

CASE NO.:
Appeal (civil) 863 of 2007

PETITIONER:
STATE OF MAHARASHTRA & ORS

RESPONDENT:
TUKARAM TRYAMBAK CHAUDHARI & ORS

DATE OF JUDGMENT: 20/02/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

Leave granted in all the Special Leave Petitions.

The private respondents in all these special leave petitions had filed several writ petitions in the Bombay High Court questioning the decision of the authorities to treat them as Untrained Teachers although they were all graduate teachers having B.Ed. qualification and approval having been granted for their appointment as trained teachers. According to the said respondents, they had all been appointed as Assistant Teachers in Primary Schools which conducted classes up to the 7th standard, from about the year 1988 onwards. It is only after a decision was taken to treat them as untrained teachers, despite being fully trained and qualified, that they were compelled to move the several writ petitions which were all allowed by a common judgment of the Bombay High Court dated 6th May, 2004.

The case of the writ petitioners before the Bombay High Court was that they were all graduate teachers having B.Ed. qualification and that they had been appointed to teach in Primary Schools conducting classes up to the 7th standard. In most of the cases, approval was granted for their appointment as Trained Teachers. Subsequently, however, in 2001, they were all informed on different dates that they would be treated as untrained teachers and would be paid their salaries accordingly. According to the writ petitioners, in terms of Government Resolution dated 26th October, 1982, they were entitled to be appointed and continued as Trained Teachers in the B.Ed. scale. The respondents in the several writ petitions, who are the appellants before us, had contended before the High Court that B.Ed. qualification was not sufficient for being treated as Trained Teacher in the Primary Schools and that what was required was a D.Ed. qualification. It was contended that before joining the school, the teacher concerned was required to hold the qualification of S.S.C. and D.Ed. and that the teacher was also required to acquire a graduation degree while in service along with a B.Ed. degree.

Relying on a Division Bench decision of the Bombay High Court in the case of Kondiba vs. State of Maharashtra & Ors., referred to in paragraph 3 of the impugned judgment of the High Court, the Bombay High Court allowed all the writ applications and set aside all the impugned orders upon holding that teachers who possess B.A./B.Sc. and B.Ed. qualification are duly qualified and are eligible to continue to receive their salaries as Trained Teachers from the date on

which they were appointed along with all consequential benefits and were also entitled to be paid the difference and any other consequential benefits within the period stipulated.

The State of Maharashtra is in appeal before us against the aforesaid decision of the Bombay High Court. Appearing for the appellants, Mr. S.K. Dholakia, learned senior counsel, submitted that in the State of Maharashtra classes from 5th to 7th standard are attached either with primary schools or with secondary schools. He submitted that the provisions of the Maharashtra Employees of Private Schools Rules, 1981 provides for the qualification of teachers for appointment to primary schools. Rule 6 provides that the minimum qualifications for the posts of teachers and the non-teaching staff in the primary schools are those specified in Schedule "B" which reads as follows:-

"Qualifications for Primary Teachers":- (1) Appointment to the posts of Primary school teachers (other than special teachers \026 Drawing teachers) shall be made by nomination from amongst candidates who have passed S.S.C. examination or Matriculation examination or Lokshala examination or any other examination recognised as such by Government and the Primary Teachers Certificate Examination or Diploma in Education Examination, or Diploma in Education (Pre-Primary of two years duration)

Note.- A person holding a Diploma in Education (Pre-primary of two years' duration) shall be qualified to teach standards I to IV only notwithstanding anything contained in the foregoing provisions \026

(a) Candidates who were recruited before the coming into force of these rules in accordance with the recruitment rules then in force and who were thereafter discharged for want of vacancies shall be eligible for reappointment.

(b) Other things being equal, preference may be given to \026

(i) candidates who have passed the S.S.C. or other equivalent examination with English, Mathematics and Science or any two of them and

(ii) eligible women candidates obtaining the qualification mentioned at item (i) through condensed courses.

2. Appointment to the post of Special Teacher (Drawing Teacher) in Primary Schools shall be made by nomination from amongst candidates who have passed S.S.C. examination and possess Art Teaches Diploma or Drawing Teachers Certificate or Drawing Masters Certificate.

3. Primary School teachers whose date of first appointment as such teachers in the service of a Zilla Parishad or Municipal School Board or Municipal Corporation or Municipal Council or recognised private primary school is 15th October 1966 or any prior date are exempted from acquiring S.S.C. and training qualification.

4. Primary School teachers recruited prior to the 30th June 1972 and who are possessing academic and training qualification according to the rules in force at the time of their appointment are exempted from the S.S.C. and D.Ed. qualifications. Those who were recruited after the 30th June 1972 and who do not possess the S.S.C. and training qualifications should acquire the same before June 1985. Failure to acquire these qualifications before June 1985 shall make them liable for termination of their services.

5. The Primary School teachers with S.S.C. plus S.T.C. or T.D. or D.T. (one year) or Diploma in Education (one year) qualification who have been appointed in service on or before the 30th September 1970 in primary schools shall be regarded as trained and held eligible for the scale of pay for trained S.S.C. teachers."

Mr.Dholakia submitted that the petitioners were all graduate teachers having B.Ed. qualification and they were appointed to teach in primary schools conducting classes from 1st standard to 7th standard. While the writ petitioners were functioning as teachers in the primary schools, the Government of Maharashtra in its Education, Employment and Youth Services Department, adopted a Resolution on 14th November, 1979, with the aim of gradually removing any discrimination regarding availability of teachers and other facilities for 5th to 7th standard classes attached to secondary schools and 5th to 7th standard classes attached to primary schools run by Local Self Governing Bodies. In the Notification itself it was noticed that in Maharashtra State, there is similar syllabus for 5th to 7th standard classes in primary and secondary schools but for these very classes there was a difference in staffing pattern and other facilities. It was also noticed that as per the staffing pattern then existing, for 5th to 7th standard classes attached to secondary schools, for each class 1.3 teachers are appointed. In these three standards, out of the four teachers, the first three teachers have H.S.C. and D.Ed. qualification and the 4th teacher is a trained graduate teacher (graduate and B.Ed). It was resolved that in primary schools also for the 5th to 7th standard classes, if the conditions are prescribed and attendance of students was fulfilled then for each standard 1.3 teacher is provided. All teachers in these classes attached to the primary classes are with H.S.C. and D.Ed. qualifications but in these classes of the primary schools at the existing point of time there was no permission given for appointing trained graduate as teachers. In order to remove this difference in the staffing pattern of 5th to 7th standard classes in these two kinds of schools, the Government decided that in primary schools

run by Local Self Governing Bodies where such schools are entitled to four or more teachers, for 25% of approved strength of teachers in those classes pay-scale could be available for trained graduate teachers in the increased scale of pay.

It was also stipulated that the post of Primary Teachers converted into Trained Graduate Teachers should only be from the cadre/category of Primary Teachers and only in service Primary Teachers who were in full time service and who fulfilled the educational qualifications mentioned should be appointed.

Paragraph 5 of the said Resolution further stipulated as follows:-

"On these converted post of increased pay scale of Rs.365-760/- in primary schools, from below mentioned category, in service graduate primary teachers (inclusive of trained teachers, who have completed stipulated training course (D.Ed.) or primary teachers) should be appointed on following conditions:-

(a) Trained primary teachers who have obtained degree in Arts or Science (at least by taking one subject which is being taught in primary schools) and obtained degree in education i.e. B.Ed.

(b) Trained primary teachers who have done graduation in other subjects (without taking any subject which is being taught in primary schools) but obtained degree in education i.e. B.Ed. Primary teachers, falling in this category, should be given new increased pay scale on such condition that "within 5 years of their appointment in the post of increased pay scale of Rs.365-760/-, they - at their own cost/expenses - should obtained degree by taking at least one subject which is being taught in primary schools". If this condition is not fulfilled, then for such teachers further increment in this new pay scale should be stopped till he acquires that degree.

(c) Trained primary teachers who have done graduation in other subjects (without taking any subject which is being taught in primary school) and who have also not obtained degree in Education i.e. B.Ed. Primary teachers, falling in this category, should be given new increased pay scale on such condition that "within 5 years of their appointments in the post of increased pay scale of Rs.365-760/-, they - at their own

costs/expenses - should obtained degree by taking at least one subject which is being taught in primary schools and also obtained degree in Education i.e. B.Ed. If this condition is not fulfilled, then for such teachers further increment in this new pay scale should be stopped till he acquires those degrees."

Mr.Dholakia submitted that as trained graduate teachers the writ petitioners did not fulfill the eligibility criteria as indicated in paragraph 5 of the Resolution extracted hereinabove and accordingly they were informed that they would be treated as untrained teachers and paid salary accordingly.

Aggrieved by the decision of the State Government to treat them as untrained teachers, despite their having the B.Ed. qualification, purportedly as per the Government Resolution dated 14th November, 1979, the private respondents in these appeals filed separate writ applications which, as indicated hereinbefore, were all taken up for hearing together and disposed of by a common judgment dated 6th May, 2004.

Mr. Dholakia urged that although the Government Resolution of 14th November, 1979 had been brought to the notice of the High Court, the High Court relied on a Bench decision of the Bombay High Court in case of Kondiba vs. State of Maharashtra (supra), in arriving at the conclusion that in schools having 1st to 7th standards, it was permissible to appoint one teacher having B.Ed./B.Sc. as per the State Government Circular.

Mr. Dholakia also submitted that a Full Bench decision of the Bombay High Court in the case of Jayashree Sunil Chavan vs. State of Maharashtra and Ors., reported in 2000 (3) Mah. L.J. 605, taking a different view, had been brought to the notice of the High Court but the said decision appears not to have been considered by the High Court while deciding the writ petitions filed by the private respondents herein. Mr. Dholakia pointed out that in the said decision the same question had fallen for consideration and it had been answered by the Full Bench by holding that D.Ed. is the requisite minimum qualification for teaching students in primary schools and a B.Ed. qualification cannot be treated as equivalent thereto. In paragraph 22 of the judgment, the opinion of the State Teachers Board to show how D.Ed. education is better suited for teaching primary teachers was considered and it was mentioned that it was the opinion of the State Teachers Training Board that candidates holding B.Ed. qualification could not be treated as candidates holding the qualification equivalent to D.Ed. by giving them mere training of two-three months.

Mr. Dholakia submitted that the mere fact that B.Ed. qualification was a higher qualification than D.Ed. qualification could not be the reason for holding that trained graduates holding B.Ed. degree were also eligible in terms of the Government Resolution of 14th November, 1979 to be appointed in the 4th post of Assistant Teacher in primary schools conducting classes for the 5th and 7th standards. In fact, such an argument was repelled by the Full Bench. Mr. Dholakia urged that by ignoring the Full Bench decision referred to above, the Bombay High Court misinterpreted the Government Resolution dated 14th

November, 1979. On account of such error, the Bombay High Court committed a further error by holding that of the 25% posts of the approved strength of teachers to be converted into the pay scale of Rs.365-15-500-20-660/-, the same was meant for trained graduate teachers which included graduate teachers holding a B.Ed. degree, which was not the intention of the Government Resolution dated 14th November, 1979.

Mr. Dholakia submitted that paragraph 5 of the Resolution made it clear that only in service graduate primary teachers, inclusive of trained teachers who had completed stipulated training course (D.Ed.) could be appointed to the converted posts in the increased pay-scale. It was urged that such an interpretation finds support from the Full Bench decision. Submitting that the approach of the High Court and its findings were erroneous and contrary to the Government Resolution dated 14th November, 1979, Mr. Dholakia urged that the impugned judgment of the High Court was liable to be set aside.

Mr. Dholakia's submissions were strongly opposed on behalf of the respondents by Mr. R.S. Apte, advocate who urged that the High Court had correctly interpreted the Government Resolution of 14th November, 1979 and the interpretation now being sought to be given on behalf of the State was, in fact, erroneous.

Mr. Apte contended that the Government Resolution of 14th November, 1979 had been duly noticed by the High Court in its correct perspective which was to bring about a parity between the facilities given to the teachers of 5th to 7th standards attached both with primary schools as well as secondary schools. In the Resolution itself it was indicated that 25% of the teachers teaching in the 5th to 7th standards attached to secondary schools were enjoying the benefit of a higher scale of pay for the 4th teacher who was a trained graduate teacher being a graduate as well as having the B.Ed. degree, while for the same classes attached to primary schools there was no such arrangement. It was noticed that all teachers in these classes of primary schools were with H.S.C. and D.Ed. qualifications and that in these classes of primary schools there was no permission for appointing trained graduate as teachers. In order to remove the difference in the staffing pattern of these classes in these kinds of schools, the Government decided that in primary schools run by local self governing bodies and having 5th to 7th standard classes, 25% of the posts of approved strength of teacher in those classes should be converted into increased pay-scale which was meant for those very classes in the secondary schools. It was submitted that the Government consciously provided for the appointment of trained graduate teachers for the 5th to 7th standards attached to primary schools.

Mr. Apte submitted that paragraph 5 of the Government Resolution also indicated that in the converted posts to the higher scale in service graduate primary teachers, inclusive of trained teachers who had completed the D.Ed. course could be appointed on the conditions as stipulated. Mr. Apte contended that the said paragraph was an inclusive paragraph meant to include those trained teachers who had completed the D.Ed. course with in service graduate primary teachers who would thereafter be required to obtain the B.Ed. degree. Mr. Apte contended that the Full Bench decision of the Bombay High Court in the case of Jayashree Sunil (supra) had dealt with the question as to whether the D.Ed. qualification is the requisite minimum qualification for teaching students in primary schools and also whether the B.Ed. qualification could be treated as equivalent thereto. He

urged that although the Maharashtra Employees of Private Schools Rules 1981 had been considered and referred to by the Full Bench, and in particular Schedule 'B' thereof, the Government Resolution dated 14th November, 1979 had not been brought to its notice. On the other hand, the said Resolution was considered in detail by the Division Bench of the Bombay High Court in the case of Kondiba (supra) which had been decided on 12th September, 2002. The Full Bench decision was made on 5th May, 2000 and dealt with the question regarding the eligibility of the holder of a B.Ed. degree to be appointed as a teacher in a primary school. Mr. Apte submitted that the subject matter of consideration, as also the facts were different in the cases before the Full Bench and the Division Bench and the decision rendered by the Full Bench had no application to the facts of the instant case, whereas, the issue in Kondiba's case (supra) was directly on the point and the High Court correctly arrived at the decision in deciding the instant case.

Mr. Apte submitted that the order passed by the High Court and impugned in the instant proceedings had been correctly made and no interference was called for therewith. We have carefully considered the submissions made on behalf of the respective parties. Having particular regard to the fact that though standards 5 to 7 were attached to both primary schools as well as secondary schools, these classes in fact, represented the middle schools for which different standards were being followed.

Conscious of such disparity in respect of teachers who are similarly situated but were treated differently on account of their being attached to primary schools and/or secondary schools, the State Government resolved to eliminate such differences and to make provisions for trained graduate teachers to be upgraded to a higher scale to the extent of 25% of the posts. The said Resolution consciously refers to in service graduate primary teachers who were eligible for appointment to the posts in the increased pay-scale. In fact, one of the conditions for appointment of in service graduate primary teachers to the converted post carrying the higher pay-scale was that such teacher should have obtained a degree in Arts or Science and had also obtained a degree in education namely, B.Ed. While adopting the aforesaid Resolution, the Government was, therefore, fully aware of the fact there were graduate teachers teaching in standards 5 to 7 in the primary schools. This fact was also referred to by the Division Bench of the High Court in its judgment under appeal. It has been mentioned that one of the contentions raised on behalf of writ petitioners was that in terms of Government Resolution dated 26th October, 1982, the petitioners were entitled to be appointed and continued as trained teachers in B.Ed. scale.

As has been pointed out by Mr. Apte, the said Government Resolution does not appear to have been brought to the notice of the Full Bench which rendered its decision on the reference made to it on the basis of the Maharashtra Rules of 1981 in respect whereof conflicting views had been taken with regard to the eligibility of a graduate, also holding the B.Ed. degree to be appointed in a primary school. The Resolution of 1979 was dealing with a situation which was prior to the enactment of the said Rules and which contemplated the existence and appointment of graduate teachers in primary schools.

The decision rendered in Kondiba's case (supra) is closer to the facts of this case. The High Court, in our view, did not commit any error in following the same upon distinguishing the decision rendered by the Full Bench on account of the said

Resolution and the Resolution dated 12th November, 2001 adopted on the basis thereof.

We, therefore, find no reason to interfere with the decision rendered by the High Court which has been impugned in these appeals which are accordingly dismissed but without any order as to costs.

JUDIS