

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8793 OF 2018

Sandip Vishnu Kedar and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. N.V. Gaware, Advocate for Petitioners
Mr. A.R. Kale, Assistant Government Pleader for
Respondents/State
Mr. A.R. Nikam, Advocate for Respondent No. 2

WITH
WRIT PETITION NO. 8843 OF 2018

Jyoti Gahinath Katkade and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. R.K. Temkar, Advocate for Petitioners
Mr. A.R. Kale, Assistant Government Pleader for
Respondents/State
Ms. Manjushri Shendage-Narwade, Advocate for
Respondent Nos.5 and 6

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 30th APRIL, 2019

ORAL ORDER: (Per S.V. Ganagapaurwala, J.)

1. The petitioners assail Government Resolution dated

27.06.2017 on the ground that it takes away 20 % reservation of the candidates in appointment as Assistant Teacher who have completed D.Ed. in English medium.

2. The gravamen of the petitioners case as contended by Mr. Gaware, the learned Counsel for the petitioners is that the Government Resolution dated 27.06.2017 to the extent it takes away the reservation granted to the persons completing D.Ed., in English medium is illegal and *ultra vires*. The same is unreasonable, arbitrary and violative of Article 14 of the Constitution of India. The learned Counsel submits that since the year, 2009, 20 % reservation was provided to English medium D.Ed. candidates for appointment as Assistant Teachers. The learned Counsel submits that relying on the same, the petitioners completed their D.Ed. from English medium. They had filled in the form of the Teachers Aptitude and Intelligent Test (for short TAIT) as English medium candidates for which 20 % posts are reserved. The petitioners had filled in the form for TAIT and the form also classified 20 % reservation for English medium D.Ed. candidates. Appearing in TAIT examination is a step in furtherance of selection process. The petitioners had also passed the TAIT as candidate from D.Ed. English medium for whom 20 % posts are reserved. The learned Counsel submits that as TAIT examination is a part of the selection process, the respondents now under the impugned Government Resolution cannot change the

Rules of the selection process and take away the benefit given to 20 % English medium D.Ed. candidates. The same is illegal. To buttress his submission, the learned Counsel relies on the Judgment of the Apex Court in a case of ***K. Manjusree Vs. State of A.P. & Anr. reported in 2008 (3) SCC 512***. So also, another Judgment of the Apex Court in case of ***Maharashtra State Road Transport Corporation Vs. Rajendra Bhimrao Mandve reported in 2002 AIR (SC) 224*** and another Judgment in a case of ***Tej Prakash Pathak & Others Vs. Rajasthan High Court & Ors. reported in 2013 (4) SCC 540***.

3. The learned Counsel further submits that the maths and science subjects are taught in English medium. It is only those candidates who have completed their D.Ed. in English medium, would be entitled and capable of teaching those subjects in English. A candidate who has done D.Ed. in Marathi medium cannot be expected to teach maths and science subjects in English.

4. In view of that, the Government Resolution is unreasonable, arbitrary and deserves to be set aside.

5. *The learned Assistant Government Pleader submits that selection process has not commenced.* Possessing TAIT qualification is one of the qualifications required for the post of Assistant Teacher. A eligible candidate can apply for the post of

Assistant Teacher when the on-line process of recruitment of Assistant Teachers would take place.

6. The learned Assistant Government Pleader submits that no Rules are changed. According to the learned Assistant Government Pleader, the petitioners do not have any right as even selected candidates do not have any right to claim appointment. Reliance is placed by the learned Assistant Government Pleader on the Judgment of the Apex Court in a case of ***Jitendra Kumar & Ors. Vs. State of Haryana & Anr. reported in 2008 AIR (SCW) 322.***

7. The learned Assistant Government Pleader further submits that framing Policies in academic matters is the prerogative of the experts and the professionals in the said field. Considering the requirement, the Policy has been undertaken by the Government to do away with providing classification as 20 % English medium and 80 % Marathi medium candidates. According to the learned Assistant Government Pleader, the research has been done with regard to the curriculum and it is found that there are about 1960 schools in Aurangabad. Out of that only 178 schools adopted English language as medium of instructions for maths and science subjects. As only limited number of schools have opted for English language as instructions for teaching maths and science subjects, thereby keeping 20% teachers posts for the candidates, who have

done D.Ed. in English medium was not justified, and as such, a conscious decision was taken to cancel the said practice.

8. The learned Assistant Government Pleader relies on the Judgment of the Apex Court in a case of ***Maharashtra State Board of Secondary and Higher Secondary Education and Anr. Vs. Paritosh Bhupesh Kurmarsheth, etc. reported in 1984 (4) SCC 27.***

9. The preface to the Government Resolution dated 27th June, 2018 clarifies the purpose for issuance of the Government Resolution assailed in the present Writ Petition. It has come to the notice of the State Government that considering the curriculum approved by the State Government under Government Resolution dated 28.12.2012, a policy was required to be changed. In the affidavit-in-reply, the curriculum has been spelt out. The same reads thus -

9. I say and submit that after recommendation of National Curriculum Frame Work, 2005, provisions of Right of Childrens to Free and Compulsory Education Act, 2009 and the Maharashtra Curriculum Frame Works 2010 and new curriculum approved by the State Government vide Government Resolution dated 28.12.2012.

(a) As per the new curriculum, the subject science was not available for Ist to Vth Std.

(b) Only Math subject is available from Ist to Vth Std. As

such the State Government vide Government Resolution dated 19.06.2013 directed that,

(I) to grant permission to teach math subject for Ist to Vth Std.,

(ii) to grant permission to teach mathematic and Science subject for VI to VIII Std., in english language optionally.

(iii) to grant permission to teach Science subject for VI to VIII std., in english language optionally.

(iv) no additional post will be sanctioned in the said school, who opted to teach the said subject in english language.

(v) the school who opt to teach Math and Science subject in english language, those schools has to appoint atleast one teacher from sanctioned post having D.|E|d. In english medium, besides passing of teachers education test. The said curriculum was applicable from the academic year 2013-2014. The copy of the Government Resolution dated 19.06.2013 is annexed herewith and marked as EXHIBIT R-5.

10. It has also been noticed by the State Government that the subject environment science is included in language and maths for 1st Std. and 2nd Std. The subjects General Science and Social Science are restructured and included in environment science Part-I and Part-II for 3rd, 4th and 5th Std. and the said curriculum is approved by the State Government under Government Resolution dated 28.12.2012. In view of the change in curriculum, it is manifest that science subject is not available for 1st and 2nd Std. in view of restructured curriculum. Separate subject general science is also not available for 3rd, 4th and 5th Std. In view of the change in the

curriculum, the Government has taken a conscious decision to do away the classification of 20 % English medium D.Ed. candidates and 80 % Marathi medium D.Ed. candidates. The statistics collected by the Government is self-explanatory. The illustration is given of Aurangabad Region. In Aurangabad Region, out of 1960 schools, only 178 schools adopted English language as medium of instructions for maths and science. The same is not even 10 %. Classifying 20 % posts for D.Ed. English medium, certainly would made unreasonable.

11. Considering the above, the Government in its wisdom has taken a decision to do away that classification of Marathi and English medium D.Ed. candidates.

12. By issuing impugned Government Resolution, the petitioners or the persons who have done the D.Ed. from English medium would not be disqualified. They would still be qualified to be considered for appointment as Assistant Teachers in the school. As observed by the Apex Court in case of Maharashtra State Board Secondary and Higher Secondary Education (supra) that the Court cannot sit over the Judgment or wisdom of the Policy evolved by the legislature and the subordinate Regulation making Body. It may be wise policy which will effectuate the purpose or it may even lack effectiveness and hence, calling for revision and improvement, but that would not render it *ultra vires* and the Court cannot strike it down

on the ground that in its opinion, it is not wise of the prudent policy. The State Government under Art. 162 of the Constitution of India has the prerogative to frame a particular policy. The rider is that the policy framed by the Government ought not to supplant the statutory provisions or the regulations. In the present case, there are no statutory regulations governing the issue as such it can be said that the policy framed by the Government under the impugned Government Resolution supplants the statute. In absence of any statute holding the field with regard to the classification of the Marathi medium and English medium D.Ed. candidates, the policy framed by the Government cannot be faulted with, more particularly, the said policy is backed by the research done by the State Government. The policy does not appear to be unreasonable or arbitrary.

13. It also needs to be considered that by framing policy, the rights of the petitioners are not affected. The petitioners have not participated in any selection process. TAIT is not part of the selection process for appointment of the primary teachers. TAIT is the basic qualification required for a candidate to apply for the post of Assistant Teacher. In view of that, it cannot be said that the Rules of the selection process are tinkered by the State Government by impugned Government Resolution. The petitioners cannot claim to have vested right only on the ground that petitioners have completed

D.Ed. in English medium and classification of 20 % English medium D.Ed. and 80 % Marathi medium D.Ed. has been done away.

14. Considering the above, no case for interference is made out.

15. The Writ Petitions are dismissed. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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