



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO.8051/2023

Dnyaneshwar s/o Mohan Pandagale,
aged about 42 years, Occ. Asstt. Teacher,
(Termianted), R/o At post Ningnoor,
Tq. Umarkhed, Dist. Yavatmal.

.....PETITIONER

...V E R S U S...

1. State of Maharashtra, through
Secretary, School Education and
Sports Department, Mantralaya,
Mumbai – 32.
2. Divisional Commissioner,
Amravati Division, Amravati.
3. The Commissioner, Maharashtra
State Council of Examination,
Dr. Ambedkar Marg, Pune – 01.
4. Zilla Parishad, Yavatmal, through
its Chief Executive Officer.

...RESPONDENTS

Mr. A. S. Deshpande, Advocate for petitioner.
Mrs. S. S. Jachak, Addl. G. P. for respondent Nos.1 and 2.
Mr. V. M. Kulsunge, Advocate for respondent Nos. 3 and 4.

CORAM:- ANIL L. PANSARE, J.
DATED :- 20.07.2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

Heard Mr. A. S. Deshpande, learned counsel for the
petitioner, Mrs. S. S. Jachak, learned Additional Government

Pleader for respondent Nos. 1 and 2 and Mr. V. M. Kulsunge, learned counsel for the respondent Nos. 3 and 4.

2. The petitioner is aggrieved by order dated 24.08.2023 passed by respondent No.2-Divisional Commissioner, Amravati in Appeal No.48/2022, upholding the order dated 31.12.2021 passed by respondent No.4-Chief Executive Officer, Zilla Parishad, Yavatmal. The Chief Executive Officer, Zilla Parishad, Yavatmal has terminated services of the petitioner with effect from 31.12.2021 for his failure to acquire requisite qualification viz D.El.Ed., in terms of condition No.9 of his appointment order dated 04.12.2014.

3. The petitioner was appointed as an Untrained Assistant Teacher on 04.12.2014. The appointment was on certain conditions, one of which is the condition No. 9, which stipulated that the petitioner shall acquire necessary qualification in terms of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the, "Act of 2009"), which reads thus:

"23. Qualifications for appointment and terms and conditions of service of teachers.—

(1) Any person possessing such minimum

qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 (24 of 2017).

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.”

4. In the present case, second proviso of Section 23(2) of the Act of 2009 will apply because the petitioner was appointed prior to 31.03.2015. The Right of Children To free and Compulsory Education (Amendment) Act, 2017, came into force

with effect from 01.04.2015. The petitioner, therefore, was under an obligation to acquire training qualification viz. D.El.Ed. within four years from 01.04.2015 i.e. on or before 31.03.2019.

5. It is the case of the petitioner that in March, 2019, examination for the course under question was not held and, therefore, he could not appear. The examination was held in the month of June, 2019. The petitioner appeared in the examination and was declared successful.

6. In context with the above facts, the petitioner has relied upon judgment passed by Division Bench of this Court in Writ Petition No.1792/2021, wherein the Court has held as under:

“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.”

7. As held in the said case, the petitioner therein was to acquire qualification in March, 2019, the examination was held in June, 2019. The Court, therefore, held that the petitioner sole was not to be blamed for the lapse and accordingly held that the petitioner therein has acquired necessary qualification in terms of the provisions of the Act of 2009.

8. The facts in the present case are identical and, therefore, the petitioner herein is entitled for the relief as prayed for.

9. The respondent No.4 – Zilla Parishad has terminated the services of the petitioner on the ground that he failed to acquire qualification within the stipulated time. In view of the order passed by the Division Bench of this Court in Writ Petition No.1792/2021 (supra), the order impugned is unsustainable and requires interference.

10. The petitioner, having acquired the training qualification and that being the only reason for terminating his services on 31.12.2021, the order of termination dated 31.12.2021 passed by the Chief Executive Officer, Zilla Parishad, Yavatmal is

set aside.

The petitioner shall be reinstated on the post of Assistant Teacher with the Zilla Parishad, Yavatmal within a period of four weeks on receiving copy of the judgment.

The petitioner would not be entitled to any back-wages from 31.12.2021 till his reinstatement. However, his 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.

(Anil L. Pansare, J.)

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