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

**WRIT PETITION NO.4857 OF 2014**

1. Pravin s/o Ashok Beldar,
   Age : 33 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Ghorpadwadi, Tal. Rahuri,
   District Ahmednagar

2. Santosh s/o Vishwanath Dhage,
   Age : 35 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Kothewadi, Tal. Rahuri,
   District Ahmednagar

3. Mahesh s/o Bhagwant Waghchaure,
   Age : 37 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Khandala, Tal. Ahmednagar,
   District Ahmednagar

4. Satish s/o Gangadhar Andhare,
   Age : 29 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Taklimiya, Tal. Rahuri,
   District Ahmednagar

5. Razak s/o Sardar Sayyad,
   Age : 42 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Chinchale, Tal. Rahuri,
   District Ahmednagar

6. Rehman s/o Razak Shaikh,
   Age : 44 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Lamantanda, Tal. Parner,
   District Ahmednagar

7. Sunil s/o Mahadeo Londhe,
   Age : 37 years, Occu. Service,
   Address : Zilla Parishad Primary School,
   Brahmni, Tal. Rahuri,
   District Ahmednagar

8. Ravindra s/o Bharat Borude,
Age : 41 years, Occu. Service,
Address : Zilla Parishad Primary School,
Chormalewadi, Tal. Shrigonda,
District Ahmednagar

9. Dashrath s/o Tukaram Deshmukh,
Age : 41 years, Occu. Service,
Address : Zilla Parishad Primary School,
Pategaon, Tal. Karjat,
District Ahmednagar

10. Gajanan s/o Ashok Reddewar,
Age : 27 years, Occu. Service,
Address : Zilla Parishad Primary school,
Mandlik Akhada, Tal. Rahuri,
District Ahmednagar

11. Hamid s/o Rafikahmed Shaikh,
Age : 33 years, Occu. Service,
Address : Zilla Parishad Primary School,
Panjabi Vasti, Tal. Rahuri,
District Ahmednagar **PETITIONERS**

**VERSUS**

1. The State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32

2. The Zilla Parishad,
(Through its Chief Executive Officer),
Ahmednagar

3. The Education Officer,
Zilla Parishad (Primary),
Ahmednagar

4. The Education Officer
Zilla Parishad (Secondary),
Ahmednagar

5. Lahu s/o Laxman Phalke,
R/o Z.P. Primary School,
Kaudgaon, Tq. and Dist. Ahmednagar

6. Baban s/o Pandharinath Gadekar,
R/o Z.P. Primary School,
Valan, Tal. Rahuri,
District Ahmednagar

7. Arun s/o Pandharinath Phargade,
R/o Z.P. Primary School,
Pimpalgaon-Khand, Tal. Akole,
District Ahmednagar

8. Kachru s/o Nivrutti Benke,
R/o Z.P. Primary School,
Keli-Rumhanwadi, Tal. Akole,
District Ahmednagar **RESPONDENTS**

**AND**

**WRIT PETITION NO.7416 OF 2014**

1. Devendra s/o Gopalrao Ambetkar,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Vitthalwadi, Tal. Pathardi,
District Ahmednagar

2. Pralhad s/o Mohan Pawar,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Alhanwadi, Tal. Pathardi,
District Ahmednagar

3. Govind s/o Babanrao Rupnar,
Age : 30 years, Occu. Service,
Address : Zilla Parishad Primary School,
Divate, Tal. Shevgaon,
District Ahmednagar

4. Valmik s/o Gangadhar Bade,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Badewadi, Tal. Pathardi,
District Ahmednagar

5. Ambadas s/o Nana Sonpure,
Age : 36 years, Occu. Service,

Address : Zilla Parishad Primary School,
Ambikanagar, Tal. Pathardi,
District Ahmednagar

6. Shrikant s/o Shalivahan Phutane,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Kakaddara, Tal. Pathardi,
District Ahmednagar

7. Rajendra s/o vitthal Sathe,
Age : 36 years, Occu. Service,
Address : Zilla Parishad Primary School,
Budhawantwasti, Tal. Pathardi,
District Ahmednagar

8. Anil s/o sakharam Shelke,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Hatgaon, Tal. Shevgaon,
District Ahmednagar

9. Arvind s/o Muralidhar Kharmate,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Hatgaon, Tal. Shevgaon,
District Ahmednagar

10. Suhas s/o Namdeo Walke,
Age : 29 years, Occu. Service,
Address : Zilla Parishad Primary School,
Vijaypur, Tal. Shevgaon,
District Ahmednagar

11. Bhausaheb s/o Jivraj Chande,
Age : 35 years, Occu. Service,
Address : Zilla Parishad Primary School,
Adgaon, Tal. Pathardi,
District Ahmednagar

12. Sharad s/o Jagannath Ghule,
Age : 30 years, Occu. Service,
Address : Zilla Parishad Primary School,
Indiranagar, Pathardi, Tq. Pathardi,
District Ahmednagar

13. Nana s/o Shankar Gadhave,
Age : 31 years, Occu. Service,
Address : Zilla Parishad Primary School,
Dolewasti, Tal. Pathardi,
District Ahmednagar

14. Subhash s/o Pandurang Sonawane,
Age : 33 years, Occu. Service,
Address : Zilla Parishad Primary School,
Mohoj (Bk.), Tal. Pathardi,
District Ahmednagar

15. Sweta Sukhdeo Wandekar,
Age : 33 years, Occu. Service,
Address : Zilla Parishad Primary School,
Javkhede (Kha.), Tal. Pathardi,
District Ahmednagar

16. Jayram s/o Shrirang Satpute,
Age : 30 years, Occu. Service,
Address : Zilla Parishad Primary School,
Tisgaon, Tal. Pathardi,
District Ahmednagar **PETITIONERS**

**VERSUS**

1. The State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32

2. The Zilla Parishad,
(Through its Chief Executive Officer),
Ahmednagar

3. The Education Officer,
Zilla Parishad (Primary),
Ahmednagar **RESPONDENTS**

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Mr. U.R. Awate, Advocate holding for Mr. S.B. Talekar, Advocate for the petitioners in W.P. No.4857/2014
Mr. Arvind G. Ambetkar, Advocate for the petitioners in W.P. No.7416/2014
Mr. S.N. Morampalle, A.G.P. For the respondent/State
Mr. S.T. Shelke, Advocate for respondent Nos.2 and 3
Mr. A.T. Kanawade, Advocate for respondent Nos.7 and 8

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**CORAM : T.V. NALAWADE AND**
**SUNIL K. KOTWAL, JJ.**

**DATE : 1st FEBRUARY, 2019**

**JUDGMENT (PER : SUNIL K. KOTWAL, J.) :**

Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties and learned A.G.P., heard finally.

2. These petitions are filed by the Assistant Teachers, serving in Primary Schools, run by Zilla Parishad, Ahmednagar, to quash the revised seniority list of the primary teachers prepared by Zilla Parishad, Ahmednagar for the purpose of awarding higher pay scale to the teachers imparting education to 5th to 7th standards. Direction has been sought to the respondents to award higher pay scale only to those the primary teachers in Zilla Parishad School Ahmednagar, who possess B.Sc./B.A. and B.Ed. qualification, as per the seniority list, prepared on 6th May, 2014. Quashment of the circular dated 16th October, 2016, issued by School Education and Sports Department to the extent of precedence over Govt, Resolution dated 11th August, 1999 and 21st May, 2004, is sought by the petitioners.

3. The only question for consideration before this Court is whether the primary Zilla Parishad teacher imparting education to standards 5th to 7th possessing B.A./B.Sc. and B.Ed. can be treated at par with teacher possessing B.A./B.Sc. and D.Ed. Qualification.

4. Heard Shri U.R. Awate, learned counsel for petitioners, A.G.P. For the State and Shri S.T. Shelke, learned counsel for respondent No.2 – Zilla Parishad.

5. Undisputedly, on 11th August, 1999, the State Government through its School Education Department issued Govt. Resolution regarding awarding higher pay scale to 25% primary school teachers imparting education to 5th to 7th standards in the school run by Zilla Parishad. Requisite eligibility of the teachers is also provided under this Govt. Resolution. Accordingly, Zilla Parishad, Ahmednagar prepared revised seniority list of the eligible primary teachers possessing B.A./B.Sc. degree with additional qualification B.Ed. or D.Ed.

6. Learned counsel for the petitioners objected this common seniority list on the ground that for

determining the seniority of eligible teacher for higher pay scale, the date of appointment of teacher is considered by the respondent No.2. They submit that the teachers acquiring B.A./B.Sc. with D.Ed. qualification cannot be equated with teachers with B.A./B.Sc. with B.Ed. qualification. They submit that B.Ed. qualification is certainly higher than D.Ed. Therefore, the seniority list of eligible teachers must be prepared on the basis of date of acquisition of B.Ed. qualification and not on the basis of date of appointment of teacher. They submit that even under the Right of Children to Free and Compulsory Education Act, 2009, higher minimum qualification is prescribed for the teachers imparting education to 5th to 8th standards. Sum and substance of their argument is that the seniority list prepared by Zilla Parishad, Ahmednagar is not in consonance with Govt. Resolution dated 11th August, 1999. They placed reliance on ***Vitthal s/o Fakruji Madavi and others Vs. Zilla Parishad, Chandrapur and others 2006 (2) Mh.L.J.124*** **and** ***Union of India and another Vs. Kartick Chandra Mondal and another (2010)2 SCC 422.***

7. Learned counsel for respondent No.2 submitted that for determining seniority list of the teachers

working in primary school, who are eligible for the higher scale under the abovesaid Govt. Resolution, the date of appointment is to be considered and not the date of acquisition of B.Ed. qualification. They submit that even under the Govt. Resolution dated 11th August, 1999, the teachers having B.A./B.Sc. with D.Ed. qualification are considered as eligible for the higher scale, subject to certain conditions. They have placed reliance on the judgment of the Division Bench of this Court in Writ Petition No. 2280/1997, “Sunil Gopalrao Pande and others Vs. the Amravati Zilla Parishad and others) ”, decided on 28th July, 2016.

8. We have carefully gone through the Govt. Resolution dated 11th August, 1999, issued by the Government for awarding higher pay scale to the primary school teachers imparting education to 5th to 7th standards. Such higher scale is to be given only to 25% teachers out of sanctioned strength of the teachers. Clause (5) of the Govt. Resolution envisages placement of primary teachers on higher pay scale of Rs.365-760 and the basis on which the same is to be done. Vide clause 5(1) trained primary teachers who have done graduation in Arts, Science having atleast one subject

taught in primary school and also who holds B.Ed. Degree in education, is to be appointed as trained graduate teachers. Vide sub-clause (2), the primary teachers who did not have graduation in concerned subject, were given time of five years after their appointment on the post of higher pay scale to acquire degree in such relevant subject. Vide sub-clause (3), similar teachers as in category (2), who have not acquired B.Ed. qualification are permitted to be placed in the higher pay scale on the condition that they would obtain degree in relevant subject as also B.Ed. qualification. Sub-clause (4) provides that even teachers serving in primary school having equivalent degree can be awarded higher scale provided they fulfill the other conditions and requirement. Sub-Clause (5) provides that the primary school teacher who were appointed prior to 1st October, 1970 and who have acquired degree prior to 17th April, 1979 are eligible for the higher scale of trained graduate teacher and the condition of obtaining B.Ed. Degree is not applicable to them.

9. Therefore, after going through clause (5) of the Govt. Resolution dated 11th August, 1999, it becomes

clear that the primary school teachers having degree of graduation and even D.Ed. qualification are not excluded in clause 5 sub clause (3) of the Govt. Resolution and only condition is imposed to obtain B.Ed. degree within five years from the date of their appointment on higher scale. Sub-clause (5) of clause 5 of the Govt. Resolution also indicates that the teachers appointed prior to 1st October, 1970, who acquired degree prior to 17th April, 1979, are totally exempted from obtaining B.Ed. degree. Thus, contention of learned counsel for petitioners is not at all acceptable that for awarding higher pay scale, the primary teachers having B.A./B.Sc. and D.Ed. qualification are not eligible. Sub-clause (1) of clause 5 of the Govt. Resolution, if read with sub-clause (3) of clause 5 of the Govt. Resolution, it becomes clear that the teachers having B.A./B.Sc. and B.Ed. degree are at par with teachers having B.A./B.Sc. and D.Ed. Diploma. Thus, the declaration sought by the petitioners regarding the Assistant Teachers holding B.A./B.Sc. and B.Ed. qualification cannot be granted.

10. Even clause 3 of above Govt. Resolution makes it clear that the award of higher pay scale is not promotion. The appointment on higher pay scale is to be

given in accordance with seniority in the cadre of primary teachers.

11. Otherwise also, in the case of ***Sunil Gopalrao Pande and others Vs. the Amravati Zilla Parishad*** (supra), Division Bench of this Court held that seniority list of primary teachers in Zilla Parishads needs to be prepared on the basis of their continuous officiation in the cadre of primary teachers i.e. as Assistant Teachers in respective Zilla Parishads. The seniority list needs to be prepared on the basis of date of joining the service only. This Court held that contention of petitioners in that case that seniority list of primary teachers in Zilla Parishad must be drawn on the basis of date of obtaining B.Ed. Qualification is, erroneous and misconceived. The Apex Court in ***Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust and others (2014) 13 SCC 219***, has also considered the similar point and held that though higher qualification may be essential for next higher post, it did not affect determination of seniority as an Assistant Teacher in primary school. Similar view is also taken by this Court in Writ Petition No.1289/2014 "Nitin Raghunath Amkar Vs. State of Maharashtra", decided on 4th February,

2019.

12. In view of this settled legal position, the ratio of ***Vitthal s/o Fakruji Madavi and others Vs. Zilla Parishad, Chandrapur and others*** (supra), is of no help to the petitioner. So also, in ***Union of India and another Vs. Kartick Chandra Mondal and another*** (supra), the ratio descendi is altogether different and not applicable in the case at hand.

13. Even recently, in Govt. Resolution dated 13th February, 2013, issued by the State Government, School Education and Sports Department, the requisite qualification of primary school teacher imparting education to 1st to 5th standards divisions is provided as higher secondary school and diploma in education. For the teachers imparting education to 6th to 8th standards, the minimum qualification is prescribed as degree and two years' diploma in education. This Govt. Resolution is issued after considering the provisions under the Right of Children to Free and Compulsory Act. We do not find anything irrationale in this Govt. Resolution and therefore, it cannot be quashed.

14. In the circumstances, we hold that seniority of

the teachers for awarding higher pay scale under Govt. Resolution dated 11th August, 1999 cannot be determined from the date of acquiring B.Ed. qualification but the seniority is to be determined from the date of appointment of the teacher. In the circumstances, none of the reliefs sought by the petitioners can be allowed. Petition being devoid of merit is dismissed. Civil Applications if pending any, are disposed of. Parties to bear their respective costs. Rule stands discharged accordingly.

Sd/-
**[SUNIL K. KOTWAL]**
**JUDGE**

Sd/-
[**T.V. NALAWADE**]
**JUDGE**

npj/wp4857-2014+