

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1855 OF 2013
WITH
INTERIM APPLICATION NO. 721 OF 2026

Jahida Mohd. Shaikh @ Nasim Hussain Khan & Ors. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

Ms. Rekha Musale for the Petitioners.

Mr. B. V. Samant, Addl GP a/w. Smt. R. M. Shinde, AGP for the Respondent-State.

CORAM : M. S. KARNIK AND
S. M. MODAK, JJ.

DATED : 5th MAY, 2026.

P.C. :

1. Heard learned counsel. This petition prays for the following substantive reliefs:-

“B) By issuing Writ of Certiorari or any other appropriate writ, order or direction in the like nature, to quash and set aside the impugned Government Resolution dated 15.9.2010 Exh. H to the extent of denial of continuity of service, pay protection, placing the petitioners in the lower pay scale of untrained teachers and directing the petitioners to acquire the qualification of diploma in Education Afresh as illegal, arbitrary, unjustified and contrary to the Article 14 of the Constitution of India;

C) By issuing Writ of Mandamus or any other appropriate writ order or direction in the like nature, the respondents no. 1 and 4 may please be directed to deposit the annual installments of the arrears of sixth pay commission in the respective provident fund accounts of the petitioners with interest amount on delayed deposit as per Exh. F;

D) By issuing Writ of Mandamus or any other appropriate writ, order or direction in the like nature, the respondents no. 1 to 3 may please be directed not to recover the paid salary to the petitioners no. 1 and 2 for the period 1.4.2009 till the date of their actual absorption in the service in the year 2011;

E) By issuing Writ of Mandamus or any other appropriate writ, order or direction in the like nature, the respondents no.1 to 3 may please be directed to release and pay the salary to the petitioners in the pay scale of trained teachers plus admissible allowances from the date of their actual absorption;

F) By issuing Writ of Mandamus or any other appropriate writ order or direction in the like nature, the respondents no. 1 to 3 may please be directed to release and pay the difference of salary from the date of their actual absorption till 31.12.2012 and further actual application of the said pay scale;”

2. Brief facts of the case are that the petitioner No.1 completed Diploma for Primary School Teachers for visually Handicapped from the training centre for the Teachers of the Visually Handicapped at Pune and registered herself with the Rehabilitation Council of India. In the year

1998, she has completed her graduation in Arts faculty from Pune University. In the year 1989, petitioner No.2 completed his graduation in Arts faculty from Pune University. Petitioner No.2 completed Diploma for Primary School Teachers for visually Handicapped from the National Institute for the visually handicapped, Dehradun and registered himself with Rehabilitation Council of India. Petitioner No.3 completed her Higher Secondary Certificate Examination from Kolhapur Board. Petitioner No.3 completed Special Diploma for Primary School Teachers for visually Handicapped from the National Institute for the visually handicapped, Dehradun and registered herself with Rehabilitation Council of India.

3. Petitioner No.1 has joined the services as a Research Teacher in Kasturba Gandhi Primary School No.61-B, Koregaon Park, Pune run by Municipal Corporation, Pune receiving 100% grant-in-aid. Petitioner No.2 has joined services as a Research Teacher in Kasturba Gandhi Primary School No.61-B, Koregaon Park, Pune run by Municipal Corporation Pune. Petitioner No.3 has joined the services as a Research Teacher in Prathamik Vidyalay, Varnali, Sangli receiving 100% aided grant-in-aid.

4. In the year 1986, National Education Policy was changed and said scheme was implemented throughout the State of Maharashtra as Central Government-Sponsored Integrated Education for Disabled till 31st March, 2009 run with 100% finance grant by Central Government. In the State of

Maharashtra, 595 units were working under the said scheme till March, 2009. From April, 2009, the said scheme was ceased/stopped by respondent No.4 resulting 595 research teachers like the petitioners who were rendered surplus. Consequent upon closure, 595 research teachers working in primary schools at different places situated in the entire State of Maharashtra became surplus. Vide Government Resolution, Respondent No.1 absorbed all these 595 teachers in the primary schools run by the local bodies like Zilla Parishad, Nagar Palika, Nagar Parishad, Municipal Corporation against the vacant posts and which would fall vacant in near future with certain conditions.

5. Respondent No.8-The Rehabilitation Council of India is the competent authority to plan and implement the policies in the field of physically challenged persons, their education and rehabilitation. Vide the Government Notification, the said Council has recognized the Diploma in Education (Special Education) a course recognized by the Rehabilitation Council of India which is considered as equivalent to D.Ed.

6. Petitioner Nos.1 and 2 were served with the absorption letter dated 17th March, 2011 directing the petitioner Nos.1 and 2 to join the services with respondent No.6-The Head Master, Pujya Kasturba Gandhi Primary School where they were already working under the above referred scheme sponsored by respondent No.4-Union of India. It was further made clear in

the said letter that petitioner Nos.1 and 2 were absorbed in the services as untrained teachers in the pay grade of 5200-20200+grade pay 2000 and salary which was paid for the period April, 2009 till the actual absorption was required to be recovered from petitioner Nos.1 and 2 in lump sum.

7. By a Letter dated 27th May, 2011 issued by the Education Department of Zilla Parishad, Kolhapur, services of petitioner No.3 came to be absorbed at Hatkangale under the control of Zilla Parishad, Kolhapur. The conditions laid down in the absorption order are same and identical.

8. In the submission of learned counsel for the petitioners, the conditions imposed vide G.R. dated 15th September, 2010, which required the petitioners to lose their salaries from April, 2009 till the date of their actual absorption in the respective schools of local self government, the condition about acquiring regular D. Ed. Qualification and condition in respect of non-consideration of earlier services of the petitioners for the purpose of seniority, old pension scheme, placing the petitioners in the basic pay, pay scale as untrained teachers are not only arbitrary and in violation of Article 14 of the Constitution of India but also contrary to the provision of the Maharashtra Employees of private Schools (Conditions of Service) Rules, 1981.

9. Learned AGP for the respondents-State justified the aforesaid G.R. and submitted that the writ petition deserves to be dismissed.

10. We are inclined to accept the submission of learned counsel for the petitioners that the issue involved in the present petition is squarely covered by the decision of this Court in **Chitra Nitin Pendharkar Vs. The State of Maharashtra & Ors.** in Writ Petition No. 507 of 2011 dated 22nd August, 2023. This Court in paragraph Nos.6 to 21 observed as under:-

“6. In the meantime, the Petitioner in Writ Petition No.507 of 2011 was terminated, but pursuant to an order of 28th October 2011 issued by this Court in an earlier Writ Petition, she was reinstated as primary teacher in the concerned Municipal School. However, the complaint is that reinstatement was made as an untrained teacher in the related pay-scale. The Petitioner in the Writ Petition No.506 of 2011 was also given the status of an untrained teacher in the same pay-scale. Furthermore, their seniority was fixed only from the date of their absorption in the Municipal Schools of the State and hence the new pension scheme was being applied to them. It is this action of the State which is assailed by the Petitioners.

7. Mr Bandiwadkar, learned Senior Counsel appearing for the Petitioners, says that both the Petitioners have been working prior to their absorption in the State Government schools. Thus, treating them as untrained teachers instead of trained teachers is illegal and contrary to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (‘MEPS Rules’) which provide for absorption of employees after being declared surplus in the original scheme. Consequently, there is also an impermissible and illegal reduction in their pay-scales. He also complains that the Petitioners are not being paid salary since November 2009 and the Petitioners are suffering heavy financial loss. They are entitled to

benefit of their past services and eligible for retiral benefits under the old pension scheme.

8. *Mr Walimbe, learned AGP, appears for the State. Admitting that the Petitioners were appointed in their respective schools right from the period when the scheme was being implemented by the Central Government, nonetheless he maintains that upon being absorbed on vacant posts of teachers at general primary schools run by the local governing bodies of the State, they are entitled to be absorbed only as untrained teachers on a minimum pay-scale. He also says that as per their GR, these teachers will not be entitled for any benefits of their previous pay-scales and their seniority will be counted from the date of their absorption in the new school. He also defends the Government decision to recover purported overpayment of salary to such teachers.*

9. *Mr Helekar, learned Counsel for the schools, supports the Petitioners.*

10. *It is an admitted position that both the Petitioners have rendered their services in the hearing and speech impaired units in the scheme implemented by the Central Government till 2009. They have continued in service upon their absorption as surplus teachers in the Municipal Corporation schools of the State Government. There is no break in service save and except a few months when the Education Officer refused to grant approval. However, the documents on record indicate that the approval has been granted in compliance with the orders of this Court in earlier proceedings.*

11. *The State is unable to point out any justification in law for denying the Petitioners' claim for continuity. There is no provision in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act") nor any GR which declares that a trained and qualified teacher, serving on a particular post in a State Government school itself, is to be literally demoted*

upon discontinuation of a particular scheme, despite continuing in service. Both the Petitioners are qualified, eligible, and experienced in teaching students in the Speech and Hearing Impaired Units in the local schools. They are performing the same duties as they were performing prior to their absorption, with the same expertise and training. In fact, the long tenure of more than 19 years in service has enhanced their skills and experience. There is no justification for treating trained teachers as untrained teachers only on account of their absorption as surplus teachers. 'Absorption' has nothing to do with the level of training, past experience, or skill sets. The entire case is illogical: an untrained teacher may become a trained teacher, but it is inconceivable that a teacher trained in one discipline or field can ever become 'untrained' — only on account of absorption under a particular scheme. If such teachers are to be treated as 'untrained' then, at the very least, we expect to see what precisely is the 'training' required or demanded. To this obvious question there is no answer at all.

12. Mr Bandiwadekar places reliance upon a decision of a Division Bench of this Court in the matter of Sangita Maruti Pund & Ors v. State of Maharashtra & Ors.¹ The facts in that case are identical to those in the present case. The Division Bench relied upon a decision of the Delhi High Court in the matter of Social Jurist, A Civil Rights Group v Government of NCT of Delhi & Anr,² in paragraph 4 of which the Delhi High Court reproduced part of an affidavit filed on behalf of the Rehabilitation Council of India. The quoted paragraph reads:

“16. It is worthwhile to mention here that in B.Ed. (SE) the successful candidates are trained in teachers training as well as special education for disabled children. In a welfare state,

¹ Writ Petition No. 4902 of 2012 of 2012. Mohit S Shah CJ and Anoop V Mohta J. Order dated 21st November 2012.

² 2009 SCC OnLine Del 2939 : (2009) 163 DLT 489.

it is necessary that in general school the special teachers must be appointed to the physically challenged children so that they could feel themselves at par with the children of general category.”

13. *The Division Bench of this Court in Sangita Maruti Pund thus proceeded to hold the acts of the Government in treating such special teachers possessing the qualification of even a diploma in special education awarded by the Rehabilitation Council of India as untrained teachers was illegal and bad in law.*

14. *In another order in the matter of Jahida Mohd Shaikh v State of Maharashtra³, again with identical facts, a Division Bench of this Court held that teachers having diploma in special education as trained special teachers were entitled to salaries and allowances in the pay-scale of trained teachers with effect from the date of absorption.*

15. *The Petitioners in the present case are in fact not only diploma holders from the Rehabilitation Council but have B.Ed and M.A. degrees, in the relevant subject, which is a higher qualification than a diploma. There is no reason for the Education Department to belittle the qualifications, training in special education, and the experience drawn from the long years of service of the Petitioners by relegating them to the status of untrained teachers. ‘Untrained’ after all is only an adjective ascribed to the training of a teacher and considering the relevant attributes of the Petitioners they cannot be said to be ‘untrained’ at all.*

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*

³ Writ Petition No. 1855 of 2013; order dated 9th April 2013. Per Mohit S Shah CJ and MS Sanklecha J.

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.

21. There will be no order as to costs.

11. We are satisfied that the petitioners' case is squarely covered by the aforesaid decision. In such view of the matter, this petition is allowed in terms of prayer clauses (B), (C), (D), (E) and (F).

12. Further, Respondent Nos. 1 to 3 are directed to grant petitioner No.1 the benefit of higher pay scale of time bound on completion of 12 years of services with all monetary consequential benefits in accordance with the relevant rules.

13. The Writ Petition and Interim Applications are disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)