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**(2005) 12 BOM CK 0133**

**In the Bombay High Court**

**Case No : Writ Petition No. 6647 of 2005**

Shivaji Basu Chavan

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 14-12-2005**

**Acts Referred:**

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 6

**Citation : (2006) 5 BomCR 838**

**Hon'ble Judges : Kukday S.P., J;Deshpande A.P., J**

**Bench : Division Bench**

**Advocate : S.D. Kotkar, for the Appellant; S.K. Tambe, AGP for respondent Nos. 1 and 2 V.S. Panpatte and A.Y. Pandule, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Kukday S.P., J.—Rule. Rule made returnable forthwith. Petition is taken up for final hearing with the consent of the respective Advocates, who waive service.

2. Petitioner possesses B.A. B.P.ED. qualifications. He came to be appointed as an Assistant Teacher by the respondent No. 5 school on 1-7-1994. The petitioner submitted an application dated 4-10-2004 seeking admission to postal D.Ed. course. The Officers of the respondent No. 2, however, expressed their inability to consider the claim of the petitioner. The petitioner, therefore, approached this Court by filing a petition being Writ Petition No. 2898/2005. The petition was disposed of by an order dated 3-5-2005 directing the respondent No. 2 to consider the claim of the petitioner for admission to the said course in accordance with the Government policy. By communication dated 17-8-2005 the petitioner was intimated that admission to postal D.Ed. course is refused on the ground that petition filed by trained graduate teachers is pending in this Court. The petitioner has impugned this communication in the present petition and seeks a direction to respondent No. 2 to admit him to postal D.Ed. course for the academic year 2004-05.

3. Heard respective Advocates at length. The impugned communication dated 17th August, 2005 shows that admission to said course was refused on the ground that petition of the trained graduate teachers is pending in the High Court. Thus, the only point for consideration is whether admission to the petitioner can be refused to postal D.Ed. course on the ground that writ petition of trained graduate teachers is pending in this Court.

4. Learned AGP has referred to the compilation of judgment in respect of admission to postal D.Ed. course, including the judgment of the Full Bench reported in Smt. Jayashree Sunil Chavan Vs. The State of Maharashtra and Others, , wherein this Court has considered the qualifications prescribed by Rule 6 read with Schedule "B" of the M.E.P.S. Rules, 1981 : and held that as per the policy of the State, D.Ed. is the requisite minimum qualification for teaching students in Primary Schools and B.Ed. cannot be treated as equivalent qualification to D.Ed. According to learned AGP in view of the decision of Full Bench, Circular dated 12th November, 2001, was issued for continuance of the services of the trained graduate teachers appointed in primary school as untrained Primary teachers. However Writ Petition No. 3553/2002 came to be filed, challenging the Government Resolution and the Circular. By order dated 3rd July, 2002, the petition came to be admitted and interim relief with a direction that the impugned Government Resolution and Circular shall not be implemented until further orders in respect of rejection of the pay scales. According to learned AGP as the Government Resolution is stayed, the issue is now governed by the Government Resolution dated 14-11-1989. Therefore, in view of the pendency of Writ Petition, the trained graduate are not given admission to postal D.ED. course. For this purpose, learned AGP has made reference to the guidelines issued by the Government vide letter dated 2nd July, 2004. Clause (4) thereof, makes a reference to the query as to whether admission should be given to primary teachers for the academic year 2004-05 in consonance with Government Resolution dated 7-11-2001 in view of decision of the High Court in Writ Petition No. 4159/1998 dated 5-5-2000. The guidelines issued in this behalf was that in view of the pendency of the Writ Petition in the Court, no admission can be granted to the trained graduates as they are not entitled to benefit of explanation provided by G.R. dated 7-11-2001. Learned AGP, therefore, contends that the petitioner is not entitled to admission to postal D.Ed. course.

5. This contention cannot be sustained. It can be seen from the order in Writ Petition No. 3553/2002 that the impugned Government Resolution and Circular were not to be implemented until further orders in respect of rejection of the pay scales, the interim order, therefore, speaks about that aspect of the circular which deals with rejection of pay scales of the trained graduate teachers. The order cannot be interpreted so as to mean staying operation of the entire Government Resolution dated 12-11-2001 and the Circular.

6. It is not in dispute that the basic Government Resolution regulating admission to the postal D.Ed. course are Government Resolutions dated 5-2-1999 and

2-6-2000 with corrigendum dated 11-7-2000. The Government Resolution dated 5th February, 1999 provides an opportunity to untrained primary teachers for admission to postal D.Ed. course whose appointments are prior to 30th June, 1997, are approved by the Government at least for one year and the teachers who are still in service by Government Resolution dated 2nd June, 2000. By G.R. dated 2nd June, 2000, the Government took a decision to continue services of untrained teachers on certain conditions. It was also decided to give admission to such untrained teachers to postal D.ED, course.

7. It is not in dispute that the petitioner is otherwise eligible for admission to postal D.Ed, course. The letter dated 18-8-2005 shows that since the petition filed by trained graduate teachers is pending in this Court, the petitioner was denied admission. This reason given in Clause 15 of the letter dated 18-8-2005 is obviously based on the so called guidelines given by letter dated 2nd July, 2004. The so called guidelines are issued by the Desk Officer to Education department. The guidelines reflect interpretation of the Desk Officer in view of the order passed in the Writ Petition No. 3553/2002. It can also be seen that this interpretation of the Desk Officer cannot be approved of. The order passed in the said writ petition merely defers the implementation of Government Resolution and Circular applicable to the trained graduates in respect of rejection of pay scales. Apart from that, it can be seen that this controversy is in respect of trained graduate teachers. In the present case, however, the petitioner cannot be classified as a trained graduate because he is B.P.Ed. and not B.Ed. Moreover, appointment of petitioner is also not for imparting physical education but it is for teaching. Therefore, the fact that the petitioner is B.P.Ed. does not include him in the category of trained graduate teacher and impugned GR dated 12th November, 2001 which is regarded as stayed, does not become applicable to the present case.

8. Taking any view of the matter, it is apparent that admission to the postal D.Ed. course cannot be refused to the petitioner solely on the ground of pendency of the writ petition filed by the trained graduates. Therefore, refusal to the petitioner on this ground cannot be sustained. As the petitioner is otherwise eligible for admission to the postal D.Ed. course, the petition deserves to be allowed by directing the respondent No. 2 to admit the petitioner to postal D.Ed. course for the academic year 2004-05.

9. In this petition the petitioner is seeking admission to postal D.Ed. course for the academic year 2004-05. During the course of hearing it has been made clear that admission to postal D.Ed. course for the academic year 2004-05 were delayed. Process of granting admission is completed some time in the month of August/September, 2005. In fact, after the process of admission was completed in the month of August, the first session had commenced from 9th August to 25th September; second sessions started from 23rd November upto 28th December, 2005; whereas the third session is to commence some time in January/February, 2006. Each session is of 28 days. It has to be borne in mind

that the first session is over and the second session is nearing completion. It will be for the concerned respondent to decide whether the petitioner can be accommodated for the academic year 2004-05. If the petitioner can be so accommodated, he can be included in one of the batches or a fresh batch. If this cannot be done, the petitioner should be accommodated in the academic session 2005-06.

10. Petition is therefore allowed. Rule is made absolute in above terms. There shall be no order as to costs.