

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

**WRIT PETITION NO.11609 OF 2017
WITH CIVIL APPLICATION NO.5187 OF 2018
IN WRIT PETITION NO.11609 OF 2017**

1. Sant Dnyaneshwar Shikshan Prasarak Mandal, Tandulwadi
Tq. Paranda, District Osmanabad,
through its Secretary,
Mr. Krushnakant Shankarrao Deshmukh,
Age : 65 years, Occ: Agriculture
R/o Village Tandulwadi,
Tq. Paranda, Dist. Osmanabad
Email- ramkpatil2@gmail.com
2. Ram s/o Kalidas Patil,
Age : 48 years, Occ : Service- Head Master,
Shri. Sant Dnyaneshwar Multipurpose High School,
District Osmanabad
Email-ramkpatil2@gmail.com

... PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Department of School Education
Mantralaya, Mumbai
2. The Education Officer (Secondary)
Zilla Parishad
Osmanabad.
3. Satish s/o Chhagan Kharsade,
Age : 41 years, Occ. Service - Assistant Teacher,
Shri Sant Dnyaneshwar Multipurpose High School,
Tandulwadi, Tq. Paranda,
District Osmanabad

... RESPONDENTS

Mr. Balaji Laxmanrao Sagar Killariker, Advocate for the petitioners
Mr. A.V. Deshmukh, AGP for the respondent/State
Mr. S.S. Jadhavar, Advocate for respondent No.3.

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE, JJ.**

DATED : 07-08-2019

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel for the appearing parties finally by consent.

2. Aggrieved by communication dated 06-09-2017, petitioner is before this court questioning propriety, legality and validity of the same. Said communication, it appears, had been issued with a reference to an appeal-cum-representation by present respondent No. 3 before respondent No.2-The Education Officer (Secondary).

3. Reference to a few indisputed facts may be necessary in order to facilitate appreciation of the matter in controversy in its proper perspective.

There is no dispute on that petitioner No. 2 had been appointed as an Assistant Teacher by petitioner No. 1 by following due procedure, pursuant to Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981. An appointment order had been issued on 19-03-1990. Respondent No. 2 had approved said appointment on 26-10-1991.

During the course of his employment, petitioner had acquired bachelors degree in Arts in 2002 and subsequently had also completed B.Ed. degree course in 2007. Respondent No. 3, while had been appointed in June, 2006, had already been possessing graduate degree and also bachelor's degree in Education.

4. On 31-10-2005 erstwhile Head Master, Mr. Shriniwas Jyotiba

Bhandurge retired on superannuation. Before his retirement, resolution had been passed by Managing Committee on 25-10-2015 proposing appointment of petitioner No. 2 as the Head Master on the post as would be falling vacant on superannuation of Mr. Bhandurge.

5. Since petitioner No. 2 being the senior-most qualified teacher pursuant to Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981, appointment order had been issued in favour of petitioner No. 2 as Head Master with effect from 01-11-2015. Said appointment had also been approved by respondent No. 2 under order dated 14-12-2015.

6. Respondent No. 3 had then approached respondent No. 2 submitting appeal-cum-representation staking claim to the post of Head Master. Thereupon, it appears, petitioners were called upon to respond and petitioner No. 2 had filed detailed explanation and impugned order referred to above came to be passed.

7. Perusal of the impugned order would evince, the same has been issued on the premise that though petitioner No. 2 had been appointed in 1990, he had been working in D.Ed. scale since then and that he had acquired B.A degree in 2002 and B.Ed. in 2007 and accordingly proposal ought to have been submitted but had not been so submitted. Proposal for petitioner No. 2 had been fallacious. Having regard to schedule-F to MEPS Rules, respondent No. 3 would be senior to petitioner No. 2 in category 'C' and had directed

petitioners to submit proposal accordingly.

8. Learned counsel for the petitioner contends, category 'C' has two requirements so far as petitioner's qualifications are concerned. A person should possess graduation degree and if he has completed S.T.C/ Dip.Ed./Dip.T. (one year course) with 10 years post S.T.C etc. While the petitioner had graduated in 2002, he possessed both the requirements under category 'C' and had, thus, since 2002 been in category in 'C'. He purports to point out that respondent No. 3 who had been a graduate as well in possession bachelor's degree in education at the time of his appointment in 2006, he would be satisfying the criteria to be in seniority list under category 'C', but being a subsequent appointee, would be junior to petitioner No. 2 in category 'C'. He purports to submit that having regard to requirement under category 'C' of Schedule 'F' to the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 respondent No. 3 would not be said to exactly qualified to be in said category since he does not possess B.Ed training qualification and as holds B.P.Ed degree. He further purports to submit impugned letter/order has been cryptic without reflecting upon relevant aspects involved in the matter and obviously is a cursory consideration of facts, circumstances and legal position and, thus, is unsustainable.

9. In support of his submissions, he places reliance on a decision of a Division Bench of this Court in the case of *Pandurang Atmaramji Tijare Vs. State of Maharashtra & Ors.* reported in (1997(3) Mh.L.J.568) with particular emphasis on paragraphs No. 14,15 thereunder, reading, thus;

"14. Undoubtedly, petitioner and respondent No. 4 fall in 'C' Category as per the seniority list published in 1987 itself. It is the contention of the respondent No. 4 that petitioner Shri Tijare cannot be an Assistant Teacher in the Secondary school and he cannot be classified under Category 'C'. However, by reading the guidelines as set out hereinabove, it is clear that a Graduate with Diploma in Education or S. T. C. or Diploma in Teaching (One Year Course) with 10 years post S. T. C. etc. service also falls in Category 'C' on par with an Assistant Teacher of Secondary School with B.A. + B.Ed or its equivalent. A Graduate Teacher with Diploma in Education (D.Ed. 2 years course) is required to satisfy an additional condition of 10 years experience to fall in Category 'C' on par with an Assistant Teacher of Secondary School with B.A. plus B.Ed. The only question that needs to be considered is whether such experience of ten years is required to be of post B.Ed. period or post D.Ed. period. If such experience is held to be of post B.Ed. passing years, obviously petitioner did not satisfy the requirement to be in Category 'C' in the seniority list as shown in 1987 because he has passed his B.Ed. only in 1984 and he could not come under Category 'C' till 1994. However, if it is held that ten years experience is of post D.Ed. service, petitioner satisfies the requirement for being qualified under Category 'C' in the year 1980 itself because he has passed his D.Ed. examination in 1970 and joined as an Assistant Teacher on 1-7-1970 itself. **The wording of the above quoted guidelines in Schedule 'F' is material to decide the requirement of ten years service and it ends with the words with 10 years post S.T.C. etc. service. This indicates that the ten years experience should be post S.T.C. /Dip.Ed./Dip.T. (one year course). If it was to be the requirement that ten years experience should be after obtaining graduation degree or degree in bachelor of Education, then the wording should have been with 10 years post B.A. or B.Ed. etc. service. Such is not the case in the guidelines laid down in Schedule 'F' as set out hereinabove. It is, therefore, required to be held that requirement of ten years teaching experience for B.A./B.Sc./B.Com. with D.Ed. Teacher to fall in category 'C' has to be after passing D.Ed. examination and not after passing B.Ed. examination.** In the result, it will have to be held that the petitioner came in Category 'C' as an Assistant Teacher of Secondary School in the year 1980-81 itself. Whereas respondent No. 4 has been in the said Category right from his deemed date of joining, i.e. 22-8-1983 even with giving him the benefit of condoning the break in his service prior to his appointment on probation. The petitioner fell in C Category as soon as 1981 rules became operational.

(15) Reliance may be usefully placed on the judgment of this Court in the case of Madhav govindrao Budhe vs. Education Officer, Zilla panshad, Nagpur and others, 1994 Mh.L.J.42

(Sambre and Sirpurkar, JJ.) wherein a similar issue fell for consideration based on the provisions of Secondary Schools Code as was then prevailing and this Court held that principle of continuous officiation is squarely applicable to decide the seniority of trained Assistant Teachers falling in Category 'C' even if one has B. Ed. qualification and other has D.Ed. qualification so long as both of them are Graduates. Annexure (45) which was in relation to Rules 61 and 63 of the secondary Schools Code provided guidelines for fixation of seniority list of the Teachers in the non-Government Secondary Schools. Categories of teachers were also set out in Annexure (45) and Rule 3 therein read as under:

"The categories mentioned above represent the ladder of seniority and have been mentioned in descending order. The inter se seniority of teachers falling in any single category should be determined on the basis of their length of continuous service in that category, in a single School or in Schools run by the same management."

This Court while interpreting Rule 3 held that it is specifically mandated that the inter se seniority of the Teachers falling in any single category should be determined on the basis of their length of continuous service in that category in a single School or in different schools run by the same Management. While referring to the specific case of Madhav (supra), this Court observed as under:

"It is an admitted position that the petitioner was only a marticulate when he joined the service. He acquired diploma in teaching in the year 1962 and on 31-12-1965 he was an undergraduate trained Teacher. Thus, he belonged to Category 'D' at the time when he was confirmed. Now after the advent of the Secondary Schools Code, the petitioner, for the First time in the year 1967, became a graduate and thus stepped into Category 'C'. He stepped into this category because of the improvement of his qualifications. Category 'C' is applicable to those who hold degree of B.A./B.Sc./S.T.C./Dip.Ed. (one year course) or its equivalent. Therefore, in the year 1967, the petitioner belonged to Category 'C' being a graduate and having a diploma in teaching."

The ratio laid down in the case of Madhav (supra) by this Court is squarely applicable to the present case, which is under 1981 Rules wherein schedule F framed under Rule 12 is on par with Annexure 45 framed under Rules 61 and 63 of the secondary Schools Code.

A similar issue also came up for consideration before the Apex Court recently in the case of D. Stephen Joseph vs. Union of India and others, 1997 (4) SCC 753. The question for

consideration before the Apex Court was regarding counting of service after obtaining graduation degree in Engineering for the purpose of promotion to the post of assistant Engineer in respect of diploma holder engineer holding the post of Junior Engineer and it was held that requirement of three years experience does not commence after obtaining graduation degree in Engineering and even the experience prior to obtaining degree in engineering will have to be counted for deciding the eligibility for promotion. In the case before the Supreme Court, the Central Administrative tribunal, Madras Bench by the impugned order had held that the respondents, who were holding the posts of Junior Engineers and had three years regular service on that grade and also possessed degree in Electrical Engineering would be entitled to get such promotion to 50% reserved quota and their experience of three years was not to be reckoned from the date of acquisition of degree in electrical Engineering. Upon challenge of the said order, the Apex Court upheld the order of the tribunal and confirmed that the experience of three years was not required to be reckoned from the date of acquisition of degree in Electrical engineering."

10. He also places reliance on a decision of the Apex court in the case of *Viman Vaman Awale Vs. Gangadhar Makhriya Chartiabale Turst and Others* reported in (2014) 13 Supreme Court Cases 219 and refers to paragraph No. 14 thereunder:

"14. When we read the aforesaid Rules in the context of the present case, the position which emerges is that for appointment of a Primary Teacher, the qualification that is stipulated in Schedule-B is that he or she should have passed SSC examination or matriculation examination or lokshala examination or any other examination recognised as such by Government and the Primary Teachers Certificate examination or Diploma in Education examination, or a Diploma in Education (per-primary of two years' duration). Thus, among various alternate qualifications which are prescribed for appointment to the post of Primary School Teachers, one of the prescribed qualification is Diploma in Education Examination (D Ed). Therefore, a person holding this qualification would be treated as satisfying the qualification stipulated in Rule 6. As a consequence, he would be treated as 'Trained Graduate', as defined in Rule 2(1)(j), which means a person possessing the qualifications mentioned in sub-clauses (i) to (vi) of clause (1) of item II in Schedule B. "

He submits, position would emerge that the situation as in

present case is no longer *res integra* and has been decided upon in favour of petitioners.

11. On the other hand learned counsel Mr. S.S. Jadhavar purports to have a different perspective on schedule-F, category 'C', concerned with seniority amongst the teachers. He submits that category-C basically requires graduation as a predominant qualification and having regard to other categories particularly E, F and G, it would emerge that the experience of 10 years duration would have to be construed as after graduation and not before. He submits that it is not disputed that petitioner had acquired B.A. degree in 2002 and would complete tenure of ten years thereafter only in 2012 and, as such, he will be below respondent No. 3 in the seniority list under category 'C', since respondent No.3 had already been in category 'C' right from inception i.e. 2006 and petitioner would, thus, be junior to respondent No. 3 in the seniority list. Petitioner would be eligible to be inducted in category 'C' only after 10 years duration after attaining graduate degree.

12. Learned counsel also submitted that going by Explanation under category 'D', it would be discernible eligibility to be in a category would have to be from acquisition of all the requirements thereunder and as such for category 'C' it would have to be construed accordingly.

13. He purports to submit that paragraph No. 4 relied on and referred to by learned counsel on behalf of petitioners had not been dealing exactly with present situation. What has to be considered in here is, whether

experience after acquisition of B.A. degree would be necessary in the given case. He, therefore, urges not to indulge into request made under the writ petition.

14. After hearing learned advocates for the parties as aforesaid, it would be germane to reproduce relevant extract of Schedule "F" of MEPS Rules, 1981 as under-

SCHEDULE 'F'

1. *Guidelines for fixation of seniority of teachers in the primary schools: -*

The Seniority of primary school teachers in Primary Schools shall be based on continuous officiation counted from the date of acquiring the educational qualification as prescribed under Schedule B' appended to these rules.

2. *Guidelines for fixation of seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College Classes attached to secondary schools and Senior College:*

For the purpose of Fixation of Seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College classes attached to Secondary Schools the teachers should be categorized as follows:

Category A: Heads of Secondary Schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of their appointments to the respective posts.

Category B: Heads of Secondary Schools having an enrolment of students above 500, Principals of Junior Colleges of Education having four or less divisions and Assistant Heads of Secondary Schools having more than 20 classes on the basis of their appointments to the respective posts.

Category C: Holders of- MA/MSc/MCom, BT/BEd, or its equivalent; or BA/BSc/BCom. BT/BEd, or its equivalent; or BA/Bsc/ BCom. DipT (old two years course); or BA/Bsc/ BCom., STC /DipEd/ DipT. (One year course) with 10 years post STC

etc. service

[[B A or its equivalent Plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service [after obtaining both academic and training qualification]]

Category D: Holders of - BA/BSc/BCom, STC/DipT (One year course) Senior or Junior Hindi Shikshak Sanad or its equivalent

[Explanation- On and after the date of publication of this notification in the Official Gazette, and without affecting the promotion made until that date, the inter se seniority of teachers with qualification Senior Hindi Shikshak Sanad or Junior Hindi Shikshak Sanad in service should be fixed in Category 'C' with reference to the date of their acquiring both the qualification i.e. B.A. or its equivalent and the Senior (5 years) or Junior Hindi Shikshak Sanad (10 years) as the case may be my the teachers concerned.]

Category E: SSC, STC/ DipEd/ DipT (One year course) Senior or Junior Hindi Shikshak Sanad or its equivalent

Category F: Untrained Graduates or holders of equivalent qualification

Category G: Untrained Matriculates or holders of equivalent qualification

Category H: All teachers other than those mentioned in categories A to G.

15. Category 'C' under schedule-F specifically refers to that a person shall be a graduate and if he is S.T.C. /Dip. Ed./ Dip. T. (one year course) with 10 year post S.T.C etc. service. In this respect, in paragraph No.14 in the

Pandurang's case (Supra) it has been specifically observed as under,

"If it was to be the requirement that 10 years experience should be after obtaining graduation degree or degree in Bachelor of Education, then the wording should have been "with 10 years post B.A. or B.Ed. etc service. Such is not the case in the guidelines laid down in Schedule-F as set out hereinabove. It is therefore, required to be held that requirement of ten years teaching experience for B.A./B.Sc./B.Com with D.Ed. Teacher to fall in category 'C' has to be after passing D.Ed. examination and not after passing B.Ed. examination".

16. Though arguments are advanced referring to Explanation to category 'D', its perusal would show it specially speaks about category 'D' persons. Apart from that category 'C' sets out specific criteria for inclusion thereunder requiring experience post S.T.C. etc. This, requirement would not be shadowed by Explanation to other category. When there is specific provision, explanation of other category would not be able to govern the specific requirement under specific provision.

17. It will have to be noted that category "C" specifically speaks of post graduate and/or graduate qualifications with S.T.C./Dip. Ed/Dip. T. (one year course) with ten years post S.T.C. etc. service.

18. Most importantly, there is no dispute about training qualification of petitioner No. 2. It was not the case, petitioner No. 2 being not possessed of S.T.C./Dip. Ed/Dip. T. (one year course) with ten years post S.T.C. etc. service referred to under category 'C'. It had never been the case of respondents that petitioner No. 2 is not qualified to be in category 'C'. As a matter of fact case of respondents, is petitioner would qualify to be category 'C' albeit junior to respondent No. 3. Nor the order shows any such

consideration. Submissions with respect to explanation to category 'D' are absolutely off the cuff and un-looked for submissions by respondent No. 3. Nobody had objected to qualifications of petitioner including respondent No. 3 on that count. Petitioner even otherwise has acquired B.Ed degree in 2007. In the circumstances, cumulatively, on the scale, case of petitioner No. 2 would outweigh that of respondent No. 3 in present case.

19. Situation in present matter stands already trodden upon by this court as referred to by learned advocate for the petitioner in *Pandurang's* case (*supra*) and observations in paragraphs No. 14 and 15 thereunder and treatment being given to the guidelines in Schedule "F" in respect of category "C" would prevail over the submissions on behalf of respondent No. 5. Submissions with reference to Explanation in category 'D' under Schedule "F" would not tend to have any efficacy undoing present situation and the exposition given in respect of category "C", particularly, about the experience would not be after acquiring graduation, but would be 10 year post S.T.C./Dip. Ed/Dip. T. (one year course) service etc. and the same would be relevant. In, paragraph No. 16 from *Pandurang's* decision (*supra*) it is observed;

"16. In the instant case also, the requirement of ten years' service is specifically provided to be counted post D.Ed/S.T.C./Dip.t. and not post B.A. or B.Ed. examination. On the same analogy as held in the case of D. Stephen referred to hereinabove, the requirement of ten years' experience as provided in Schedule 'F' of 1981 Rules is to be read and interpreted."

20. In the present case while it is undeniable that petitioner had acquired degree a requisite qualification to be in category 'C' in 2002, since

having already possessing 10 years experience post S.T.C. etc. he had been in category 'C' since 2002. It is not denied that respondent No. 3 had been inducted in 2006. Petitioner No.2 indeed already had been in category 'C' well before. He is, thus, senior to respondent No. 3 in 2006 in category 'C'. In the circumstances, having regard to Rule 3, petitioner No. 2 had been possessing the requirements thereunder to be appointed as Head Master. In view of aforesaid, we consider that impugned communication is not proper, is unsustainable and is liable to be set aside.

21. Impugned communication dated 06-09-2017 is quashed and set aside. Petition is granted in terms of prayer clause (B). Writ petition, accordingly is allowed. Rule made absolute in aforesaid terms.

22. The petition is decided with reference to on scheduled-F, category 'C' and rest of the controversy raised in respect of management is not touched upon.

23. Writ petition is disposed of.

24. In view of disposal of writ petition, civil application stands disposed of.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]