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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1153 OF 2018**

Sahakar Vidya Prasarak Mandal & Anr.

... Petitioners

vs.

Smt. Shreelekha Sunil Ghag

... Respondents

@ Sangita Balkrishna Patole & Ors.

Mr. Pramod J. Pawar for the Petitioner.

Ms. Anupama B. Shah for Respondent no.1.

**CORAM : A.K. MENON, J.**

**RESERVED ON : 25<sup>th</sup> APRIL, 2018**

**PRONOUNCED ON : 4<sup>th</sup> MAY, 2018**

**JUDGMENT**

1. The challenge in this Writ Petition is to order dated 4<sup>th</sup> October, 2017 passed by the School Tribunal in Appeal No. 57 of 2015 by which the appeal filed by the respondent herein was partly allowed. Considering the facts of the case, it is appropriate that the matter be disposed of finally at the stage of admission. Accordingly, I issue Rule. Rule made returnable forthwith. By consent of parties taken up for final hearing forthwith.

2. In her appeal the respondent no.1 claimed relief against respondent nos. 3 and 4 who were headmaster and supervisor respectively. No relief was granted against respondent no. 3 who was the headmaster. The promotion granted to respondent no. 4 was however set aside and the petitioner was directed to promote the present respondent no. 1 with effect from 1<sup>st</sup> June, 2015 with consequential

benefits attached to the post of supervisor but without monetary benefits. The respondent no. 1 was granted monetary benefits for the post of supervisor effective date of the impugned order dated 4<sup>th</sup> October, 2017. The management is aggrieved by the impugned order. Respondent no.1 has not challenged the order to the extent it concerns the appointment of respondent no.3

The facts in brief are as follows :

3. Petitioner no. 1 is a registered trust which runs the petitioner no. 2 – School. The respondent no. 1 was appointed on probation as an Assistant Teacher w.e.f. 1<sup>st</sup> June, 1984 for a period of two years ending on 31<sup>st</sup> May, 1986. She had qualified with S.S.C., D.Ed. After completion of probation she was absorbed as a permanent teacher in petitioner no. 2-school. She was then placed in Category-E of Schedule 'F' of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the Act"). Thereafter she acquired the B.A. Degree in the year 1986 while in services. It is the petitioners contention that initially she was in Category-E and after acquiring the B.A. Degree she was entered in Category-D and not in Category-C as contended in the appeal.

4. Respondent no. 4 was appointed on 12<sup>th</sup> June, 1989. Respondent no.4 is stated to be holding B.A. B.Ed. qualification and therefore shown in Category-C of Schedule 'F' of the Act. The seniority list was maintained by the school and was offered for annual approval of the teachers. These lists were perused by the teachers and signed. It is petitioners case that on 31<sup>st</sup> August, 2014 the then headmistress Ms. D. P. Tipnis retired and respondent no. 1 claimed she being the

senior most teacher was entitled to promotion as headmistress, but respondent no.3 has been promoted as headmaster and that has resulted in super cession.

5. It was further contended that on or about 31<sup>st</sup> May, 2015 when one Ms. Sonavane retired, as respondent no. 1 was senior most teacher, she was to be promoted as Supervisor. Being aggrieved and denied promotion while teachers who were junior have been promoted to the post of headmaster and supervisor of the school, the petitioner filed an appeal before the School Tribunal on or about 1<sup>st</sup> December, 2015 under section 9(1)(b) of the Act. The appeal came to be allowed in part, granting relief to the respondent no. 1 as stated above.

6. According to Mr. Pawar the learned Advocate for the petitioner, the respondent no.1 had incorrectly stated in the appeal that she was placed in Category-D prior to her acquiring the B.A. Degree. Likewise after acquiring B.A. degree she had contended that she was in Category-C but in fact she was entered in Category-D. Mr. Pawar submitted that the impugned order was passed ignoring provision of Schedule 'F' under Rule 2 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the Rules) which sets out how a teacher acquires seniority. That since respondent no.1 acquired a B.A. degree in 1986 her name could not have been considered in Category-C of Schedule 'F' and could have been considered in Category-D of Schedule 'F' and the same could have been so considered only after acquiring 10 years experience post S.T.C.etc and therefore the 1<sup>st</sup> respondent's contention that she had been entitled to entry in

Category-C immediately after obtaining B. A. degree is contrary to provisions which the Tribunal failed to appreciate. In other words entry into Category-C could have been possible only after 10 years of service after obtaining the B.A. degree.

7. Mr. Pawar contended that after the respondent filed Appeal no.57 of 2015 the petitioner had pointed out that respondent no.1 was not entitled to be promoted to the post of headmistress or as supervisor as contemplated in Rule 3(1)(b) of the Rules. The respondent no. 1 though senior most did not possess requisite qualification and thus was not eligible. Mr. Pawar therefore submitted that the impugned order of the School Tribunal was perverse since the respondent acquired the B. A. degree only in the year 1986 and therefore her name could not be considered for Category-C of Schedule 'F'. The School Tribunal did not appreciate that although respondent no.4 was appointed in the year 1989 by virtue of his B.A. B. Ed. qualification he entered Category-C of Schedule 'F' directly. Mr. Pawar further submitted that the Tribunal had ignored the provisions of Rule 5(2) of the Rules which provided for qualifications for appointment of a Head or that of a Supervisor.

8. Ms. Shah learned Advocate for the respondent-applicant opposing admission of the petition submitted that at the time of appointment the respondent must be categorized under Category- D being holder of S.S.C/D.Ed. and had completed her B.A. in 1986 and thereafter on account of her continuous service she was categorized in Category-C. Her service record is said to be satisfactory and non-stigmatic. She contended that respondent was senior most teacher entitled for

promotion on the retirement of the then Headmistress, but she has been superseded by respondent no.4 who has been promoted as Headmaster. She urged that in May 2015 when the then Supervisor Mrs. Sonawane had retired, respondent no.4 a teacher junior to respondent no.1 was appointed as Supervisor instead of appointing respondent no.1. It is contended that the petitioner management had placed the respondent no.4 in seniority over the present respondent no.1. In the year 2010-11 the respondent no.1 had been shown as senior to respondent no.4 but thereafter respondent no.4 was placed as senior to respondent no.1. For 32 years she has been treated as senior to respondent no. 4 and the management has subsequently altered the seniority.

9. Ms. Shah contended that in the decision of the Apex Court in *Viman Vaman Awale vs. Gangadhar Makhriya Charitable Trust & Ors.*<sup>1</sup> the Supreme Court had held that the criteria for determining seniority is continuous officiation counted from date of acquiring educational qualifications as prescribed under Schedule 'B' in that case. In that case, the appellant held the necessary qualifications, D.Ed. for appointment to the post of Assistant Teacher and her seniority was counted on the basis of continuous officiation. She had joined the post of Assistant Teacher prior to the contesting respondent and therefore the appellant would naturally be senior to the contesting respondent. The Court further found that the Head of the school acquired qualifications under Rule 3 to have been met and the appellant had fulfilled all qualifications.

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<sup>1</sup> 2014 (13) SCC 219

10. Ms. Shah contended that the facts in the case of *Viman Awale (supra)* would govern the instant case and the petitioner would be entitled to relief on that basis. Ms. Shah further submitted that in the case of *Vivek Gajiram Kadgaye v/s. Education Officer*<sup>2</sup> a Division Bench of this court had held that the D.Ed qualification is equivalent to a B.Ed. Qualification. She relied upon paragraph 14 of the said judgment in which the Division Bench observed that a graduate teacher with Diploma in Education (D.Ed. two years course) is required to satisfy an additional condition of ten years experience to fall into the Category- C, on par with an Assistant Teacher of a secondary school who held a B.A. and B.Ed. degree and that the only question that needs to be considered is whether experience of ten years is required post the B.Ed. Period or post D.Ed. Period. If experience gathered is held to be post the B.Ed. passing year, the petitioner in that case did not satisfy the requirement of Category-C in the seniority list in 1987 because he had passed his B.Ed only in 1984 and could not reach Category-C till 1994 but if it was held that 10 years experience is post D.Ed. service the petitioner satisfied the requirement of being qualified under Category-C because he had passed his B.Ed examination in 1970 and joined as Assistant teacher on 1.7.1970 itself.

11. The Court found that the language of Schedule 'F' was material to decide the requirement of ten years service since it ends with the words "with 10 years post S.T.C etc. service". The Court held that this is indicative of the fact that 10 years experience should be after acquiring S.T.C./ Dip.Ed./Dip.T.(one year course) and if the requirement was to be of 10 years experience after obtaining a graduation

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2 *BCR (1998) 2 534*

degree or the B.Ed. Degree the wording would have been “with 10 years post B.A. Or B.Ed. etc. service”.

12. Ms. Shah relied upon the seniority list of the year 2016-17 updated as of 30<sup>th</sup> June, 2017 wherein the name of respondent no.3 Rathod was shown as Headmaster at Sr. no. 1 and that of Pravin Patil respondent no.4 at Sr. no.2 whereas the petitioner as Assistant Teacher was at Sr. no. 7. This seniority list showed respondent no.4 as Supervisor who had put it twenty years of service having joined on 12<sup>th</sup> June, 1989 with qualifications of B.A. in April 1983 and B.Ed. in April,1986. The respondent no.1 had been appointed on 18<sup>th</sup> June 1984 and she had completed her D.Ed. in April 1982 and B.A. in 1986. She had 33 years experience. This seniority list was signed by the respondent no.1 under protest on 24<sup>th</sup> February, 2018. Whereas in Exhibit-F collectively being the seniority list of 2010-11 the said respondent no.4 was shown at Sr.no.11 when the respondent no.1 was at Sr. no. 10. In 2011-12 also respondent no.1 was at Sr. no. 8 and respondent no.4 at Sr. no. 9. In 2012-13, respondent no.1 was shown at Sr. no. 11 and respondent no.4 at Sr. no. 5. Across all these years respondent no.3 was always shown as senior to both respondent no.1 and 4.

13. Ms. Shah submitted that Respondent no. 1 is due to retire in October 2018 and by the impugned order the petitioner has been directed to promote her to the post of Supervisor in the school with effect from 1<sup>st</sup> June 2015 with consequential benefits including monetary benefits. That respondent no. 4 has not challenged the order and had accepted the same. She submitted that it is not in dispute that when

respondent no. 1 was appointed as Assistant Teacher in 1<sup>st</sup> June 1984 and secured her B.A. Degree in April 1986 as per Rule 2 of Schedule F she would have entered Category-C. That at the time of her appointment the respondent no. 1 was D.Ed and was Assistant Teacher and the respondent no. 3 was appointed on 14<sup>th</sup> June, 1985 with a B.A. B.Ed degree whereas respondent no. 4 was appointed on 12<sup>th</sup> June, 1989 when she was already in Category-C. On this basis it is contended that respondent no. 4 could not have been promoted to Supervisor ignoring her claim. Ms. Shah placed reliance on a communication dated 5<sup>th</sup> February, 1988 from the Directorate of Education addressed to all Zilla Parishads stating that a teacher holding B.A., S.T.C and other required qualification enters category "C" after 10 years of service such a teacher on the basis of seniority in the cadre would be eligible for promotion to the post of Head Master, Asst. Head Master or Supervisor as the case may be and such a teacher would not be required to acquire B.Ed. degree again. She submitted that D.Ed is equivalent to B.Ed. for all practical purposes.

14. Ms. Shah had submitted that by virtue of communication dated 5<sup>th</sup> February, 1988 issuing clarification about Rule 3(b) of the Rules the Director of Education, State of Maharashtra had clarified that as per Rule 3(1)(b) for appointment of the post of head for secondary schools would have to follow guidelines of Seniority in Schedule 'F' and thus in Category-C along with graduate and teaching degrees holding D.Ed. qualification and where completed 10 years of service after acquiring qualification would be included and where a teacher holding qualification of D.Ed should be considered the eligibility for the post of supervisor on the basis of seniority.

15. On this aspect the Government has issued a clarification that if a teacher holds qualification of B.A., S.T.C and thus enters Category-C after 10 years of service such teacher shall on basis of her seniority in the cadre be eligible to the post of Head Master, Assistant Head Master or Supervisor and such teacher would not be required to obtain B.Ed degree again. Relying upon the said clarification Ms. Shah submitted that the respondent is well and sufficiently equipped to be considered as senior to the petitioner it has accordingly been held. Moreover respondent nos. 3 and 4 did not appear before the School Tribunal and have not contested the appeal. The impugned order of the School Tribunal has not been challenged by the said respondents and they appear to have accepted the same.

16. In the course of submissions Ms. Shah also relied upon circular dated 24<sup>th</sup> January, 2017 which reveals that while preparing seniority list of all graduate primary teachers the date on which the concerned teacher has acquired the degree should not be taken into consideration and seniority should be fixed on the basis of the date of his original appointment. Furthermore in clause (4) of the said circular the State has clarified that for the purpose of promotion for graduate teachers, common seniority list should be deemed acceptable as per provisions of Schedule 'F' of Rules and not subject wise seniority list. In the present case, we are concerned with common seniority list. Ms. Shah also relied upon the Government Circular dated 14<sup>th</sup> November, 2017 Exhibit C-1 to affidavit in reply where the State has clarified that common seniority prepared by taking into consideration date of first appointment in teachers cadre and continuous services shall be taken into consideration for the purposes of promotion and if a teacher is holding educational

and professional qualification required for the post of promotion and upon conditions of experience and the name of such concerned teacher should be taken into consideration for promotion.

17. She also relied upon a decision of the Nagpur bench of this Court in the case of *Sunil Gopalrao Pande and Ors vs. Amravati Zilla Parishad and Ors.*<sup>3</sup> in which case this Court had followed the decision in *Viman Awale (supra)* and held that the Seniority list of primary teachers in Zilla Parishad also needs to be prepared on the basis of continuous officiation.

18. In the course of arguments, learned Government Pleader submitted that the communication dated 5<sup>th</sup> February, 1988 from the Director of Education relied upon by the respondent had since been withdrawn on 23<sup>rd</sup> April, 2018 reiterating that the person seeking to be appointed to the post of Head Master is required to hold degree in teaching or science of education or equivalent degree approved by the Government. A person to be appointed on this post should have worked as a teacher on full time basis. That a graduate teacher should have minimum 5 years teaching experience in secondary school and out of 5 years minimum of 2 years experience should be after acquiring B.Ed. Qualification. That even if teachers holding D.Ed or S.T.C. qualification are included in Category -C they would not be treated equivalent to those holding a B.Ed degree. It was specified that the clarification in the letter dated 5<sup>th</sup> February, 1988 is not consistent with provision of the Rules and hence the letter dated 5<sup>th</sup> February, 1988 stands canceled. In my view

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3 2016 (5)AIR Bom R 229

this is of no assistance to the petitioners case since respondent's case did rest entirely upon communication dated 5<sup>th</sup> February, 1988.

19. I find that this is the basic premise adopted by the respondent no. 1 before the School Tribunal as can be seen from her averment in her affidavit in rejoinder filed in the appeal before the School Tribunal. In paragraph 4 it is stated that D.Ed. is equivalent to B.Ed. and that since she is already holding a B.A. Degree she was qualified to hold the post of Head Master. In the present case the respondent no 1 has not challenged the order passed by the School Tribunal and therefore we proceed on the basis that she seeks to support the order to the extent it directs her promotions as Supervisor.

20. Under Sub-rule( 3 )of Rule 5, every secondary school with more than ten classes is required to have one or more Supervisors and under Rule 5 the post of a Supervisor is to be filled only from amongst the permanent staff and strictly on the basis of guidelines given in Schedule 'F' subject to seniority-cum-merit. Merit is to be determined in accordance with the record of service as contemplated in sub-rule (6) of Rule 3. Schedule 'F' provides for guidelines for fixation of seniority. Provisions of Rule 3 relating to qualifications and appointment of the Head shall also apply to the post of an Assistant Head or Supervisor. There is no finding against the respondent no.1 as far as merits go. In fact her assertion that her service record is said to be satisfactory and non-stigmatic has not been denied.

21. The respondent no. 3 and 4 were holding B.A. B.Ed degrees at the time of their respective appointments. The impugned order also proceeds on the basis that the respondent no. 1 was senior to respondent no. 4 when considering their entry into Category-C on the basis of qualification. Ms. Shah placed reliance on judgment of Division Bench in *Vivek Gajiram Kadgaye (supra)* in support of her contention that experience of 10 years is required to be post D.Ed. Period and such experience is to be held post D.Ed.

22. In *Satish Ramchandra Kamdi vs. State of Maharashtra*<sup>4</sup> a single Judge of this court has held that the criteria for seniority is continuous officiation continued from the date of acquiring educational qualifications under Schedule-B. In the facts of that case the petitioner qualified with S.S.C. Certificate along with D.Ed in Schedule-B from the date of appointment from 13<sup>th</sup> July, 1986. B.Ed degree was only an improvement in qualification which the petitioner acquired, the respondent concerned did not have qualification as required per Schedule-B when he was first appointed on 23<sup>rd</sup> July, 1983. He acquired B.Ed degree only on 3<sup>rd</sup> June, 1986 and therefore his seniority could be counted from 23<sup>rd</sup> June, 1986. The petitioner in that case was found to be senior.

23. In *Viman Awale (supra)* the appellant joined respondent no. 3 as Assistant Teacher on 24<sup>th</sup> August, 1979. Respondent no. 4 joined as Assistant Teacher on 1<sup>st</sup> September, 1980 at the time of joining appellant was not a graduate but qualified as Assistant Teacher. He completed his B.A. on 1<sup>st</sup> November, 1984 and therefore

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4 WPNo. 983/2016)

before the appellant who had qualified on 20<sup>th</sup> May, 1986. The question that arose on the aspect of seniority was then considered by the Apex court. When these persons were appointed they were qualified with D.Ed. and therefore fit in the Category-D of Schedule 'F'. B.Ed was acquired by the appellant in 1986 whereas respondent had already acquired B.Ed. in 1984. The School Tribunal held that acquisition of B.Ed degree and the school being secondary school holding class from 5<sup>th</sup> to 10<sup>th</sup> Rule 3(1)(b) was attracted which provided that the teacher must be graduate with diploma in teaching with 5 years experience out of which two years had to be after acquiring a Bachelors degree. Schedule B provides degree qualification for secondary teachers as graduate and B.Ed and therefore the date of acquiring professional qualification becomes relevant which was B.Ed. Respondent no. 4 who was therefore held to be qualified before the appellant and therefore he was treated as senior. In doing so the School Tribunal relied upon the full bench decision of this Court in *Shri Vaijanath s/o. Tatyarao Shinde vs. The Secretary, Marathwada Shikshan Prasarak Mandal*<sup>5</sup>

24. The Supreme Court held that the obtaining of the B.Ed degree was not a relevant consideration. On the other hand the criteria was the D.Ed qualification which was necessary for appointment of the post of Assistant teacher in the primary school and that his seniority would be counted based on continuous officiation from the date of acquiring educational qualification prescribed under Schedule 'B'. In view of the fact that the appellant therein had joined the post of Assistant Teacher prior to respondent, the appellant was held to be senior most. In paragraph 22 of

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<sup>5</sup> WP No. 4907 of 2002 decided on 15.11.2006

*Viman Awale (supra)* the Supreme Court considered Rule 12 which deals with seniority that clear and unambiguous criteria in determining seniority and continuous officiation from date of acquiring educational qualification.

25. Thus the order of the School Tribunal came to be reversed and the appellant was appointed in place of the respondent. Applying the ratio in *Viman Awale (supra)* to the present case we find that the petitioner herein was appointed as Assistant Teacher on 1<sup>st</sup> June, 1984 in the secondary school and she has served for more than 31 years as on date of her filing of her appeal before the School Tribunal. The petitioner school is a grant-in-aid institution receiving grant from the Government and in view of her being appointed in the secondary school her appointment would be governed by Rule 2(1)(j) and Schedule 'B'. The qualification was secondary teachers provides as follows :

*Qualifications for trained Teachers in Secondary Schools and Junior College of Education :*

***(1) For Graduate Teachers .***

*(i) A Bachelor's degree in Teaching or Education of any statutory University or a qualification recognised by Government as equivalent thereto;*

*(ii)....*

*(iii)....*

*(iv)....*

*(v)....*

***(2) For Undergraduate Teachers .***

*(i) A Diploma in Education of Nagpur and Bombay Universities which is awarded two years after Secondary School Certificate Examination.*

*(ii) ....*

*(iii).....*

*(iv).....*

*(v).....*

26. In the present case, admittedly the respondent holds the requisite Diploma in Education which is after two years after Secondary School Certificate. At the time of her appointment she was holding the same qualification SSC and D.Ed. In view of the same what we have here is a case where the respondent a duly qualified undergraduate teacher and in the matter of determining seniority reference may be made to Rule 12. Rule 12 which deals with seniority reads as under :

**Rule 12 : Seniority List** : Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.

On a fair reading of Rule 12 it is evident that the seniority list of teaching staff is to be prepared in accordance with the guidelines in Schedule 'F' periodically and all changes are to be brought to the attention of all members of the staff and their signatures are required to be obtained. Objection to the seniority list and changes are required to be considered by the management and if not resolved, disputes in the matter of inter-se seniority are required to be referred to the Education officer. In the present case it does not appear that the dispute has been referred to the Education Officer at all and what is been done is that the appellant has raised dispute with the management by sending numerous letters between 25<sup>th</sup> February,

2015 and 30<sup>th</sup> July, 2015. But the petitioner management apparently did not accede to the request and did not revise the seniority list. The dispute does not appear to have been referred to the Education Officer for his decision as required under Rule 12 sub-clause (3).

27. Referring to Schedule F qua the case of the petitioner, the fixation of Seniority amongst teachers in secondary school is governed by clause 2 of Schedule 'F' which categorizes them. We are not concerned with Category-F and Category-H since these are for untrained graduate. Category B provides for those teachers who hold a B.A. degree and diploma in Education or diploma in teaching (one year course) and 10 years experience post STC etc. service. The relevant category which concerns the respondent are category-C, D and E. Initially on appointment the petitioner joined under Category-E since she held SSC and D.Ed. She was a trained under graduate teacher. Category-D would be relevant to the extent the respondent completed B.A and held a diploma in Education. Upon her obtaining the B.A. degree she moved from Category-E to Category-D and then to Category-C on acquiring 10 years experience post D.Ed.

28. In view of the decision of *Viman Awale (supra)* the D.Ed qualification is sufficient along with the SSC and the Dip. It is not material to obtain a B.Ed degree for the purpose of computing seniority, rather it would be on the basis of continuous officiation and it is on this basis that the impugned order grants relief to the respondent. While the equivalence of D.Ed with B.Ed as an absolute proposition cannot be accepted, what the comparison in *Vivek Kadgaye (supra)* entailed was

that if one held a teaching qualification such as D.Ed, it was not necessary to have a B.Ed qualification for the purpose of determining seniority subject to continuous officiation as contemplated now in *Viman Awale (supra)*.

29. The contention of the petitioner that respondent no. 1 has incorrectly contended that she had entered Category-C cannot be accepted. Although when she joined she entered Category-E by virtue of completing SSC and having obtained D.Ed. On a fair reading of Category-C of Schedule 'F' and Rule 12 preparation of maintenance of seniority list including Assistant Head Master will also include a Supervisor by virtue of Rule 5. The 4<sup>th</sup> entry in category B reads as follows :

*B.A./B.Sc./B.Com., S.T.C./Dip.Ed./Dip.T (one year course) with 10 years post-S.T.C. etc. service.*

Reference to etc. services in my view does not include B.A./B.Sc./B.Com, but the word “etc.” refers to “*S.T.C./ Dip.Ed / Dip. T with 10 years service post STC/ Dip.Ed / DipT.*”

The comma after “*B.A./B.Sc./B.Com.,*” is of significance while interpreting the effect of this provision.

30. In my view the respondent would have thus entered into Category-C upon her obtaining B.A. degree and need not have awaited a B.Ed degree which is only an improvement of teaching qualification. In that light of the matter when considered along with the ratio in the case of *Viman Awale (supra)* as to continue officiation and the decision of the Division Bench of this Court in the case of *Vivek Gajiram Kadgaye (supra)* it leaves no manner of doubt that the expression 10 years post S.T.C., etc. services would necessarily mean 10 years after the D.Ed. and not after obtaining B.A.

31. I am therefore unable to agree with the petitioner that respondent no. 1 could have been considered for Category-C after 10 years experience post completion of B.A. Such a reading in my view would be incongruous. In the circumstances following the decision in *Viman Awale (supra)* as also the Division Bench decision in *Sunil Gopalrao Pande (supra)* and *Vivek Gajiram Kadgaye (supra)*, I find no reason to take a different view as far as secondary teachers are concerned. Notwithstanding the fact that the case at hand pertain to teacher to secondary school since in my view the respondent no. 1 entered Category- C by virtue of guidelines no. 2 of Schedule 'F'.

32. There is no justification in having relegated the petitioner to the lower position in the Seniority list. In the circumstances, I find no reason to interfere with the impugned order. I therefore pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)