

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8243 OF 2019

1. The State of Maharashtra through
The Additional Chief Secretary,
School Education & Sports Department,
Mantralaya, Mumbai 400 032
2. The Commissioner,
Education, Maharashtra State,
Central Building, Ani Bezant Road,
Pune 411 001
3. The Secretary,
Maharashtra Public Service Commission,
Mumbai 400 001 ... Petitioners

Versus

1. Shri. Shrikant Dhondu Sutar,
Age : 43, Occupation : Zilla Parishad Service,
Working as Asst. Teacher,
Address : G-6/1, Manapa Vasahat,
Shahu Nagar, Jasmin Mill Road,
Mahim (East), Mumbai – 400 017
2. Shri.Namdev Kundlik Gaikwad
Age: 42, Occupation : Zilla Parishad Service.
Working as Asst. Teacher,
Address : Flat No.2, Dnyanamrut Hsg. Society,
At Post Devachi Alandi,
Tal. Khed, Dist. Pune

3. Smt. Rohini Shivaji Gavhane,
Age : 41, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address : B-2/7, Narayan Hut Society,
Jay Ganesh Samaraja, Bhosri,
Pune 411 039
4. Smt. Sharmila Dharpal Nandre,
Age : 45, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address : At Post Koyali, Tal. Shrirol
Dist. Kolhapur 412 210.
5. Shri. Rajram Narayan Chore,
Age: 44, Occupation : Zilla Parishad Service,
Working as Asst. Teacher,
Address: Shivkripa Shikshan Society,
Ramling Road, Tal. Shirur,
Dist. Pune 412 210
6. Shri.Dattatraya Dagadu Gaddare
Age: 47, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address: Jambhali Mala,
Post Tandobachi Wadi,
Tal. Shirur, Dist. Pune 412 210
7. Shri Balasaheb Dhondiba Aswale,
Age : 46, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address : Nimgaon Bhogi, Tal. Shirur,
Dist. Pune 412 220
8. Shri. Sandeep Ramlal Gadhari,
Age: 41, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address: Matruchhaya,

Kartavya Hospital Road,
Kolegaon, Post. Nilje, Tal. Kalyan,
District Thane 421 204.

9. Shri. Daulat Bhikaji Koyande,
Age : 41, Occupation : Zilla Parishad Service,
Working as Asst. Teacher,
Address: 04/31, Hirji Govindaji Chal,
T.J.Road, Zakeriya Bandar, Shivadi,
Mumbai 402 705.
 10. Shri Vasant Dinkar Raskar,
Age: 46, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address : D-2, 2/1, Saptrang Society,
Sector -7, Sanpada,
Navi Mumbai – 402 705
 11. Shri. Ramdas Tathoba Gend,
Age: 44, Occupation: Zilla Parishad Service,
Working as Asst. Teacher,
Address : PL-5/10/5, Sector -17,
Cidco Colony, Navin Panvel,
Dist. Raigad 410 206
 12. Block Development Officer,
Panchayat Samittee Kalyan
 13. Chief Executive Officer,
Zilla Parishad, Kalyan
- ... Respondents

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Mr.Ram Apte, Senior Advocate, Special Counsel, with Mr. N.K. Rajpurohit, AGP for the Petitioners.

Mr. Narendra V. Bandiwadekar, Senior Advocate with Mr. Vinayak Kumbhar i/b. Ms. Ashwini N. Bandiwadekar for the Respondents.

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**CORAM : NITIN JAMDAR &
SMT. MANJUSHA DESHPANDE, JJ.**

DATE: 15 SEPTEMBER 2023

JUDGMENT : (*Per Nitin Jamdar, J.*)

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. The three Petitioners are State of Maharashtra through the School Education & Sports Department; Commissioner of Education; and Maharashtra Public Service Commission. The Respondents are working as primary teachers in the Respondent Zilla Parishad Schools.

3. The Petitioners have challenged the judgment and order dated 4 October 2018 passed by the Maharashtra Administrative Tribunal, Mumbai, (the Tribunal), allowing the Original Application No. 634 of 2017 filed by the Respondents and the order dated 1 February 2019 passed by the Tribunal rejecting the Review Application No. 21 of 2018 filed by the Petitioners.

4. The subject matter of the Petition is the recruitment to the post of Deputy Education Officer in the State of Maharashtra. The recruitment to this post is governed by the *"Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted)(Recruitment) Rules, 2016"*. Hereinafter referred to as the Deputy Education Officer (Recruitment) Rules, 2016. These Rules are framed by the State Government in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. To provide context to the narration of facts, the relevant clauses of these Rules are reproduced below.

"1. These rules may be called the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) (Recruitment), Rules, 2016.

2. In these rules, unless the context otherwise requires,-

(a) ..

(b) ..

(c) ...

(d) "Deputy Education Officer" means the Deputy Education Officer in the Maharashtra Education Service, Group-B and it includes the posts mentioned in Schedule A appended to these rules;

(e) “District Technical Service Group-C” means the District Technical Service, Group-C under the control of Zilla Parishad and it includes the posts mentioned in Part II of Schedule B appended to these rules;

(f)

(g) “Limited Departmental Competitive Examination” means the competitive examination conducted by the Maharashtra Public Service Commission amongst the eligible candidates for promotion on the post of Deputy Education Officer.

(h) “Maharashtra Education Service, Group-C” means the Maharashtra Education Service, Group-C which includes the posts included in Part I of Schedule B appended to these rules;

(i) “Schedule” means the Schedule appended to these rules.

3. Appointment to the post of Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) shall be made either, -

(A) (1) by promotion of a suitable person on the basis of seniority, subject to the fitness, from amongst the persons holding the post of Maharashtra Education Service, Group -C, having not less than five years of regular service in that post;

and

(2) by promotion of a suitable person on the basis of seniority, subject to the fitness, from amongst the persons holding the post of District Technical

Service, Group-C having not less than five years of regular service in that post;

or

(B)(1) by selection of a suitable person on the basis of merit list prepared on the basis of Limited Departmental Competitive Examination to be held by the Commission from amongst the persons holding the post of Maharashtra Education Service, Group-C, having not less than five years of regular service in that post;

and

(2) by selection of a suitable person on the basis of merit list prepared on the basis of Limited Departmental Competitive Examination to be held by the Commission, from amongst the persons holding the post of District Technical Service, Group-C, having not less than five years of regular service in that post ;

or

(C) by nomination on the basis of the result of Competitive Examination held by the Commission, from amongst the candidates who,-

(i) are not more than thirty eight years of age; relaxation of five years in case of candidates belonging to the reserved categories;

and

(ii) possess a degree of any statutory university or any other qualification declared by the Government to be equivalent thereto”.

(emphasis supplied)

Part -II of Schedule- B appended to the Deputy Education Officer (Recruitment) Rules, 2016, reads thus :

<u>Part –II</u>	
<i>District Technical Service, Group-C (Non gazetted)</i>	
<i>Sr. No.</i> <i>(1)</i>	<i>Designation</i> <i>(2)</i>
1.	<i>Assistant Teacher</i>
2.	<i>Head Master (Non Gazetted)</i>
3.	<i>Lecturer (Junior Colleges)</i>
4	<i>Extension Officer (Junior)</i>
5.	<i>Secondary Teacher</i>

Under these Rules, the appointment to the post of Deputy Education Officer is made by three methods. One, by way of promotion. Second, selection of a suitable person on the basis of a merit list prepared on the basis of limited departmental competitive examination. Third, by way of nomination. This, in short, is the scheme of these Rules. The appointment to the post of Deputy Education Officer by selection under 3(B)(2) on the basis of limited departmental competitive examination of persons holding the post of District Technical Service, Group-C Clause is the subject matter of this Petition.

5. The question raised in this Petition is whether the Respondents- Primary Teachers working in the Primary Schools of the Zilla Parishads are entitled to participate in the limited departmental competitive examination of the year 2017 in the recruitment process for the post of Deputy Education Officer, State of Maharashtra.

6. On 17 May 2017, a Circular was issued by the School Education and Sports Department of the State of Maharashtra, notifying the recruitment to the post of Deputy Education Officer. An advertisement was issued wherein 92 posts were advertised. A limited departmental competitive examination was to be conducted on 13 August 2017 by the Maharashtra Public Service Commission (MPSC) pursuant to Circular dated 17 May 2017. As regards the eligibility, reference was made to the District Technical Service, Group-C. This was in consonance with Part II of Schedule B appended to the Deputy Education Officer (Recruitment) Rules, 2016. On 18 May 2017, the Deputy Secretary of the Government of Maharashtra wrote to the Commissioner (Education) in respect of this limited departmental competitive examination that queries were received and instructions were given that only those who fall in Maharashtra Education Service, Group-C and District Technical Service, Group-C can appear for the for the limited departmental competitive examination-2017 (competitive examination). It was made clear that those who are working in the primary schools as teachers cannot appear for this competitive examination. Based on this communication dated 18 May 2017, the Commissioner (Education) wrote to all Chief Executive Officers of Zilla Parishads on 19 May 2017, and further, the Block Development Officers informed the Respondents that they will not be permitted to appear for the competitive examination. The last date for filling up the

application form was 6 June 2017, and the date of examination was 13 August 2017.

7. The Respondents, who are working as teachers in the primary schools of the Zilla Parishad, approached the Tribunal with Original Application No. 634 of 2017. Respondents challenged the stand of the State that teachers in Primary Schools of Zilla Parishad are not eligible to apply for the limited departmental competitive examination 2017 held for appointment to the post of Deputy Education Officer. The Respondents made a grievance that while some of the Respondents could file their application forms; however, others could not do so because of the impugned communication. The Respondents contended before the Tribunal that the pay scales of Primary Teachers possessing graduation and degree in education with the pay scale of Assistant and Secondary School Teachers is the same. This fact of equal pay proves that the post of Primary Teacher possessing the requisite qualification and equal pay scale renders the class of Primary Teacher equal to the class of Secondary School Teacher/ Assistant Teacher for present recruitment. The Respondents further contended that the Petitioner-State is practicing hostile discrimination, and it has arbitrarily rejected the Respondents' candidatures and has denied equal opportunity of employment to the post of Deputy Education Officer. The Respondents initially sought a prayer to set aside the above

communications and a declaration that the Respondents are also eligible for the competitive examination as under:

“a) The Hon. Tribunal be pleased to call for the record and proceedings of the impugned communication dated 18.05.2017 (Exh. A-2) issued by Respondent No.1, letter dated 19.05.2017 (Exh. A-3) issued by Respondent No. 3, and the order dated 27.06.2016 (Exh. A-1) issued by Respondent No. 4, in consequences of those communications and after examining its legality and validity those letters and order the same may please be hold as illegal and further be pleased to quash and set aside the letters and order.

b) The Hon. Tribunal further be pleased to hold and declared that the persons holding the posts as stated in the Part-II of the Schedule -B of the Rule-2016, i.e. the Applicants are also eligible along with the persons holding the posts in MES Group-C and DTS Group-C services, for the Limited Departmental Competitive Examination-2017.

c) The Hon. Tribunal be pleased to direct the Respondent No. 1 to issue the directions to the all concern authorities including Chief Executive Officers of Zilla Parishad to issue the necessary permission to the Applicants to appear for the examination namely Limited Departmental Examination-2017 for the post of Maharashtra Education Services, Group-B (Administrative Branch), if necessary by extending the last date of submission of application form and examination”.

Later, this prayer was amended as under:

“The Hon. Tribunal be pleased to hold and declare that the exclusion of Primary Teachers and specially degree holder primary teachers like Applicants from the Section 3 (B) (2) r/w Schedule-B Part II of the Rules, namely Dy. Education Officer in Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) Recruitment Rules, 2016 is arbitrary and further be pleased to hold declare that the applicants are eligible for appearing to the Departmental Competitive Examination- 2017 and for getting selection according to their merit”.

Thus the prayer was substituted for a declaration that the exclusion of Primary Teachers from Section 3 (B) (2) r/w Schedule -B Part II of the Rules, namely, the Deputy Education Officer (Recruitment) Rules, 2016, is arbitrary and the Respondents are eligible for appearing to the limited departmental competitive examination- 2017 and for getting selection according to their merit.

8. The Petitioners-State of Maharashtra and MPSC opposed the Applications. They contended that the Primary Teachers do not fall in the District Technical Service and, hence, are not eligible to sit for the examination under the Deputy Education Officer (Recruitment) Rules, 2016, and this non-inclusion is a conscious omission.

9. The Tribunal heard several similar applications together. The Tribunal framed issues for consideration. First- which is the class of

employees serving under the State Government and under the Zilla Parishad who fall within the compass of eligibility as contemplated by Rule 3 of the Deputy Education Officer (Recruitment) Rules, 2016. Second -whether the exclusion of Primary Teachers by failure to mention 'Primary Teachers having graduation and Bachelor's Degree in Education or equivalent' in education is a conscious omission. The Tribunal held in favor of the Respondents with the following reasoning :

“24. Admittedly, Primary Teachers with higher qualification (Graduation and Bachelor’s degree in education or equivalent), are not ipso facto, and barely due to possession of said qualification, and even by virtue of fact of equal scale of pay to that of pay of Assistant Secondary School Teachers, are not transferable as Assistant Secondary School Teacher.

25. There does not exist any ambiguity that District Technical Service Grade ‘C’ as referred to in M.E.S., Dy.E (A) Recruitment Rules, 2016 mean by D.T.S. (Class-III) (Educational) which is quoted in foregoing paragraph no. 13, i.e. Assistant Secondary School Teacher.

31. It is evident and unambiguously mentioned in said prescription that Primary School Teachers and Masters in District Service, (Class-III) (Subordinate Education) who possess prescribed qualification and experience(or are already transferred to the post of Grade-II) are eligible for being appointed by transfer in the cadre of District Service, Class -III (Educational) Grade - II.

32. It is thus conclusive that District Technical Service, Class -III, can be filled in by:- temporary transfer of suitable person in the District Technical Service (Class III) Educational, (Subordinate Education), i.e. Primary Teacher subject to fulfilling condition laid down in rules, apart from Teachers in Junior Colleges attached to Secondary Schools.

33. Thus, the post of Primary Teachers holding prescribed qualification, experience etc. is a feeder cadre for appointment by transfer to the post of District Technical Service, Class-III (Educational), Grade -II, and this post (TTS- Class III (Educational) Grade II] is a feeding cadre for appointment by temporary transfer to the post of District Technical Service, Class-III (Educational).

34. The aspect of feeder cadre and eligibility described in foregoing paras is totally lost sight by the State Government as well as by the M.P.S.C., and therefore stance of opposing even to consider applicant's candidature is totally erroneous being based on incomplete reading of Rules. Result thereof is denial of opportunity of being a candidate and hence violative of Constitutional guarantee of fairness and guarantee against arbitrariness. It results in denial of equal opportunity in the matter of employment. Impugned rejection of applicants' candidature deserves to be set aside”.

The Tribunal in short held that Primary School Teachers in District Service with the required qualifications can be temporarily

transferred to the District Technical Service, Class -III, and therefore, they are eligible to apply for the District Technical Service, Class-III (Educational), Grade -II position. The Tribunal concluded that denying this opportunity is unfair and arbitrary, and it allowed the Application, directing that they can apply pursuant to advertisement and their test results will be subject to eligibility criteria as per relevant rules. With this reasoning, the Tribunal allowed the Application. The operative portion of the order is as under:

“(A) Impugned decision of M.P.S.C. in rejecting applicants’ candidature for recruitment furtherance to Advertisement No. 40/2017 is quashed and set aside.

(B) Primary Teachers who are serving in employment of Government of Maharashtra and whose qualification and eligibility corresponds/ concurs with Col. 4 of Appendix IV Part-I of M.Z.P. (D.S.) R. Rules, 1967 too are declared to be eligible to apply along with Primary Teachers for the post advertised through Advt. no. 40/ 2017.

(C) Result of written test undergone by applicants be declared and its validity shall be subject to applicants’ eligibility as is laid down by joint reading of M.Z.P. (D.S.) R. Rules 1967 and the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) (Recruitment) Rules, 2016.

(D) M.P.S.C and State Government shall keep in mind M.Z.P. (D.S.) R. Rules 1967 referred to in

foregoing para no 28, while scrutinizing and examining eligibility of applicants' candidature.

(E) Those applicants who withstand eligibility shall be permitted to pursue their candidature for recruitment subject matter.

Later, this order was modified, and the words "Primary Teachers who are serving in the employment of Government of Maharashtra and" in Clause B of paragraph 35 were deleted and the words "The Applicants" were added. The Tribunal disposed of Original Application No. 634 of 2017 and other Original Applications by order dated 4 October 2018 with the above directions.

10. The State of Maharashtra filed Review Applications in all Original Applications, including Original Application No. 634 of 2017, for review of the judgment and order dated 4 October 2018. Primary contention was that the Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014 vide Notification dated 10 June 2014, have not been noticed by the tribunal. The grounds for review were as under:

"4. The Applicant (Org. Respondent No.1) states that, in the light of amendment in the Maharashtra Zilla Parishad (District Service) Recruitment Rules, 1967 vide Notification dtd. 10.6.2014, as column no. 4 entry (b) is substituted, it would not be correct to say that Primary Teachers are included in the class of cadre which are transferable on completion of certain conditions which are incorporated in column

4 and these conditions are as regards age and experience.

5. The Applicant (Org. Respondent No.1) states that, in the light of the amendment in Maharashtra Zilla Parishad (District Service) Recruitment Rules, 1967 vide Notification dtd. 10.6.2014, the Primary Teachers are not eligible for being appointed by transfer in the cadre of District Technical Service, Class-III (Educational) Grade-II. It is further submitted that, in paragraph no. 31 of the order dtd. 4.10.2018, instead of "District Technical Service Class-III (Educational) Grade-II", it is written as "District Service". The said error also needs to be corrected.

6. The Applicant (Org. Respondent No.1) states that, as in the light of amendment vide Notification dtd. 10.6.2014, the Primary Teachers cannot be transferred in the cadre of District Technical Service, Class-III (Educational) Grade-II. The observations of this Hon'ble Tribunal are not in consonance with the said amendment and the Primary Teachers holding the prescribed qualification, experience are not part of the Feeder Cadre for appointment by transfer to the post of District Technical Service, Class-III (Educational) Grade-II.

7. The Applicant (Org. Respondent No.1) states that, on perusal of order of this Hon'ble Tribunal dtd. 4.10.2018, it appears that the amendment vide Notification dtd. 10.6.2014, was not at all considered by the Hon'ble Tribunal. Therefore, it is humbly requested that the order dtd.4.10.2018 needs to be reviewed to take into consideration the amendment in Maharashtra Zilla Parishad (District

Service) Recruitment Rules, 1967 vide Notification dtd. 10.6.2014.

8. The Applicant (Org. Respondent No.1.) states that, while giving factual background in paragraph no. 3 of order dtd. 4.10.2018, the Hon'ble Tribunal has observed that :

“3. Most of the Applicants are employees of various Zilla Parishads and few applicants are serving in Government of Maharashtra with designation of Primary Teachers”.

8.1. However, on verification of details of all the Org. Applicants, it is revealed that not a single Org. Applicant is serving in Government of Maharashtra with designation of Primary Teacher. The said factual correction is necessary because in operative part of the order in paragraph no. 35 (B) the Hon'ble Tribunal”

On these grounds, the order dated 4 October 2018 was sought to be reviewed.

11. Review Application No. 21 of 2018 was taken up for consideration by the Tribunal. The Tribunal with brief reasoning , rejected the Review Application holding that the phrase Primary School Teacher appears in both Old and Amended Rules and the class of Primary Teacher continues to be a part of the eligible class. The observations are as under :

“9. The words “Primary School Teachers” are printed in Italics and in capital in both above quotations.

10. The class of Primary Teachers continues to be a part of eligible class. The aforesaid being the factual aspect as to what is the exact provisions of law, the Review Application is based on a notional grudge than actual error.

11. Review Application is devoid of merit and is dismissed”.

Accordingly, the Tribunal dismissed the Review Application by order dated 1 February 2019.

12. Being aggrieved by the orders dated 4 October 2018 allowing Original Application No. 634 of 2017 and 1 February 2019 rejecting Review Application No. 21 of 2018, the Petitioners are before us with this Petition.

13. We have heard Mr. Ram Apte, learned Senior Advocate and Special counsel for the Petitioners, and Mr. Narendra Bandiwadekar, the learned Senior Advocate for the Respondents- the Original Applicants.

14. Mr. Ram Apte, the learned Senior Advocate for Petitioners, contended briefly as follows. The Tribunal has failed to consider the

true purport of the recruitment rules for the post of Deputy Education Officer. The Respondents are not eligible to apply for the post as they do not belong to District Technical Service, but they belong to District Service. There is a clear distinction between District Technical Service and District Service. The Assistant Teachers referred to Rules governing recruitment to the Deputy Education Officers are not the Primary Teachers but must be from the District Technical Service. The Respondents were not amongst the eligible candidates as per Recruitment Rules for the post of Deputy Education Officer as they are working in District Service Class III and not under District Technical Service, Class- C. There is a clear distinction between District Technical Service and District Service, and merely because there is a temporary transfer, this distinction is not lost. Even otherwise, the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, were amended and the qualifications for and methods of appointment mentioned in column 4 of Appendix IV Part I have been substituted. The Tribunal has ignored the Amendment of 2014 to the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 when brought to the notice that the Primary Teachers are not eligible for appointment by transfer to the post of Extension Officer. The Primary Teachers cannot be transferred to the post of Extension Officer, and therefore, the Tribunal has committed a grave error. The Amendment of 2014 has clearly taken away the concept of

transfer of the Primary Teacher to the Extension Officer, and the same is no longer permissible after the Amendment of 2014. Appointment orders of the Respondents show that they were appointed Primary Teachers in Zilla Parishads Primary Schools. The Respondents cannot dispute that they are working as Primary Teachers. The Tribunal has travelled beyond jurisdiction in including an entirely ineligible class to participate in the process of recruitment to the post of Deputy Education Officer by giving a declaration which amends the governing Rules. The impugned orders of the Tribunal are, therefore, perverse and illegal and are required to be quashed and set aside.

15. The contentions of Mr. Narendra Bandiwadekar, the learned Senior Advocate for the Respondents, opposing the Petition, in short, are as follows. The Tribunal disposed of the various original applications filed by different Teachers by a common order, and the Petitioners have challenged only the order passed in Original Application No. 634 of 2017. Even the Review Applications were filed in all the original applications, which were disposed of by a common impugned order. Therefore, the challenge of the Petitioners only to the order passed in Original Application No. 634 of 2017 should not be entertained. The affidavit in reply filed would show that the Respondents have been designated as Assistant Teachers. Even the State of Maharashtra has accepted that the Respondents

were working as Assistant Teachers, and therefore, the State of Maharashtra cannot deny that the Respondents were Assistant Teachers. The communication issued by the Deputy Secretary, Government of Maharashtra, to the Commissioner (Education) dated 18 May 2017 would show that even the State of Maharashtra had accepted that there was confusion in the minds of the authorities on this aspect. The argument of the Petitioners that there is a difference between the Assistant Teacher and Primary Teacher was never urged before the Tribunal. Since the Respondents are working as Assistant Teachers in a Primary School run and managed by Zilla Parishads, the Respondents are entitled to appear for the limited departmental competitive examination 2017 for the purpose of selection to the post of Deputy Education Officer. The reasoning of the Tribunal in the impugned orders is incorrect and is adopted. The Division Bench of this Court in the case of *Shrikisan Narayanrao Solanki and Others V/s. The State of Maharashtra and Another connected Petition*¹ has taken the view that the Primary Teachers would be eligible to participate in the limited departmental competitive examination- 2017 for appointment to the post of Deputy Education Officer. This decision clearly upholds the view taken by the Tribunal and is squarely applicable to the present case. The Respondents rely upon the salary slips, pay bills, acquittance roll, increment certificates and certificates for attending training courses, which referred to them as Assistant Teachers. Further,

1 Civil Writ Petition No. 8344 of 2023 dated 7 July 2023.

substantial developments have taken place after the impugned orders were passed whereby the Respondents have applied for an interview and based on the written examination and oral interview results, the Commission would now declare the list of candidates for appointment based on aggregated marks. Therefore, even otherwise, at this stage, the impugned orders should not be interfered with.

16. We have considered the rival contentions.

17. Respondents have taken an objection that Applications of other applicants were disposed of by the Tribunal by the common order, and the orders passed in other applications are not challenged; therefore, the challenge only to the order passed in this application should not be considered. There is no merit in this objection. The challenge is before is on the basis that an ineligible class is made eligible in the recruitment process completely contrary to the recruitment rules. This question has serious repercussions on the recruitment process. The Petitioners have not contended before us that they are not going to challenge the orders passed in other applications. Considering the issue, we cannot dismiss this Petition solely only on this ground.

18. Before we proceed to examine the challenge in detail we refer to and deal with the decision rendered by the Division Bench of this Court in the case of *Shrikisan Narayanrao Solanki* upon which

Respondents have heavily relied upon. According to the Respondents, the Division Bench has concluded the issue raised in this petition against the Petitioners. In *Shrikisan Narayanrao Solanki*, the Tribunal had dismissed the application filed by the petitioners/applicants-primary teachers therein, holding that they were not eligible to participate in the Competitive Examination - 2017 for the post of Deputy Education Officer. The Division Bench concluded that the petitioners therein were eligible to participate in the limited departmental competitive examination for the post of Deputy Education Officer. However, having carefully examined this judgment, we note certain peculiar aspects arising from said decision. Most importantly, the Division Bench set aside the order of the Tribunal impugned before it by referring to the Tribunal's order in O.A. No. 634 of 2017, which is under challenge in this Petition. The Division Bench took into consideration that the O.A No. 634 of 2017 was allowed, and the Review Application filed by the State Government was also rejected. The Division Bench held that the Tribunal, in the impugned order before it, should have extended the benefits of the order issued in Original Application No. 634 of 2017. The Division Bench noted that there was no reason why Assistant Teachers in Zilla Parishad Primary Schools should not be deemed eligible as the Tribunal had ruled in Original Application No. 634 of 2017. It must be noted, however, that the Division Bench, while disposing of the writ petition filed in the year

2023 on 7 July 2023, was not apprised of the challenge pending in this writ petition to the very same order issued by the Tribunal in Original Application No. 634 of 2017 and Review Application No. 21 of 2018. Furthermore, the Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014, were not brought to the attention of the Division Bench. Given these circumstances, with all due respect to the decision in *Shrikisan Narayanrao Solanki*, we accept the contention of the Petitioners that this decision will not conclude the issue while determining the merits of the order under challenge before us.

19. We now proceed to refer to the statutory framework governing the issue in detail.

20. The State of Maharashtra, School Education and Sports Department, in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, issued a notification on 5 July 2016 framing the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) (Recruitment), Rules, 2016. The relevant Rules are reproduced earlier. The “Deputy Education Officer” is defined as the Deputy Education Officer in the Maharashtra Education Service, Group-B, and it includes the posts mentioned in Schedule A appended to these Rules. The “District Technical Service Group-C” means the District Technical Service, Group-C, under the control of Zilla Parishad, and

it includes the posts mentioned in Part II of Schedule B appended to these rules. The Rules prescribe that the appointment to the post of Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) shall be made either by promotion, nomination and/or selection. Under Rule 3 (2)(C) appointment can be made by selection of a suitable person on the basis of a merit list prepared on the basis of the Limited Departmental Competitive Examination to be held by the Commission, from amongst the persons holding the post of District Technical Service, Group-C, having not less than five years of regular service in that post. “Limited Departmental Competitive Examination” is defined to mean the competitive examination conducted by the Maharashtra Public Service Commission amongst the eligible candidates for promotion to the post of Deputy Education Officer. Thus, Rule 3 (B) (2) of the Deputy Education Officer (Recruitment) Rules, 2016, enables the selection of a suitable person on the basis of a merit list prepared on the basis of limited departmental competitive examination from amongst the persons holding the post of “District Technical Service, Group-C”, having not less than five years of regular service in that post. Therefore, the selection has to be amongst the persons holding the post of “District Technical Service”, Group-C. Under Rule 2 (e) of the Deputy Education Officer (Recruitment) Rules, 2016, District Technical Service is defined as the District Technical Service, Group-

C under the control of Zilla Parishad and it includes the posts mentioned in Part II of Schedule B appended to these Rules. Part -II of Schedule- B appended to the Deputy Education Officer (Recruitment) Rules, 2016, specifically has a heading as "District Technical Service, Group-C (Non gazetted)". Clearly therefore what is contemplated is the District Technical Service . Five posts are named in the Schedule B part II. These are- Assistant Teacher , Head Master (Non Gazetted), Lecturer (Junior Colleges), Extension Officer (Junior) and Secondary Teacher.

21. It is clear from the reading of the Deputy Education Officer (Recruitment) Rules, 2016 that the appointment to the post of Deputy Education Officer by selection through limited departmental competitive examination is from amongst the persons holding the post of District Technical Service, Group -C, which is referred to Part II of Schedule-B appended to the Deputy Education Officer (Recruitment) Rules, 2016.

22. The scope and ambit of District Technical Service is thus of importance. This is to be found in the rules governing employments in the Zilla Parishads. The relevant Rules are the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, as amended from time to time. The relevant Rules are reproduced below:

“1. Short title and application.- (1) These rules may be called the Maharashtra Zilla Parishads District Services(Recruitment) Rules, 1967.

(2) These rules shall apply to the recruitment to all posts in District Technical Service (Class III), District Service (Class III) and District Service (Class IV) and unless otherwise provided shall not apply to the recruitment to -

(i) posts on a contingency paid establishment, a daily-rated establishment or a work-charged establishment;

(ii) posts to which appointments are made on part-time basis; and

(iii) posts to which appointments are made on contract.

2. Definitions.- In these rules unless the context otherwise requires,-

(i)

(ii)

(iii)

(iv) “District Service” means a District Technical Service (Class III), District Service (Class III) or a District Service (Class IV) of a Zilla Parishad, constituted under clause (b) of section 239 of the Act;

.....

.....

.....”

The Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 apply to the recruitment to all posts in District

Technical Service (Class III), District Service (Class III) and District Service (Class IV) except certain categories excluded therefrom. District Service is defined as a District Technical Service (Class III), District Service (Class III) or a District Service (Class IV) of a Zilla Parishad, constituted under clause (b) of section 239 of the Act. There is a distinction between “District Service” and “District Technical Service.” in as much as District Technical Service is a specific class. This is of importance to note since the Deputy Education Officer (Recruitment) Rules, 2016 make a specific reference to District Technical Service only.

23. The Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 provide for qualifications and method of appointments, appointment by nomination, promotion or transfer and reservation of posts in District Service. These Rules also deal with the departmental and language examinations and training and appointments of government servants in District Service. Appendix IV Part I of these Rules is enacted as per Rule 5 of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967.

24. The Appendix IV is set out in a tabular form. In column No. 2 of Appendix IV of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, there is a reference to service and cadre. Column No. 3 refers to the post, and column No.4 refers to qualifications for and methods of appointment. Various posts are

referred to under Appendix IV of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, with District Technical Service, however we will note these clauses in context of the controversy in this Petition with reference to the posts mentioned in Part II of Schedule B appended to the Deputy Education Officer (Recruitment) Rules, 2016. These are as under :

*“APPENDIX IV
(PART I)
(See rule 5)*

Rules laying down the qualifications of candidates for and methods of appointment to posts included in the District Technical Service (Class III) (Educational) and District Service (Class III) (Subordinate Educational).

<i>Sr. No</i>	<i>Service and Cadre</i>	<i>Post</i>	<i>Qualifications for an methods of appointment</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>2</i>	<i>District Technical Service (Class III) (Educational), Grade II.</i>	<i>(i) Extension Officer (Education). (ii) Assistant Education Officer. (iii) Senior Assistant Deputy Educational Inspector</i>	<i>1. Appointment shall be made by - (a) promotion of persons in District Technical Service (Class III) (Educational), Grade III who have completed not less than 5 years of continuous service in that grade :</i>

OR

*(b) temporary transfer of
suitable persons from amongst
Assistant Teachers in District
Technical Service (Class III)
(Educational) and from
amongst Primary School
Teachers and Masters in District
Service (Class III) (Subordinate
Educational) who -*

(i) possess at least 3 years of post B.Ed (or equivalent qualification) teaching experience in Primary or Secondary Schools, or a Junior College of Education, or

(ii) possess at least 3 years of post B.Ed (or equivalent qualification) experience of inspection of Primary or Secondary Schools, or

(iii) possess 5 years teaching experience after passing the S.S.C. Examination and acquiring teacher's training qualification;]

OR

(c) nomination from amongst candidates who-

(i) unless already in the service of the Zilla Parishad are not more than 35 years of age,

(ii) are graduates of a recognised University, and

[(iii) (a) possess at least 3 years of post B.Ed. (or equivalent qualification) teaching experience in Primary or Secondary Schools, or Junior College of Education; or

(b) possess at least 3 years of post B.Ed. (or equivalent qualification) experience of inspection of Primary or Secondary Schools; or

(c) possess 5 years teaching experience after passing of the S.S.C. Examination and acquiring teacher's training qualifications]:

Provided that the age limit may be relaxed in the case of candidate possessing good qualifications and/or experience.

[Provided further that nothing in these rules shall affect appointments already made by the Appointing Authority by way of transfer/ temporary transfer of the Assistant Teachers in District Technical Service (Class III) (Educational) or the Primary School Teachers in District Service (Class III) (Subordinate Educational) if such Assistant Teachers of the Primary School Teachers continued to hold the post of Extension Officer (Education), Grade II or Senior Assistant Deputy Educational Inspector for more than one year on the 1st January 1976]

2. Not less than 75 percent of the posts shall be filled in by nomination and transfer.

3. Persons appointed to this post may be required to undergo training course for Social Education. Such of them who are selected to undergo this training shall execute an

agreement bond in the
appended Form 'A'.

*APPENDIX IV
(Part II)
(See Rule 5)*

*Rules laying down the qualifications of candidates for and methods of
appointment to posts included in the District Technical Service (Class III)
(Educational) and District Service (Class III) (Subordinate Educational)*

(Teaching Staff)

<i>Sr. No.</i>	<i>Service and Cadre</i>	<i>Post</i>	<i>Qualifications for and methods of appointment</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>1</i>	<i>District Technical Service (Class III) (Educational) Head Masters/Mistresses in Higher Secondary Schools.</i>	<i>(i) Head Master in Secondary School. (ii) Head Mistress in Secondary School.</i>	<i>Appointment shall be made by promotion of -- (i) trained graduate Assistant Teachers in District Technical Service (Class III) (Educational) who have completed not less than five years of continuous service as such Assistant Teachers. O R (ii) Senior Assistant Deputy Educational Inspectors/Extension Officers (Educational) who have post B.Ed. teaching experience of not less than five years.</i>
<i>2</i>	<i>District Technical Service (Class III) (Educational) Lecturers in Higher Secondary Schools.</i>	<i>[Teachers in Higher Secondary Schools (Junior Colleges).</i>	<i>(1) Appointment shall be made either by-- (a) promotion of members of the teaching staff under the Zilla Parishad, to the extent of 25 percent of the available vacancies who possess the following qualifications :- (i) Master's Degree in second</i>

*class in the respective subjects
and B.Ed. or a Diploma or
Certificate in Teaching, approved
by the Education Department of
Government.*

3.

4. District Technical Service (Class III) (Educational), Assistant Teachers. Assistant Teacher in Secondary School Appointment shall be made either by--

(a) temporary transfer of suitable persons in the District Technical Service (Class III)(Educational), Grade II who are trained graduates ;

OR

(b) nomination from amongst candidates who –

[(i) unless already in the service of the Zilla Parishad are not more than 28 years],

(ii) possess a degree of a recognised University, and

(iii) have knowledge of games and scouting;

5.

6. District Technical Service Hindi Teachers Appointment shall be made by
(Class III) (Educational), in Secondary nomination from amongst
Language Teachers including School. Candidates who –
Graduate Hindi Teachers. (i) unless already in the service
of the Zilla Parishad are not more
than 35 years of age; and
(ii) hold a degree of a recognized
University with Hindi as a
principal/special subject;
OR
hold a degree of a recognized
University with Junior Higher
Secondary Schools;
OR
possess any other qualifications

recognized as equivalent by the State Government;

Provided that preference shall be given to the holders of the Hindi Shikshan Nishant Diploma of the Kendriya Hindi Sansthan, Agra.

7.

.....

.....

8. *District Service (Class III) (Subordinate Educational), Head Masters in Primary Schools.*

Head Master in Primary School.

Appointment shall be made by promotion of Trained Primary School Teachers/Masters in the District Service (Class III) (Subordinate Educational) who have completed not less than five years of continuous service as such teacher.

9. *District Service (Class III) (Sub-ordinate Educational) Primary School Teachers/ Masters.*

*(i) Primary School Teacher.
(ii) Primary School Master.*

*Appointment shall be made by nomination from amongst candidates who --
(i) unless already in the service of the Zilla Parishad are not more than [28] years of age :*

Provided that the Chief Executive Officer may relax upper age limit up to 38 years in the case of eligible adult women who have qualified themselves for teacher job through the condensed courses organized under the auspices of the Central or State Social Welfare Boards :

Provided further that the Chief Executive Officer may relax the upper age limit up to 30 years in respect of candidate possessing past experience as Primary

*School Teachers; and
(ii) have passed the S.S.C. Examination or Matriculation Examination or Lokashala Examination or any other examination recognized as such by the State Government and have passed Primary Teachers Certificate Examination;*

Provided that in the case of posts reserved for Backward Classes and Women candidates, those who have passed the P.S.C. or other equivalent examination may be considered for recruitment to the posts of Primary School Teachers, if candidates possessing the prescribed qualifications are not available to the extent of the number of posts reserved for them;

Provided further that other things being equal preference shall be given to
—

(a) bonded candidates who have passed the four years course of the P.T.C. under the scheme “Stipend to bright girls”,

(b) ex-servicemen and wives of Jawans, Non-commissioned Officers and ex-servicemen so far as recruitment made during the period of Emergency proclaimed by the President of India,

(c) eligible women obtains the prescribed qualifications through the condensed course,

(d) candidates who have passed S.S.C. or other equivalent examination with English, Mathematics and Science or any two of them;

Provided also that (i) candidates who have passed the two years Junior P.T.C.

course after passing the P.S.C. or other equivalent examination or who have passed the P.S.C. examination or other equivalent examination and are under training for the two years course between 1966-67 and who will complete their training sometimes in April 1968 shall be eligible for appointment as Primary School Teacher upto the end of April 1970, if candidates with the minimum qualifications prescribed above are not available, and

(iii) candidates who have passed the S.S.C. or an equivalent examination but who were recruited as Primary School Teachers before the publication of these rules and who are thereafter discharged for want of vacancies shall be eligible for re-appointment as Primary School Teachers.

Explanation – The term ex-servicemen includes the defence personnel who have left the defence service by way of retirement, release, discharge or transfer to the reserve.

(2) The candidates appointed under the third proviso to rule (1) shall be required to pass the S.S.C. or an equivalent examination within a period of six years from the date of their appointments, and shall not be confirmed if they fail to pass the said examination within the stipulated period.

(3) The selection for appointment to the posts of Primary School Teachers reserved for women and Scheduled Castes, Scheduled Castes converts to

Budhism, Scheduled Tribes including those living outside the specified areas Denotified Tribes and Nomadic Tribes and other Backward Communities shall be made in the order of preference indicated below :-

- (a) Candidates who have passed the Secondary School Certificate Examination and who are also trained.*
- (b) Candidates who have passed the Primary School Certificate Examination and who have also secured the Junior Primary Teacher's Certificate.*
- (c) Candidates who have passed the S.S.C. or other equivalent examination.*
- (d) Untrained P.S.C. candidates.*

(4) 33 1/3 per cent of the total number of posts of Teachers/Masters in mixed schools shall be reserved for women candidates :

Provided that when suitable women candidates are not available the vacancies may be filled in by male candidates.

(5) Notwithstanding anything contained in rules (1) and (4) above, the State Government may direct that the teachers in private primary schools taken over by the Zilla Parishads shall be absorbed as Primary School Teachers under the Zilla Parishads, subject to such terms and conditions as may be specified by the State Government in that behalf; Provided that such teachers shall possess minimum educational qualifications prescribed in rule (ii) above.

25. Thus Appendix IV (PART I) lays down Rules laying down the qualifications of candidates for and methods of appointment to posts included in the District Technical Service (Class III) (Educational) and District Service (Class III) (Subordinate Educational). These include the posts of Extension Officer (Education), Assistant Education Officer and Senior Assistant Deputy Educational Inspector. Qualifications and methods of appointment are listed therein. Appointment to these posts is to be made from the promotion of persons in District Technical Service (Class III) (Educational), Grade III; or nomination from amongst candidates; or temporary transfer of suitable persons from amongst Assistant Teachers in District Technical Service (Class III) (Educational) and from amongst Primary School Teachers and Masters in District Service (Class III) (Subordinate Educational) who possess at least three years of post-B.Ed. (or equivalent qualification) teaching experience in Primary or Secondary Schools, or a Junior College of Education, or possess at least three years of post-B.Ed. (or equivalent qualification) experience of inspection of Primary or Secondary Schools or possess five years of teaching experience after passing the S.S.C. Examination and acquiring a Teacher's training qualification.

26. Appendix IV Part II deals with Rules laying down the qualifications of candidates for and methods of appointment to posts included in the District Technical Service (Class III) (Educational)

and District Service (Class III) (Subordinate Educational). The posts of Head Master in Secondary School, Teachers in Higher Secondary Schools (Junior Colleges), School Counsellor and Assistant Teacher in Secondary School are under the District Technical Service. Extension Officers and lecturers in junior colleges are under the District Technical Service. Hindi Teachers in Secondary Schools are also under the District Technical Service

27. It is to be noted that under Appendix IV Part II the Head Master in Primary School and Primary School Teacher are not under District Technical Service but are listed under District Service (Class III) (Subordinate Educational).

28. By Notification dated 10 June 2014, the Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014 were enacted. These Rules amended the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967. By Amendment, the entry at serial No.2 of Appendix IV relating to District Technical Service (Class III) (Educational), Grade II was amended. The relevant portion of the Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014 reads thus:

“1. These rules may be called the Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014.

2. In APPENDIX IV appended to the Maharashtra zilla parishads District Services (Recruitment) Rules, 1967,-

(I) in (Part I),

(B) in entry at serial number 2, relating to the service and cadre of the District Technical service (class III) (Educational) Grade-II,-

(1.) in column (3), under the heading “post”, for the existing brackets, letters and words,-

“(i) Extension Officer (Education).

(ii) Assistant Education Officer.

(iii) Senior Assistant Deputy Educational Inspector”.

the following words shall be substituted,
namely:- “Extension Officer (Education)”.

(II) in column (4), under the heading “Qualifications for and methods of appointment”,
for the existing qualifications and methods of appointment, the following shall be substituted,
namely:-

“1. Appointment shall be made either by,-

(a) nomination from amongst candidates who,-

(i) unless already in the service of the Zilla parishad are not more than 36 years of age;
and

(ii) possess B.A. or B.Com. or B.Sc. degree of any recognised University with minimum fifty per cent marks; and

(iii) possess B.Ed. or an equivalent degree of a recognised university with minimum fifty percent marks; and

(iv) possess at least 3 years teaching or administrative experience on the Government approved post, in recognized institution, either in primary school or secondary school or Higher secondary school or D.Ed. College; or

(b) selection of a suitable candidate on the basis of merit list prepared on the basis of Limited Departmental Competitive Examination from amongst the candidates who,

(i) are from the cadre of primary Teachers or secondary Teachers or Kendra Pramukh or Head Master(primary); and

(ii) possessing the educational and professional qualification mentioned in sub-clauses (ii), (iii) and (iv) of clause (a) of this rule; and

(iii) possess not less than 3 years continuous service on the post of teacher either in Zilla Parishad or Municipal Council or Municipality; or

(c) promotion of a suitable candidate on the basis of common seniority of Zilla Parishad, Municipal council and Municipality teachers subject to fitness from amongst the candidates,-

(i) who possess the educational and professional qualification mentioned in

sub-clauses (ii), (iii) and (iv) of clause (a) of this rules; and

(ii) possess at least three years continuous service either in Zilla Parishad or Municipal Council or Municipality”.
(emphasis supplied)

Under the heading "post", three posts referred to as posts, that is, Extension Officer (Education), Assistant Education Officer and Senior Assistant Deputy Educational Inspector, were modified. The last two posts were deleted, and only Extension Officer (Education) was retained. Qualifications for and methods of appointment for Extension Officer (Education) were also changed and were substituted by above qualifications for and methods of appointment.

29. The Amendment of 2014 brought about two main changes as far as the present controversy is concerned. First, instead of three posts of Extension Officer (Education), Assistant Education Officer and Senior Assistant Deputy Educational Inspector, only the post of Extension Officer (Education) is retained. Second, the post of Primary Teacher is now a post from which the appointment will have to be made to the post of Extension Officer (Education). This is a vertical movement. The Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014 notably deletes the clause regarding temporary transfer from amongst Primary School Teachers.

30. Therefore, a conjoint reading of the Deputy Education Officer (Recruitment) Rules, 2016 and the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, as amended on 10 June 2014, would show that the recruitment to the post of Deputy Education Officer through selection of a suitable person on the basis of merit list prepared on the basis of limited departmental competitive examination is from amongst the persons holding the post of District Technical Service, Group –C. As to what is meant by District Technical Service Group –C is mentioned in the Deputy Education Officer (Recruitment) Rules, 2016, and it includes the posts mentioned in Part II of Schedule B appended to the Deputy Education Officer (Recruitment) Rules, 2016. Schedule -B Part II lists the posts, that is, Assistant Teacher, Head Master (Non-Gazetted), Lecturer (Junior Colleges), Extension Officer (Junior) and Secondary Teacher. However, these posts are under the heading of District Technical Service, Group –C (Non-Gazetted). For the purpose of recruitment to the post of Deputy Education Officer through limited departmental competitive examination under Rule 3 (B) (2) of the Deputy Education Officer (Recruitment) Rules, 2016, the person must be from these five posts in District Technical Service, Group-C. The Deputy Education Officer (Recruitment) Rules, 2016, define the posts under District Technical Service, Group-C. Importantly, the Primary School Teacher, which is the post under District Service (Class III) (Subordinate Educational), is

not included in Part II of Schedule B of the Deputy Education Officer (Recruitment) Rules, 2016. The above-mentioned position, as per the Deputy Education Officer (Recruitment) Rules, 2016 and the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, as amended, is clear.

31. Respondents contended that the State never made any distinction between the Assistant Teacher and the Primary Teacher, and this argument is being advanced for the first time. This contention is factually incorrect. The Petitioners have specifically taken this contention in the reply filed in the Tribunal emphasizing on the distinction between the Assistant Teacher and the Primary Teacher and District Technical Service and District Service. Even the Tribunal has noted the contention raised by the Petitioners.

32. There is no debate before us that the Respondents work in the Primary Schools as teachers. The Respondents have produced certain documents such as salary slips, pay bills, acquittance roll, increment certificates and certificates for attending training courses, which referred to them as Assistant Teachers. These are not appointment orders. The State of Maharashtra has placed appointment orders for some of the candidates, including Respondent No.4. These orders specify that their appointment is as a Primary Teacher. A moot question is what post the Respondents

hold as per the governing service rules. Because the documents such as leave records and pay bills, some places use the nomenclature as Assistant Teachers that cannot change the post held by the Respondents as per recruitment rules. Appointment and the post held by the Respondents are governed by the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967. Under these Rules, the Respondents are appointed to the post of Primary School Teachers. The Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, clearly distinguish between the post under District Technical Service and District Service. There can be no manner of doubt that the Respondents, therefore, fall in District Service (Class III) being the primary School Teacher as referred to above. The Deputy Education Officer (Recruitment) Rules, 2016, Part II of Schedule B categorically refer to District Technical Service and does not refer to District Service.

33. The Respondents' stand before the Tribunal as to how they understand this position under the Rules is worth noting. The prayers are reproduced earlier in this judgement. Apart from prayer to quash the impugned letters and consequential directions the Respondents initially sought a declaration that they holding the posts, as stated in Part-II of Schedule -B of the Rule-2016, are also eligible along with the persons holding the posts in MES Group-C and DTS Group-C services, for the Limited Departmental

Competitive Examination-2017. Later the respondents changed the declaration and sought a declaration that the exclusion of primary teachers and, degree holder primary teachers like Applicants from Section 3 (B) (2) r/w Schedule -B Part II of the Rules is arbitrary, and they applicants are eligible for appearing to the Departmental Competitive Examination- 2017 and for getting selection according to their merit. Therefore, first, the Respondents prayed to declare that the Applicants holding the post in Part II of Schedule -B of the Deputy Education Officer (Recruitment) Rules, 2016 are eligible along with the persons holding the posts in Maharashtra Education Service, Group- C and District Technical Service, Group-C services, for the limited departmental competitive examination - 2017. This on the basis they already are part of the eligible class. This was changed for a contention that excluding primary teachers from Part II of Schedule -B of the Deputy Education Officer (Recruitment) Rules, 2016 is bad in law. Therefore, there was a clear shift of a stand from a declaration that the Respondents were already included in Part II of Schedule-B of the Deputy Education Officer (Recruitment) Rules, 2016, to a declaration that they have been wrongfully excluded. Therefore, even the Respondents knew they were not included in the ambit of the District Technical Services in Part II of Schedule-B .

34. With this backdrop of the statutory scheme and the pleadings of the parties, we now turn to the reasoning of the Tribunal in the

impugned order dated 4 October 2018. The paragraphs containing the reasoning are reproduced earlier. The Tribunal observed that Primary School teachers and Masters in District Service, (Class-III) (Subordinate Education) who possess prescribed qualifications and experience (or are already transferred to the post of Grade II) are eligible for being appointed by transfer in the cadre of District Service, Class -III (Educational) Grade -II. It held that District Technical Service, Class -III, can be filled in by:- temporary transfer of a suitable person in the District Technical Service (Class III) Educational, (Subordinate Education), i.e. Primary Teacher subject to fulfilling condition laid down in rules, apart from teachers in Junior Colleges attached to Secondary Schools and therefore, the post of primary teachers holding prescribed qualification, experience etc. is a feeder cadre for appointment by transfer to the post of District Technical Service, Class-III (Educational), Grade -II, and this post (TTS- Class III (Educational) Grade II] is a feeding cadre for appointment by temporary transfer to the post of District Technical Service, Class-III (Educational). The Tribunal concluded that the aspect of feeder cadre and eligibility described in the foregoing paras is lost sight by the State Government and it has resulted in denial of an opportunity to the respondent. This is the rationale given in few sentences in the impugned order before allowing Original Application No. 634 of 2017.

35. The analysis of the observations of the Tribunal would show that the legal position emerging from the governing Rules has not been considered in totality. The Primary Teachers, as per Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 falling in District Service Class III, are not the Assistant Teachers in District Technical Service Class III. They are not mentioned in the Part II of Schedule-B. To permit the Respondents to fall within the ambit of the Deputy Education Officer (Recruitment) Rules, 2016, these Rules will have to be amended. The heading of Part II Schedule-B from "District Technical Service", Group C will have to be amended to "District Service", Group C, and there will have to be an amendment to include the post of Primary Teacher belonging to District Service. It was impermissible for the Tribunal to order an amendment to include a Class which is not eligible. The Tribunal has referred to the Respondents as Primary Teachers. The Tribunal has also noted that the Respondents fall within District Service. As stated earlier, the Respondents first sought a prayer of direction to include the Primary Teachers within Schedule B Part II of the Deputy Education Officer (Recruitment) Rules, 2016. After that, the Respondents amended the prayer to declare that their exclusion is bad in law, thereby accepting that the Respondents already stand

excluded. The Tribunal has granted a relief which has resulted to an amendment to the Deputy Education Officer (Recruitment) Rules, 2016.

36. Further, the fundamental logic of the impugned order is based on a fallacy. The Tribunal observed that Primary Teacher could be transferred to the post of District Technical Service, Class III (Educational) and therefore, the Respondents became eligible for recruitment. A serious question arose for the Tribunal's consideration of as to whether, even if the Primary Teachers were temporarily transferred to the District Technical Service, Class III (Educational) Grade II, they would become District Technical Service as envisaged under the Deputy Education Officer (Recruitment) Rules, 2016. There is no discussion whatsoever on this issue by the Tribunal. The Tribunal has straightaway treated the facet of the temporary transfer of the Primary Teachers as converting them into District Technical Service, holding them eligible for recruitment for the post of Deputy Education Officer. This approach is erroneous, and the conclusion is also without cogent reason.

37. The Tribunal did not consider that merely because the Primary Teachers have higher education and qualification itself cannot be a ground for considering that they are eligible to appear for the competitive examination for the post of Deputy Education Officer.

This ground is non-germane under the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967. The Respondents are specifically termed as “Primary Teachers”. Once they are working as Primary Teachers, they are governed by the said Rules.

38. Even assuming for the sake of argument that the Tribunal was right in passing the other impugned order dated 4 October 2018, it committed serious error in rejecting the Review Application. The Tribunal quoted only part of the concerned Rules. This can be seen from the manner in which the Tribunal has reproduced the Amendment rules in the order at para 8. It reads thus :

“8. Clause (a) as seen in para 28 of the judgment and clause (b) and as amended, which is relied upon by the State are quoted juxta potion herein below:-

<i>Page 66 of R.A. (Old Rule)</i>	<i>Pages 71 & 72 of R.A. (New Amended Rule)</i>
<i>(b) temporary transfer of suitable persons from among <u>Assistant Teachers in District Technical Service (Class III) (Educational) and from amongst Primary School Teachers and Masters in District Service (Class III) (Subordinate Educational) who :-</u></i>	<i>(b) selection of a suitable candidate on the basis of merit list prepared on the basis of Limited Departmental Competitive Examination from amongst the candidates who :-</i>
<i>(i) possess at least 3 years of post B.Ed. (or equivalent</i>	<i>(ii) are from the cadre of <u>Primary Teachers or Secondary Teachers or Kendra Pramukh or Head Master (Primary);</u> and</i>
	<i>(ii) possessing the educational</i>

<i>qualification) teaching and professional qualification experience in Primary or Secondary Schools, or a Junior College of Education,</i>	<i>mentioned in sub-clauses (ii), (iii) and (iv) of clause (a) of this rule; and</i>
<i>Or</i> <i>(ii) possess at least 3 years of post B.Ed. (or equivalent qualification) experience of inspection of <u>Primary</u> or Secondary Schools, or</i>	<i>(iii) possess not less than 3 years continuous service on the post of teacher either in Zilla Parishad or Municipal Council or Municipality.</i>
<i>(iii) <u>possess 5 years teaching experience after passing the S.S.C. examination and acquiring teacher's training qualification.</u></i>	

39. Therefore, the Tribunal did not reproduce the entire relevant Amendment Rules and with three sentence reasoning, rejected Review Application No. 21 of 2018. The Tribunal held that the words “Primary School Teachers” appear both in new and old Rules and the class of primary teachers continues to be a part of the eligible class. The facet of the primary teacher was the basis of the Tribunal's main order. Once it was brought to the notice of the Tribunal that the temporary transfer itself was deleted by the Amendment of 10 June 2014 to the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, before the order of 2018, the Tribunal

should have taken note of the deletion. Reasoning that the post "Primary Teacher" appears both in the Old Rules and the Amended Rules and that there is no change, is non-application of mind. There was indeed a substantial change which has been completely overlooked. Even though the post "Primary Teacher" appears both in the original and the Amended Rules of 2014, the reference is clearly in a different context. Under the Maharashtra Zilla Parishads District Services (Recruitment) (Second Amendment) Rules, 2014, three posts, that is, Extension Officer (Education), Assistant Education Officer and Senior Assistant Deputy Educational Inspector, are replaced by a single entry of Extension Officer (Education). Appointment to the post of Extension Officer (Education) is by way of nomination, selection of a suitable candidate on the basis of a merit list and promotion. Reference to the Primary Teachers in the Amended Rules of 2014 is that filling up the post of Extension Officer (Education) by way of selecting a suitable candidate based on a merit list prepared based on a limited departmental competitive examination amongst the candidates from the cadre of Primary Teachers. Therefore, the Primary Teachers cannot be transferred to the post of Extension Officer (Education) and others as per Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 as amended, but they are to be selected on the basis of examination. There is, thus, a complete and substantial change in the manner in which the Primary Teachers can

enter District Technical Service (Class III) (Educational) Grade II for the post of Extension Officer (Education). The Tribunal, therefore, committed a serious error in not noticing the difference and rejected Review Application No. 21 of 2018, confirming the order passed in Original Application No. 634 of 2017.

40. To conclude, the Respondents-Primary Teachers working in the schools run and managed by the Zilla Parishads are not eligible to appear for the limited departmental competitive examination for selection for the post of Deputy Education Officer. The view taken by the Tribunal to the contrary is incorrect and is required to be set aside. Since the Respondents are ineligible as per the Rules, no equities can arise by subsequent development, which were anyway subject to this challenge.

41. Accordingly, the Writ Petition is allowed. Rule is made absolute in terms of prayer clause (b). The order dated 4 October 2018 passed in Original Application No. 634 of 2017, and the order dated 1 February 2019 passed in Review Application No. 21 of 2018 are quashed and set aside. No costs.

42. At this stage, the learned Senior Advocate for the Respondents states that the Respondents were permitted to participate in the examination, their results have been declared, and by virtue of the order passed today in this Petition, the Respondents would be

removed from the selection process, and further appointments would be made, and some protective order be passed as the Respondents wants to take their challenge further. The learned Senior Advocate for the Petitioners, on instructions, states that the process of giving appointments to the concerned posts will not commence for at least a period of four weeks. This statement adequately redresses the concern of the Respondents. No further orders are necessary.

(SMT. MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)