

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.4902 OF 2012
ALONGWITH
INTERIM APPLICATION NO.8183 OF 2024
IN
CIVIL WRIT PETITION NO.4902 OF 2012**

Sangeeta Maruti Pund & Ors.	]	..	Petitioners
S.			
State of Maharashtra, Through Secretary	]		
School Education Dept & Ors.	]	..	Respondents

Ms.Rekha Musale for the Petitioners.
Mr.V.G. Bagwan, AGP for the State.

**CORAM : BHARATI DANGRE &
ASHWIN D. BHOBE, JJ**

DATE : 9th JANUARY, 2025.

P.C.

1. The Petition filed by four Petitioners in the year 2012, sought quashing of the Government Resolution dated 15/09/2010, which denied the continuity of service, pay protection the Petitioners, belonging to the special class of 100% visually handicap and after acquiring the necessary qualification from the National Institute of Visually Handicap, were recruited, but by the impugned Resolution, they were liable to be placed in lower pay scale as untrained teachers, denying them the benefits of trained teachers.

With this grievance when they approached this Court on 21/11/2012, 'Rule' was issued.

2. This Court, by taking into consideration that the Petitioners were recruited under the Central Government Sponsored, 'Integrated Education for Disabled Children Scheme' referred to the Resolution dated 15/09/2010 when the State Government accorded sanction for absorption of the resource teachers/peons working in the Primary Schools under the Integrated Education for Disabled Children Scheme, in the Primary School of local self Governments against the existing vacant posts and also the posts that would fall vacant in future, subject to certain stipulations.

One of the stipulation in the Resolution, required that the untrained special teachers will acquire regular D.Ed./B.Ed. Qualification through postal D.Ed. Scheme within three years of their absorption and it also contemplated that the special teachers who do not acquire the raining of general D.Ed. will be considered as untrained teachers.

3. The grievance of the Petitioners was specific that they had acquired specific qualification to be treated as trained teachers as the qualification of Diploma in Special Education (DSE) was conferred on them by Rehabilitation Council of India (Respondent No.5), and hence they were aggrieved by the imposition of the unjust condition of asking them to acquire the qualification once again.

By a detailed order passed on 21/11/2012, the Court considered the stand of the Rehabilitation Council of India as it was not disputed that the qualification acquired by them was recognized by it and on having the specific stand by the Rehabilitation Council of India in form of Affidavit, which supported the Petitioners case that Diploma in

Special Education is two year regular course of the council and it is equivalent to D.Ed., an inference was drawn that the Respondents are prima facie not justified in treating the Special Educators, who are visually impaired as untrained.

In the wake of the discussion, the interim order was passed to the following effect :

- “i) The Respondents shall pay the Petitioners having the Diploma in Special Education awarded by the Rehabilitation Council of India as trained special teachers within the meaning of Government Resolution dated 15 September 2010 and to pay the Petitioners the salaries and allowances in the pay-scale of trained teachers w.e.f. the date of absorption.
- ii) The Respondents shall not terminate the services of the Petitioners possessing the qualification of Diploma in Special Education awarded by the Rehabilitation Council of India on the ground that they are untrained special teachers.
- iii) The arrears of the differences in salary and allowances payable to the Petitioners on the aforesaid basis for the period from the date of absorption till 30 November 2012, shall be paid by 31 December 2012.
- iv) The salary and allowances for the period from 1 December 2012 on the aforesaid basis shall be paid to the Petitioners on or before 15 January 2013 and the future salary and allowances shall be paid on the said basis regularly by the 15 day of the succeeding month.”

4. Today, when the Petition is listed before us, after more than a decade the learned counsel for the Petitioner has placed before us the Judgment delivered in WP No.507/2011 filed by one Chitra Nitin Pendharkar, who also raised a similar challenge as the present Petitioner, and while deciding the said Petition on 22/08/2023, the Division Bench placed reliance on the order passed by court in the present Petition of Sangita Pund and it also referred to another order passed in case of Jahida Mohd. Shaikh vs. State of Maharashtra (WP No.1855/2013), and ruled that teachers possessing diploma in special education as trained special teachers, are entitled to be placed in post of ‘trained teachers’ from the date of their absorption.

The Division Bench in case of Chitra Pendharkar, on 22/08/2023 directed as below :

“16. Considering the above facts and settled legal position, we have no hesitation in holding the decision of the Department to the extent of treating the Petitioners as untrained teachers upon their absorption in the local municipal schools as arbitrary and illegal.

17. The decision to treat the Petitioners as untrained teachers is set aside and the Respondent, Education Department is directed to grant them the status of 'trained teachers'.

18. Consequently, they are also to be treated as being in continuous service from the date of their initial appointment in the Special Units in the scheme implemented by the Central Government. As such, they are entitled to seniority in service from that date. They are also eligible for retiral benefits under the old pension scheme.

19. The Petitioners have not received their salary in the related pay-scale of a trained teacher from November 2009. The Respondent Education Department is directed to release the arrears of salary within a period of four weeks from the date of this order.

20. Rule is made absolute in both Petitions in terms of prayer clause 12(a) to (e) of the Additional Affidavit dated 19th July 2023 filed in Writ Petition No.507 of 2011 and reproduced above.”

On perusal of the detail order passed on 21/11/2012, it is evidently clear to us that the Respondents were directed to treat the Petitioners as trained teachers and they were held entitled for the salary and allowances in the pay scale of trained teachers from the date of their absorption. Similarly direction was also issued to pay the arrears of difference in salary within stipulated period.

5. As on today, it is the claim of the Applicants in Interim Application that they are entitled for the retiral benefits under the old pension scheme and considering that they were appointed before the cut off date of 01/11/2005, the Respondents shall extend the benefit of old pension scheme to them, if they are otherwise found to be eligible.

With this direction, by making the order dated 21/11/2012 absolute, with the additional direction to the aforesaid effect, WP stand disposed off, by directing that the Applicants shall be conferred with all the service benefits treating them as 'trained teachers' from the date of absorption, which shall include the Pensionary benefits.

Writ Petition is made absolute.

No order as to cost.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)