

(2005) 12 BOM CK 0074
In the Bombay High Court
Case No : Writ Petition No. 5747 of 2005

Prashant Chanekar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 ALLMR 449 : (2006) 5 BomCR 840 : (2006) 2 MhLj 657

Hon'ble Judges : S.A. Bobde, J;P.S. Brahme, J

Bench : Division Bench

Advocate : P.B. Patil, for the Appellant; N.H. Khubalkar, A.G.P. for respondent No. 1 and D.G. Patil, for the Respondent

Judgement

P.S. Brahme, J.—Heard the learned Counsel for the petitioner. Rule returnable forthwith.

2. The learned A.G.P. waives notice on behalf of respondent No. 1 Mr. D. G: Patil, Adv. waives notice for respondent No. 2. None for respondent No. 3, though served.

3. The petition is heard finally by consent of the learned Counsel for the parties.

4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks declaration that he be declared as a trained primary teacher and that he is entitled for getting approval as a trained teacher with all consequential benefits. The petitioner also seeks direction by an interim order to respondent No. 3 not to cancel the approval already granted to him on 29-2-2002. This Court while issuing notice by an order dated 2nd November, 2005, granted interim relief in terms of prayer Clause (2) of the petition.

5. The facts which are not in dispute and which also lie in narrow compass are that the petitioner after having passed H.S.C. Examination from Amravati Board in the year 1994, joined on 2-9-1994, the Diploma in Teaching Course of Sagar University and completed the same by 30-4-1996. As a consequence of that, the

petitioner having acquired Diploma in Teaching, he came to be appointed by way of order dt. 5-7-1999 as a Trained Primary Teacher for a period of two years on Probation. That his appointment was a substantive appointment. Later on, in the month of May, 2000, the petitioner passed B.A. Examination from Yeshwantrao Chavan Open University, Nashik. It was on 29-2-2000 that approval was granted to the appointment of the petitioner, but as untrained teacher. In fact, according to the petitioner, he is entitled to be treated as a trained teacher in view of the Judgment rendered in Writ Petition No. 3325 of 2002, Anil Deshmukh v. State of Maharashtra W.P. No. 311 of 1997, Satyajit Patil v. State of Maharashtra and W.P. No. 3773 of 2002, Santosh Bhika Pawar v. State of Maharashtra. However, in spite of that, the petitioner was informed by respondent Nos. 2 and 3 that the approval granted to his appointment is sought to be cancelled and recoveries were ordered as the petitioner has passed Diploma in Teaching of Sagar University by joining the same after the Government Resolution dt. 31-5-1993 whereby the Sagar University from which the petitioner has obtained Diploma in Teaching has been derecognized. Hence, this petition.

6. Mr. P. B. Patil, learned Counsel for the petitioner submitted that the issue involved in this petition is covered by the judgment dt. 3-2-2005 by this Court in W.P. No. 3323 of 2005 (supra). He submitted that the respondent No. 3- Education Officer has committed error in seeking cancellation of the approval granted to the petitioner placing reliance on the Government Resolution dt. 31-5-1993 inasmuch as the subsequent Government Resolution, dt. 8-3-1995 and the letter dt. 15-6-1995 issued by the Director of Education have been completely lost sight of. He submitted that the later Government Resolution dt. 8-3-1995 and also the letter dt. 15-6-1995 totally wipe out the effect of earlier Government Resolution dt. 31-5-1993.

7. As against that, the learned Assistant Government Pleader appearing on behalf of respondent Nos. 1 and 3 submitted that, the judgment delivered by this Court in the case of Anil Wamanrao Deshmukh and Anr. v. State of Maharashtra and Ors. (supra), does not take into consideration the Government communication dated 6-9-2002, which stipulates that the candidates who had joined the Diploma in Teaching after 31-5-1993 are not eligible for being appointed as trained primary teachers.

8. We have given our anxious consideration to the submissions canvassed by the learned Counsel for the petitioner as well as respondents. We have no hesitation in saying that the view which we have taken in the case of Anil Wamanrao Deshmukh and Anr. v. State of Maharashtra and Ors. (supra) concludes the issue. In this context, it would be appropriate to refer to the decision of Division Bench of this Court in the case of Narendra Jadhav v. State of Maharashtra 2000 (3) Mh.LJ. 805. In that case, it is held that all such candidates who had joined Diploma in Teaching of Sagar University before 31-5-1993 were entitled to be appointed as trained teachers. However, the question regarding the candidates who had joined Diploma in Teaching of Sagar University after 31-3-1993 fell for

consideration in the case of Anil Wamanrao Deshmukh and another v. State of Maharashtra and Ors. (supra). This Court, after taking into consideration the Government Resolution dated 8-3-1995 and the communication issued by the Director of Education dated 15-6-1995, held that the Government of Maharashtra has again recognised the Diploma in Teaching of Sagar University. This Court found that the recognition which was granted by the aforesaid Government Resolution dated 8-3-1995 came to be withdrawn vide Government Resolution dated 14-6-1999. This Court, therefore, held that the candidates who had obtained Diploma in Teaching from Sagar University prior to Government Resolution dated 15-6-1999 were entitled to grant of approval.

9. It is, thus, clear that in view of the Resolution dt. 8-3-1995, the Universities enlisted in that Resolution have been approved by the University Grants Commission. In that, Dr. Hari Singh Gaur Vishwavidyalaya Sagar, which is at Sr. No. 37 in the list, is the same University from which the present petitioner has obtained Diploma in Teaching. Thus, the University from which the petitioner has obtained Diploma in Teaching has been recognized and approved by the University Grants Commission. Therefore, though the petitioner has joined the Diploma in Teaching on 2-9-1994, that time though the Resolution dt. 31-5-1993 was in force which had derecognized Sagar University, later on when he completed his Diploma in Sagar University, he had completed that Diploma of two years by 30-4-1996 and the same is to be said recognized in view of the Government Resolution dt. 1-3-1995. I have pointed out earlier that under the Resolution dt. 8-3-1995, so also the communication letter dt. 15-6-1995 the position that was accepted by this Court was that the Government has again recognized the Diploma in Teaching of Sagar University. The effect of the Resolution dt. 8-3-1995 is that the Sagar University has been approved by the University Grants Commission. It is an admitted fact that though the petitioner joined Diploma in Teaching Course of Sagar University on 2-9-1994, he completed the same by 30-4-1996; that means that by the time petitioner completed his Diploma Course from Sagar University, the said University was approved and recognized due to the Resolution dated 8-3-1995. It is in this sense that as we have said in Writ Petition 3325 of 2002 that de-recognition from Sagar University which was brought into effect as a consequence of Government Resolution dated 31-5-1993 was made non est due to subsequent Government Resolution dated 8-3-1995, and therefore, the petitioner when joined Sagar University to take Diploma in Teaching, there was de-recognition as a consequence of the Government Resolution dated 31-5-1993. But because of subsequent resolution dated 8-3-1995, wherein recognition was granted to the said University, petitioner is entitled to protection. As such, in our considered opinion, the respondent No. 3 committed an error in seeking cancellation of approval to the appointment of Primary Teacher.

10. It is true that, by the another Government Resolution dated 14-6-1999, the recognition came to be withdrawn. But that will not affect the Diploma in Teaching acquired by the petitioner as, undisputedly, the petitioner was admitted

to the Diploma Course much prior to 14-6-1999 and he also completed the Diploma in Teaching prior to coming into force of the Resolution dated 14-6-1999. The recognition to Diploma of Teaching of Sagar University was withdrawn by the Resolution which came into effect from 14-6-1999. It is needless to say that the approval granted to the petitioner, in no case could have been granted as he acquired that Diploma prior to the Government Resolution dt. 14-6-1999 and that too, when because of the earlier resolution passed, the Sagar University was recognized to impart training to the candidates acquiring the Course of Diploma in Teaching, which was then recognized as a qualification for appointment of a person as a Primary Teacher. In the result, the petitioner who has completed the Diploma course prior to 14-6-1999 and further during the period when the Government Resolution dt. 8-3-1995 was in force, it has to be said that the petitioner has secured requisite qualification for being appointed as a Primary Teacher and therefore, the approval granted to the petitioner by order dt. 29-2-2002 will have to be protected. As a consequence of this, the communication by which the petitioner's appointment or approval was sought to be cancelled, will have to be set aside and it is accordingly, set aside. Consequently, the respondent Nos. 2 and 3 are directed to continue the approval of the petitioner to the post of trained teacher and the approval to his appointment shall be deemed to have been from the date of his appointment as a Primary Teacher i.e. 29-2-2000.

With the aforesaid directions, the petition is disposed of.

The rule is, therefore, made absolute in the aforesaid terms.