 28.02.2019 i.e. within three years. Even the list of untrained teachers was published and the Head Master of the concerned schools were directed to terminate the untrained teachers from the services. A detail report was sought if untrained teachers were still allowed to continue their services. It was stated that the salary to be paid to such untrained teachers would be at the educational institutions or the Head Master. Since the petitioner has not complied with the requirements, the writ petition deserves to be dismissed.

5 Heard learned Advocate Mr. V.D. Gunale for the petitioner, learned AGP Mr. S.K. Shirse for respondent Nos.1 to 3, learned Advocate Mr. Y.S. Thorat for respondent No.4 and learned Advocate Mr. S.L. Pansambal for respondent No.5.

6 The first and the foremost facts which remained undisputed are that the petitioner got employment as untrained teacher. She does not dispute or challenge the Government Resolutions making it compulsory to the untrained teachers to become trained, that too, within reasonable period that was given under the Government Resolution itself. She has contended that she had appeared for the postal D.Ed. Examination in 2000-2001 on the basis of selection order dated 11.10.2001, but could not clear it. It appears that she waited in silence till the show cause notice was issued on 26.07.2005. Then she appeared for the postal D.Ed. Examination held in 2006 regarding second year, but she says that the result was not declared. Thereafter also she made representation/correspondence through her Head Master on 28.01.2009, that means, she allowed about three years to lapse. By the said representation dated 28.01.2009 indirectly she asked about the result of the postal D.Ed. course. She says that she was not permitted to appear to the postal D.Ed. course. Respondent No.2 then replied on 13.03.2009 and informed that the admission of the petitioner to the postal

course was already decided as per letter dated 31.12.2005 and it was cancelled. Therefore, she had challenged the said order in Writ Petition No.910 of 2010. This Court granted liberty to the petitioner to file a fresh petition with proper documents. Therefore, she filed a Writ Petition No.6872 of 2012 which came to be disposed of by this Court on 01.10.2014, thereby quashed the cancellation of her admission and it was observed that the consequences of setting aside the cancellation of the admission would follow. By communication dated 19.12.2015 the Education Officer (Primary), Zilla Parishad, Nanded accorded the continuation of service to the petitioner, but it was specifically stated that now the Government has extended the limit to get trained till 2018. The petitioner has then produced Exh. 'D' dated 06.10.2018 communicating selection of petitioner for examination of D.T.Ed. course in November-December, 2018. There is absolutely no other document and averments in the pleading as to whether she appeared for the said examination of November-December, 2018 or not. Thereafter directly she files copy of another document i.e. communication dated 27.03.2019 by respondent No.5 to respondent No.2 selecting the name of the petitioner for examination to be conducted in June, 2019 for the said postal D.T.Ed. course. The certificate about her passing appears to be of 28.08.2019.

No.2 to the standing counsel of Government of Maharashtra Examination Council stating that the postal D.T.Ed. course examinations were held in June – 2016, November – 2016, June – 2017, November – 2017, June – 2018, November – 2018 and June – 2019. The schedule of the examination and how many students appeared for the examination have also been given. Definitely the petitioner had ample opportunity to clear the said examination.

8 Now, it is to be noted that as per the Government Resolution dated 09.02.2016 and the say on behalf of respondent No.4 all the untrained teachers ought to have got trained up to 28.02.2019 or within three years from their joining of services.

9 Here, it is to be noted that there is absolutely no affidavit-in-reply on behalf of respondent Nos.1 to 3 i.e. authority who had issued the Resolution dated 09.02.2016 as well as respondent No.2 who had permitted the petitioner to appear for the examination to be conducted in June, 2019 by letter dated 27.03.2019. If that was the mandatory condition, that those untrained teachers should clear the said training course by the end of 28.02.2019 (as applicable to the petitioner, taking into consideration her appointment in the year 1994), then respondent No.2 ought not to have forwarded the proposal in view of letter dated 02.03.2019 by respondent

No.5 to Commissioner, Maharashtra State Examination Council, who conducts the course. Further, even the Council appears to have allowed the petitioner to give the examination and has declared her result on 28.08.2019. Another aspect to be noted from the communication dated 27.03.2019 by respondent No.2 that he had only forwarded the proposal of selection of petitioner for appearing in June – 2019 examination given by respondent No.5 by letter dated 02.03.2019 to Commissioner, Maharashtra State Examination Council. Certainly, in view of the action on the part of the said authority to allow the petitioner to give the examination and complete the course has to be taken as implied permission. Therefore, at the cost of repetition we say that the Government itself had given chance/opportunity/shown leniency to the petitioner to clear the said course and become trained. In view of the said fact and peculiar circumstances, we find that the regular salary of the petitioner from April, 2019 as trained teacher ought not to have been withheld by respondent No.4. Case is made out for interference under the constitutional powers of this Court. Hence, the following order.

ORDER

1 The Writ Petition stands allowed.

2 Respondent Nos.1 to 4 are directed to pay regular monthly salary of the petitioner from April, 2019 onwards as a trained teacher and to go on paying the regular salary from this month only.

3 The outstanding amount be given in two installments of having duration of six months and the first installment would be due on 15.04.2024.

4 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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