

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12978 OF 2018

Balasaheb s/o Dattatraya Guldagad and Ors. ... Petitioners

Vs

The State of Maharashtra through its
Secretary, School Education and Sports
Department and Ors. ... Respondents

Mr.P.R. Katneshwarkar i/b Mr.A.G. Ambetkar for the Petitioners.

Mr.S.B.Kalel, AGP for the State.

**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

FRIDAY, 25th JANUARY, 2019

P.C. :

1 We have heard both sides.

2 We have perused the writ petition and the annexures
thereto.

3 We have also perused the affidavit in reply of the
State.

4 The writ petitioners are seeking a relief that the
Government Resolution dated 10th June, 2005 to the extent of

Clause 8 be struck down and the Government be directed to provide for reservation to the extent of 25% of the posts of Assistant Teachers for the non teaching qualified employees in a private school.

5 It is evident that no quota or percentage of seats can be carved out for non teaching staff unless there is a specific provision in the rules. Even if this is to be taken as a promotional avenue for the non teaching staff and they become eligible for promotion to the post of teacher, still for that to be introduced, a specific rule will have to be made or the existing rules will have to be amended. That has not been done. All that the impugned Government Resolution through the said clause provides for is that in the event such of the qualified non teaching employees become eligible for promotion as teachers and they are appointed as such, then, their past service should be protected to the extent that it can be counted or taken into consideration for pensionary benefits. That is not to cause a loss or disadvantage or modifying their service conditions to their detriment. This is distinct from carving out a quota or percentage of seats or percentage of teaching posts for non teaching employees. That is the legislative

prescription and the Court in exercise of its writ jurisdiction cannot direct the respondents to make particular statute or to amend the statute in force.

6 The entire writ petition is misconceived and is, therefore, dismissed. There will be no order as to costs.

[M.S.KARNIK, J.]

[S.C.DHARMADHIKARI, J.]