



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1855 OF 2013**

Jahida Mohd. Shaikh @  
Nasim d/o. Hussain Khan and ors. ..Petitioners.  
vs.  
The State of Maharashtra and ors. ..Respondent.

...

Mr.Chetan Agarwal and Ujjwal Agarwal for the Petitioners.  
Mrs. S.S.Bhende, A.G.P. for Respondent Nos. 1 and 2.  
Mr.S.S.Deshmukh i/b Sanjeev J. Rairkar for respondent No.5.

...

**CORAM: MOHIT S. SHAH, C.J. &  
M.S.SANKLECHA, J.**

**DATE : 7 May 2013**

**P.C.**

Learned AGP appearing for respondents Nos. 1 & 2 submits that the direction given by this Court on 9 April 2013 needs to be modified in the light of NCTE Notification dated 29 July 2011 amending the Notification dated 25 August 2010 laying down minimum qualification for a person to be eligible for appointment as a teacher.

2. It is submitted that the said Notification has been issued in exercise of powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 and in pursuance of the Notification dated 31 March 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India. Heavy reliance is placed on sub-para (b) of para 3 of the Notification, which reads as under:-



(i) *Training to be undergone.- a person.....*

(b) *with D.Ed.(Special Education) or B.Ed.(Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-month Special Programme in Elementary Education.*

3. Learned AGP submits that since petitioners have only the qualification of D.Ed.(Special Education), petitioners are required to undergo NCTE recognized 6-months Special Programme in Elementary Education. It is, therefore, submitted by learned AGP that directions given by us in the order dated 9 April 2013 and also in the previous order dated 21 November 2012 are required to be modified.

4. Learned counsel for petitioners submits that the prayer for modification is untenable. It is submitted that apart from the fact that no affidavit or application has been filed for modification of orders passed by this Court on 21 November 2012 and 9 April 2013, in any view of the matter the amendment to the Notification dated 29 July 2011 is only prospective and not retrospective.

5. It is also submitted by learned counsel for petitioners that petitioners in Writ Petition No.1855 of 2013 as well as in Writ Petition No.4902 of 2012 were all appointed long prior to issuance of the amendment Notification dated 29 July 2011.

6. Having heard learned counsel for the parties, we find considerable substance in the submission made by learned counsel for



petitioners that persons who were appointed as teachers for imparting training to children with special needs on the basis of their having qualification of D.Ed.(Special Education), which was the requisite qualification at the time of their appointment, they cannot now be treated as unqualified teachers on the ground that petitioners do not have the qualification of Bachelor in Education (B.Ed.) or that they have not undergone the NCTE recognized 6-months Special Programme in Elementary Education after having obtained the qualification of D.Ed. (Special Education) or B.Ed. (Special Education). Since petitioners possessed the requisite qualification at the time of their appointment, being the qualification of D.Ed.(Special Education), which is recognized by the Rehabilitation Council of India also as sufficient qualification for appointment of a teacher for imparting training to children with special need, petitioners have to be treated as qualified teachers and they must be accordingly paid salary and allowances in the pay scale of trained teacher.

7. Even after accepting the above submission made by learned counsel for petitioners, we must make it clear that if the NCTE has provided by the amendment Notification dated 29 July 2011 that henceforth persons with D.Ed.(Special Education) or B.Ed. (Special Education) must undergo after appointment an NCTE recognized 6-months Special Programme in Elementary Education, teachers appointed prior to 23 July 2011 are also required to undergo an NCTE recognized 6-months Special Programme in Elementary Education. Of course, reasonable time must be given to teachers appointed prior to 23 July 2011 to undergo such 6-month training course.



8. Having regard to the fact that petitioners were appointed as teachers for imparting training to children with special needs between 2000 and 2008, it will be reasonable to direct the respondents to give petitioners time upto to 31 December 2014 to undergo such training. However, during the period of such training the petitioners shall also be treated as in continuous service as trained teachers.

9. Accordingly, order dated 9 April 2013 in Writ Petition No.1855 of 2013 shall be treated as interim order, which respondents shall comply with as expeditiously as possible and payment of arrears of salary for the period upto 30 April 2013 shall be made on or before 15 June 2013 and payment of salary and allowances for the period from 1 May 2013 onwards be made on or before 15 day of the succeeding months.

10. It is clarified that the above directions shall apply to petitioners in Writ Petition No.4902 of 2012 also.

11. Stand over to 17 June 2013.

**CHIEF JUSTICE**

**(M.S.SANKLECHA, J.)**