

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO. 174 OF 2008
IN
MISC. CIVIL APPLICATION NO. 1002 OF 2006
IN
WRIT PETITION NO. 1339 OF 1996
AND
LETTERS PATENT APPEAL NO. 175 OF 2008
IN
MISC. CIVIL APPLICATION NO. 1003 OF 2006
IN
WRIT PETITION NO. 1343 OF 1996

L.P.A.NO.174/2008.

Suresh S/o. Keshavrao Varbhe,
Aged 55 years, Occupation : Service,
R/o. At Post Mohgaon (Zilpi),
Tq. Hingna, District : Nagpur.

.... **APPELLANT.**

// VERSUS //

1. P. M. Tamhankar,
Assistant Teacher,
Dr. D.W. Durugkar's Adarsha
Bharat Vidyalaya, Mohgaon,
Tq. Hingna, District : Nagpur.
2. P. D. Urkande,
Assistant Teacher,
Dr. D.W. Durugkar's Adarsha
Bharat Vidyalaya, Mohgaon,
Tq. Hingna, District : Nagpur.
3. The Education Officer(S),
Zilla Parishad, Nagpur.
4. Bharat Education Society,
through its Secretary,
Smt. Parsodkar, C/o. Bharat
Mahila Vidyalaya, Mahal,
Nagpur.

5. The Head Master,
Dr. D.W. Durugkar, Adarsha
Bharat Vidyalaya, Mohgaon,
Tq. Hingna, District : Nagpur.

.... **RESPONDENTS.**

Shri A.D.Mohgaonkar, Advocate for Appellant.
Shri D.T.Shinde, Advocate for Respondent No.1.
Shri I.N.Choudhary, Advocate for Respondent No.2.
Shri T.A.Mirza, A.G.P. for Respondent No.3.
Shri S.B.Dhande, Advocate for Respondent Nos. 4 & 5.

WITH

L.P.A.NO.175/2008.

Sarika W/o. Suresh Varbhe,
(maiden name Ku.Sharda D/o. Govindrao
Ugemuge), Aged 47 years, Occupation : Service,
R/o. At Post Mohgaon (Zilpi),
Tq. Hingna, District : Nagpur.

.... **APPELLANT.**

// VERSUS //

1. P M. Tamhankar,
Assistant Teacher,
Dr. D.W. Durugkar's Adarsha
Bharat Vidyalaya, Mohgaon,
Tq. Hingna, District : Nagpur.
2. P D. Urkande,
Assistant Teacher,
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Bharat Vidyalaya, Mohgaon,
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Mahila Vidyalaya, Mahal,
Nagpur.

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Dr. D.W. Durugkar, Adarsha
Bharat Vidyalaya, Mohgaon,
Tq. Hingna, District : Nagpur.

.... **RESPONDENTS.**

Shri A.D.Mohgaonkar, Advocate for Appellant.
Shri D.T.Shinde, Advocate for Respondent No.1.
Shri I.N.Choudhary, Advocate for Respondent No.2.
Shri T.A.Mirza, A.G.P. for Respondent No.3.
Shri S.B.Dhande, Advocate for Respondent Nos. 4 & 5.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : DECEMBER 09, 2020.

ORAL JUDGMENT : (Per : Z.A.Haq, J.)

1. Heard.
2. Both these Letters Patent Appeals can be disposed by common judgment as the facts which are required to be referred in both the appeals are same and the point required to be dealt with is also same.
3. The point which arises for consideration is:

“What is the criteria for nominations from under graduate pay-scale to 25% posts in graduate pay scale in non-government secondary schools?”

4. Suresh Keshavrao Varbhe (appellant in L.P.A. No. 174 of 2008) was appointed as Assistant Teacher in primary school administered by the respondent No.4-Society on 23rd July 1979. Undisputedly, the school was having classes up to matric and was receiving grants from the State Exchequer. At the time of appointment, appellant Suresh had qualified B.Sc.-I and was holding Diploma in Education (Dip.Ed.) from Nagpur University, the Diploma course being of one year. Appellant-Suresh acquired graduation qualification i.e. Bachelor of Arts (B.A.) in February 1988 and acquired B. Ed. in 1993.

Ms Sarika Suresh Varbhe (appellant in L.P.A. No. 175/2008) was appointed as Assistant Teacher in primary school administered by respondent No.4-society on 1st July 1985. At the time of appointment she was S.S.C, Dip.Ed from Nagpur University of one year. Appellant-Sarika acquired graduation qualifications i.e. Bachelor of Arts in October 1987 and acquired B. Ed. in 1994.

5. Shri P.M.Tamhankar (respondent No.1 in both the appeals) was appointed as Assistant Teacher in the primary school administered by respondent No.4-Society on 17th July 1979 and at that time he was S.S.C., D.Ed. (Two Years). Respondent-Tamhankar acquired graduation qualifications i.e. Bachelor of Arts in April 1988 and B. Ed. in 1992.

Shri P.D.Urkande (respondent No.2 in both the appeals) was appointed as Assistant Teacher in the school administered by respondent No.4-Society on 13th July 1982 and at that time he was S.S.C., D.Ed. Respondent-Urkande acquired graduation qualifications i.e. Bachelor of Arts in October 1988 and B. Ed. in 1994.

6. Undisputedly, one post in 25% quota for graduate teachers was available in the school administered by respondent No.4-Society since 1979-80 and one post in 25% quota for graduate teachers was available in the school administered by respondent No.4-society since 1982-83. On 31st October 1988, the Headmaster of the school had forwarded proposal to the Education Officer (Secondary) for nomination of both the appellants in the two posts available for graduate teachers in 25% quota. By communication dated 6th September 1989, the Education Officer (Secondary) returned the proposal and directed the management to nominate the respondent Nos. 1 and 2 in the two posts available in 25% quota for graduate teachers. After a prolonged litigation, the learned single Judge decided Writ Petition No.1339 of 1996 and Writ Petition No.1343 of 1996 by a common judgment dated 7th September 2006 and held that the appellants in both these appeals were entitled for nomination in the two posts available in 25% quota for graduate teachers. Directions were given to the Education Officer (Secondary) to confer the benefits on the appellants of both these appeals accordingly.

7. Miscellaneous Civil Applications were filed by respondent No.1-Shri P.M.Tamhankar in both the writ petitions, seeking review of the common judgment dated 7th September 2006. These Miscellaneous Civil Applications are decided by the learned Single Judge by the common judgment dated 13th December 2006. The Miscellaneous Civil Applications came to be allowed and the Writ Petitions and the claim of the appellants came to be dismissed. Being aggrieved by the judgment passed on review applications, these appeals are filed.

8. Respondent Nos.1 and 2 rely on the circular dated 27th April 1981 (Page No.103 of L.P.A. No.174/2008) to oppose the claim of the appellants and support their contention. According to the respondent Nos. 1 and 2, the nomination for the graduate pay-scale in 25% quota has to be made as per the seniority in the primary school and respondent No.1-Shri P.M.Tamhankar being senior to appellant-Suresh on the basis of continuous officiation in the post, he is entitled for being nominated in one of the post of graduate teacher in 25% quota. According to respondent No.2-Shri P.D.Urkande, he being senior to appellant-Sarika Varbhe, he would be entitled for being nominated for the second post of graduate teacher in 25% quota.

9. After considering the rival submissions and examining the scheme as per the circular dated 27th April 1981, we are not in agreement with the submissions made on behalf of the respondent Nos.1 and 2. It is relevant to state that even if the submissions made on behalf of the respondent Nos.1 and 2 are accepted, respondent No.2-Shri P.D.Urkande will not get any benefit as respondent No.1-Shri P.M.Tamhankar and appellant-Shri Suresh Varbhe were senior to him. In any case, we hold that the criteria for nomination in the post for graduate teacher in 25% quota will have to be on the basis of the availability of the post and acquisition of graduation qualifications by the teacher working in the school.

10. As recorded earlier, in the present case, one post for nomination of graduate teacher in 25% quota was available in the school since 1979-80 and one post was available since 1982-83 and therefore, as soon as appellant-Sarika Varbhe acquired graduation qualifications in October 1987 she became eligible for being nominated on one of the post and as soon as appellant-Suresh Varbhe acquired graduation qualification in February 1988 he became eligible and entitled for being nominated in the second post. Respondent No.1-Tamhankar and respondent No.2-Urkande had not acquired the graduation qualifications when appellant-Sarika and appellant-Suresh acquired those qualifications and therefore, it would be fallacious to uphold

the claim of respondent No.1-Tamhankar and respondent No.2-Urkande for nomination in those posts and the candidates i.e. appellants in both the appeals were also available with the required qualifications. It cannot be said that the appellants who were eligible for being nominated in the two posts should have been denied their entitlement, waiting for acquisition of graduation qualifications by the respondent No.1-Tamhankar and respondent No.2-Urkande.

11. In view of the above, we find that the impugned judgment is unsustainable. Hence, we pass the following order:

- i) The impugned judgment passed in Misc.Civil Application No.1002 of 2006 and Misc. Civil Application No.1003 of 2006 on 13th December 2006 is set aside. The judgment passed by learned single Judge in Writ Petition No. 1339 of 1996 and Writ Petition No. 1343 of 1996 on 7th September 2006 is restored.
- ii) Respondent No.3-Education Officer shall make available all the benefits to the appellants in both these appeals, treating that the appellants in both these appeals are entitled for the graduate pay scale from 6th September 1989. The benefits shall be made available to the appellants in both these appeals till 25th March 2020, failing which the respondent No.2-Education

Officer shall pay interest on the amount receivable by the appellants in both these appeals. the interest being chargeable @ 9% per annum from 1st October 2006 till the amount is paid to the appellants and in such case, the amount of interest shall be payable by the person holding the post of Education Officer (Secondary), Zilla Parishad, Nagpur.

- iii) The facts on record show that the management has acted rightly and had sent proposal for nomination of the appellants in both these appeals in the two posts in 25% quota for graduate teachers. However, arbitrarily and without any reason and justification, the Education Officer (Secondary) rejected that proposal and without any basis recommended that the respondent No.1 and respondent No.2 should be nominated in those two posts. The appellants as well as respondent Nos. 1 and 2 have retired on attaining the age of superannuation.

In these facts, we direct respondent No.3-Education Officer (Secondary) to pay costs of Rupees Ten Thousand to Shri.Suresh Keshavrao Varbhe (appellant in L.P.A.No. 174/2008) and Rupees Ten Thousand to Ms Sarika Suresh Varbhe (appellant in L.P.A. No.175/2008).

The amount of costs shall be paid to the appellants by Demand Draft and compliance report shall be filed by the Respondent No.3-Education Officer (Secondary) on record of this appeal till 25th March 2021.

- iv) Respondent No.3-Education Officer (Secondary) shall recover the amount of costs from the Education Officer who had issued the communication dated 6th September 1989 (Page No.32 of L.P.A. No.174/2008) if that concerned Education Officer has not retired.

Both the Letters Patent Appeals are **allowed** in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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