

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No.3065 OF 2020

Madan s/o Sawairam Ade
Age: 49 years, Occu: Service,
R/o Jay Durga Adivasi Ashram School,
Sakhartala Road, Jintoor,
Tq. Jintoor, Dist. Parbhani.

..Petitioner

VERSUS

1. The State of Maharashtra
(Through its secretary,
Tribal Development Department,
Mantralaya, Mumbai-32)
2. The Commissioner,
Tribal Development, Nashik.
3. The Additional Commissioner,
Tribal Development, Amravati.
4. The Project Officer,
Integrated Tribal Development Project,
Kinwat, Dist. Nanded.
5. The Project Officer,
Integrated Tribal Development Project,
Kalamnuri, Dist. Hingoli.

..Respondents

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Advocate for the Petitioner : Mr. Vijay Dhakne
AGP for Respondents/State : Mr. P.K. Lakhotiya

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**CORAM : S. G. CHAPALGAONKAR &
NEERAJ P. DHOTE, JJ.**

RESERVED ON : JULY 04, 2025

PRONOUNCED ON : AUGUST 12, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally
with consent of parties.

2. The petitioner impugns order dated 04.01.2020 passed by Additional Commissioner, Tribal Development, Amravati - respondent no.3 thereby refusing to grant pay scale of trained primary teacher to petitioner from 19.12.1997 and seeks further directions to treat him as trained primary teacher since 19.12.1997 and grant him pay scale of trained primary teacher in D.Ed scale from 19.12.1997 till date 04.07.2003 i.e. date of acquisition of D.Ed qualification and approval as trained primary teacher.

3. The petitioner contends that he was appointed as Assistant Teacher on 01.01.1997 against vacant and sanctioned post in Jay Durga Adivasi Ashram School, which is aided school. On 19.12.1997, petitioner acquired B.PEd qualification. However, respondent no.4/Project Officer approved his services as untrained teacher on the ground that petitioner does not possess D.Ed qualification which cannot be treated equivalent to B.PEd. On 01.06.2000, government resolution is passed that B.Ed or B.PEd with physical education in bifocal course is a qualification for consideration for graduate teacher. On 04.07.2003, petitioner acquired D.Ed qualification while in service. Since then, his services are approved as trained primary teacher.

4. On 11.11.2011, Government of Maharashtra issued resolution adopting policy that graduate teachers appointed in primary school with B.Ed are entitled to be treated as trained teachers

in B.Ed scale from the date of initial appointments (if within 25% quota) or D.Ed scale (if not within 25% quota). The Project Officer, Integrated Tribal Development Department has granted pay scale of trained primary teachers who were possessing B.Ed/B.PEd qualifications. Thereafter, continuously similar benefits are given to the teachers engaged as primary teachers holding B.Ed or B.PEd qualifications. On 02.08.2018, respondent no.3 granted higher pay scale to petitioner on completion of 12 years of service in pay scale of trained primary teacher w.e.f. 04.07.2003. On 23.07.2018, government resolutions have been issued laying down that graduate teachers appointed in primary school having B.Ed qualification are entitled to be treated as trained teachers in B.Ed scale (if within 25% quota) or D.Ed scale (if not within 25% quota) from the date of initial appointments. In pursuance to aforesaid developments, a proposal for treating petitioner as trained teacher and granting pay scale of trained primary teacher w.e.f. 19.12.1997 was moved through respondent no.5 to respondent no.3. However, same has been rejected by impugned order dated 04.01.2020. Hence, this petition.

5. Mr. Vijay Dhakne, learned advocate appearing for petitioner submits that impugned order is erroneous and discriminatory. He would submit that the issue raised in the petition is no more *res integra*. The petitioner ought to have been considered as trained teacher on the basis of B.PEd qualification w.e.f.

19.12.1997 and accordingly, approval ought to have been granted to his appointment as trained teacher. However, same has been refused to him on the ground that he was not possessing D.Ed qualification and it is only from the date when petitioner acquired D.Ed qualification, the approval has been granted to him as trained primary teacher. Mr. Dhakne submits that similarly situated teachers are already granted benefit of this pay scale of trained teachers, although they were possessing B.PEd qualification. He would submit that in view of government resolution, adopting policy that graduate teachers appointed in primary schools having B.Ed qualification are entitled to be treated as trained teachers in B.Ed scale (if within 25% quota) or D.Ed scale (if not within 25% quota) from the date of initial appointments, has been implemented throughout Maharashtra and Project Officers of Integrated Tribal Development Department have granted pay scale of trained teachers to similarly placed employees possessing B.Ed/B.PEd qualification.

6. Mr. Dhakne would rely upon various orders passed by Co-ordinate Division Benches of this Court. He invites attention of this Court to judgment in the case of ***Ramrao Jaimal Bacchav and Others Vs. State of Maharashtra and Others reported in 2013 (2) Mh.L.J. 370***, wherein this Court took a view that primary teachers working in Ashram School, having classes from I to VIII standards, if appointed as Assistant Teachers with qualification of B.A. B.PEd, they are entitled

for scale of pay prescribed for trained teachers. Mr. Dhakne would further invite attention of this Court to order dated 04.02.2016 passed in Writ Petition No.6355 of 2014 in the matter of Ganesh Pundlikrao Kawarkhe and Another Vs. The State of Maharashtra and Others to contend that even Hon'ble Supreme Court of India in case of ***State of Maharashtra and Others Vs. Tukaram Trimbak Choudhary and Others reported in 2007 AIR SCW 1321*** has approved similar decision.

7. Mr. P.K. Lakhotiya, learned AGP endeavours to rely upon judgment of Hon'ble Supreme Court in case of ***Devesh Sharma Vs. Union of India and Others reported in (2023) 18 SCC 339*** to contend that now it has been settled that B.Ed qualification cannot be considered appropriate for teachers of primary schools and even decision of Central Government to include B.Ed as qualification being higher qualification was held to be incorrect. He would therefore, urge that petitioner who possessed qualification of B.PEd cannot be treated as trained teacher for primary school.

8. Having considered submissions advanced and consistent decisions rendered by Division Benches of this Court, it is clear that in light of decision rendered by Hon'ble Supreme Court in case of State of Maharashtra Vs. Tukaram Trimbak Choudhary (supra) as well as scheme of Government Resolution dated 11.11.2011, petitioner would be entitled to pay scale of trained primary teacher from the date acquisition of B.PEd qualification. It cannot be disputed that if

primary schools are having V to VII standards attached, the teachers possessing B.A., B.Ed qualification are to be considered as trained primary teachers, the Division Bench of this Court in case of Ganesh Kawarkhe (supra) in similar facts like present case has observed in para 11 and 12 as under :

“11) We reiterate that, the facts involved in the present case are similar to the facts in the cases cited supra, and as such, the decisions rendered in the aforesaid cases would squarely apply to the facts of the present case. Moreover, the petitioners have also placed on record the Government Resolution dated 11.11.2011, in para (B) of which it has been prescribed that teachers holding trained graduate qualification are entitled to be paid trained teacher's (D.Ed.) pay scale (Rs. 5200 to Rs. 20200 + Grade pay Rs.2800). It is also recorded in the said Government Resolution that such of the teachers are entitled to be paid trained primary teacher's pay scale from the date of their appointment.

12) In view of the fact that, the Division Bench of this Court has held the petitioner in writ petition No.6096/2010, entitled to the trained teacher's (D.Ed.) pay scale from the date of his appointment, who was holding the qualification as B.A., B.PEd. and was working under the Tribal Development Department, both the objections raised by the respondents; first that at the relevant time the petitioners were holding the qualification as B.PEd. and not B.Ed., and the other that Government Resolution dated 11.11.2011 has not been made applicable to the Tribal Development Department, would not sustain. Moreover, the petitioners have also placed on record the order dated 17.03.2011 passed by respondent No.3, whereby the trained teacher's pay scale has been made applicable to the primary teachers who are working under the Tribal Development Department and who were holding only B.A., B.PEd. qualification on the date of their appointment.”

9. We need not deviate from aforesaid preposition of law. Since this Court has taken consistent view granting benefit of pay scale of trained teachers to the teachers holding B.Ed or B.PEd

qualification and appointed at primary schools. Even the policy of government under its resolution of 2011 is not yet modified. Similarly situated teachers like petitioner are already conferred with benefit of pay scale for trained teachers during the past. Therefore, as long as the State Government did not substitute its policy laid down under Government Resolution dated 11.11.2011 and 23.07.2018, petitioner cannot be deprived of benefit which is bestowed on similarly situated teachers. Hence, we allow writ petition in terms of prayer clauses (B), (C) and (D).

10. Rule is made absolute in above terms.

(NEERAJ P. DHOTE, J.)

(S.G. CHAPALGAONKAR, J.)