

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13510 OF 2023
WITH
INTERIM APPLICATION NO. 17084 OF 2023
IN
WRIT PETITION NO. 13510 OF 2023

Sheshrao Namdev Bade }
R/at. 308, Lavender Bafna Mead- }
ows. Kelwa Road, At/Post. Mahim, }
Taluka and Dist. Palghar- }
401 404 & Ors. } ... Petitioners.

V/s.

The State of Maharashtra, }
Through The Secretary, School }
Education And Sports Department, }
Mantralaya, Mumbai & Ors. } ... Respondents.

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Mr. C. R. Naidu a/w Ms Pooja Mankoji i/b Mr. Sandeep Dere for the
Petitioners.

Mr. N. C. Walimbe, Addl. G. P. a/w Ms. R. A. Salunkhe, AGP for the
State – Respondent No. 1.

Mr. Narendra V. Bandiwadekar, Senior Advocate a/w Mr. Aniket S.
Phophale and Mr. Rajendra Khaire i/b Mr. Dinesh Khaire for
Respondent Nos. 2 and 3.

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CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 04 December 2023.
PRONOUNCED ON : 15 December 2023.

JUDGMENT

PER MANJUSHA DESHPANDE, J.:

The Petitioners herein were working as *Education Officers* Group- A, and have been appointed on different dates, who are aspiring for the post of *Deputy Director* of Education on the basis of their seniority in the feeder cadre of *Education Officers*. They are challenging the order passed by the Maharashtra Administrative Tribunal, Mumbai Bench, in Original Application No. 649 of 2023, which has been rejected by the Tribunal by its judgment and order dated 20 October 2023.

2. The case of the Petitioners before the Tribunal was that the Petitioners who belong to the cadre of regular *Education Officers* working in the School Education and Sports Department were aspiring for the further promotion to the post of *Deputy Director*, of Education, in the near future. According to them, they fulfill the eligibility criteria required for the post of *Deputy Director* of Education as provided in Rule 3, of the Recruitment Rules of Deputy Director of Education in the Maharashtra Education Service, Group- A (Administrative Branch), Recruitment Rules, 2018. The cadre of *Education Officers*, Group – A (Administrative Branch) has been amalgamated with the cadre of *Administrative Officers*, Group – A vide a Government Resolution dated 20 November 2019. The said decision for amalgamation of the post of *Education Officer*,

Group – A and *Administrative Officer* Group – A was taken because both the posts carried the same pay scale and similar duties. Therefore, a policy decision was taken by the Government in the School Education Department to amalgamate both the posts. As a result, the Recruitment Rules were also framed by the Education Department.

3. The notification framing the Recruitment Rules was issued on 28 December 2022. The said Recruitment Rules have been framed in exercise of power conferred by the proviso to Article 309 of the Constitution of India in supersession of all existing rules, orders or instruments issued previously. The private Respondent Nos. 2 and 3 are the officers belonging to the erstwhile *Administrative Officer* Cadre. The Petitioners herein challenge Rule 8 of the Recruitment Rules of *Education Officer* in the Maharashtra Education Service, Group – A, (Administrative Branch) dated 28 December 2022 (hereinafter referred to as Recruitment Rules, 2022). The said Rule reads as under:

“8. Seniority of the person working on the post of *Administrative Officer*, Maharashtra Education Service, Group-A shall be fixed in the cadre of *Education Officer* and its equivalent posts as per their date of appointment by nomination or regular promotion on the post of *Administrative Officer*, on the date of publication of these Rules.”

4. The definition of *Education Officer* in the said Recruitment

Rules included the 5 posts of *Administrative Officer* working in the Education Department at the regional level. The said posts have been included in the Schedule- A of the Recruitment Rules, 2022. The Schedule – A provides for the list of *Education Officer* and its equivalent posts Group – A (Gazetted) Maharashtra Education Service (Administrative Branch). The Petitioners herein have challenged the said Rule 8 of the Recruitment Rules, 2022 on the ground that the *Education Officers* are appointed under Rule- 3 from the cadre of Deputy *Education Officer*. The Rule 8 of the Recruitment Rules, 2022 runs contrary to the Rule- 3 of the Recruitment Rules to the post of the Deputy Director of Education dated 18 January 2018. Since Schedule ‘B’ to the Rules do not include *Administrative Officer* in equivalent posts of *Education Officer*.

5. According to the Petitioners, the post of *Deputy Director* of Education in Maharashtra Education Service, Group – A is to be filled in by promotion from suitable persons on the basis of merit-cum-seniority from amongst the persons holding the post of *Education Officer* in the Maharashtra Education Service, Group – A (Administrative Branch), having experience of not less than five years regular service on that post. Therefore, according to the Petitioners, only the *Education Officers*, who have worked on the post of *Education Officer* on regular basis could be considered for the post of *Deputy Director* as per the Rule – 3 of the Recruitment

Rules, 2018. The post of *Education Officer* as contained in the definition given under the said Recruitment Rules, 2018 means and includes posts mentioned in Schedule – B appended to the Rules. In the said list of equivalent posts of *Education Officer* in Schedule – B, there is no mention about the post of *Administrative Officers*. Therefore, the *Administrative Officers* cannot be considered for the promotion to the post of Deputy Director. Similarly, Rule – 3 of the Recruitment Rules of Deputy Director runs contrary to Rule – 8 of the Recruitment Rules, 2022, it provides for seniority of person working on the post of *Administrative Officer*, shall be fixed in the cadre of *Education Officer* and shall be considered for regular promotion from the date of publication of these Rules.

The Petitioners contended that though the *Administrative Officer* after entering into the Single Cadre of *Education Officer* have not put in five years regular service, as contemplated in Rule – 3 of the Recruitment Rules, they would be considered as *Education Officer*. As a result, it would cause grave injustice to the regular *Education Officers*.

6. The Original Application was opposed by the State as well as the private Respondent Nos. 2 and 3. It was the stand of Respondent Nos. 2 and 3 that the Education Department has bifurcated in two cadres ‘Teaching Staff’ and ‘Non-teaching Staff’. The qualification of B.Ed or D.Ed as a requisite qualification for the

post for the post of regular *Education Officer*, has been already dispensed with. The hierarchy in the Non-Teaching Staff is Deputy *Education Officer*, *Education Officer* and *Deputy Director* of Education and so on.

7. The policy decision to merge the two cadres of regular *Education Officers* and Administrative Officer into a Single Cadre was taken long back in the year 2019, vide Government Resolution dated 20 November 2019. Even the said G.R. was challenged before the Nagpur Bench of the Administrative Tribunal in Original Application No. 276 of 2020.

8. Reliance is also placed on the affidavit filed in the said Original Application on behalf of the State which states that amalgamation of cadres does not make any adverse effect on the service conditions of the applicants who are regular *Education Officers*. The other ground raised by Respondent Nos. 2 and 3 is that, in the past there have been transfers from the post of regular *Education Officer* to *Administrative Officer* and even Vice Versa. There has been a “Inter Cadre Mobility”. In support of that, copy of transfer order dated 23 June 2023 was also produced before the Tribunal.

9. It was further contended that, recruitment for the post of *Administrative Officer* was made as per the Recruitment Rules framed in 1988. Only 6 posts of *Administrative Officer* have been

created and filled up in the ratio of 50% by nomination and 50% by promotion. Today, out of 6 posts, 3 posts have been filled in and out of the 3 posts, one *Administrative Officer* was scheduled to retire at the end of September, 2023. Therefore, presently only two posts of *Administrative Officers* are serving and who were actually be included in the seniority list of Single Cadre of *Education Officers*. Therefore, the said inclusion of *Administrative Officer* in the cadre of *Education Officer* is not likely to adversely effect the seniority of the Petitioners.

10. The State has also apposed the said Original Application. In the reply affidavit filed by the Deputy Secretary, School Education and Sports Department, it was submitted before the Tribunal that the recruitment rules for the post of *Deputy Director* of Education are intended to be amended and bring it in tune with Recruitment Rules, 2022. According to the State, the post of *Education Officer* and *Administrative Officer* are both entrusted with the same work which is administrative work.

11. The Tribunal has taken into consideration the contention and the issues raised by the Petitioners as well as the Respondents. The challenge to the amendment on the ground that the Rule – 3 regulating the recruitment to the post of *Deputy Director* of Education, includes *Education Officer* as feeder cadre for promotion to the post of *Deputy Director*. However, *Education Officer* as

defined under the said Recruitment Rules, 2018 does not include *Administrative Officer* in the schedule appended to the said rules has been negated by the Tribunal. It has been observed that *Education Officer* as defined under Rule- 2(c) of the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018, now stands extended to include the *Administrative Officers* who were already working in the School Education and Sports Department. The nature of duties, responsibilities and scale of pay to both the posts are same and both of them perform the administrative work. Therefore, the policy decision to merge both the cadres cannot be interfered with.

12. The other challenge as regards Rule – 8 of the Recruitment Rules, 2022 is concerned, it is observed by the Tribunal that Rule- 8 specifically pertains to adjusting the *Administrative Officers* on the basis of their seniority in the Single Cadre of *Education Officers*. It is contended by the applicant before the Tribunal that, Rule- 8 cannot be made retrospectively applicable and the *Administrative Officer* cannot be treated as *Education Officer* retrospectively, by counting his earlier service in the new cadre.

13. It was further submitted that the promotion to the post of *Deputy Director* of Education requires five years experience on the post of *Education Officer*. These *Administrative Officer* have not

held the post of *Education Officer* on regular basis for five years cannot be considered and they cannot be placed above the regular *Education Officer* in the seniority list.

While dealing with the said submission, the Tribunal has placed reliance on Section 4 of the Maharashtra Civil Services (Regulations of Seniority) Rules, 1981, which provides that the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein. Therefore, the *Administrative Officer* who has put in whatever number of years of continuous service on the said post will carry his earlier service and will be appropriately placed as per his date of appointment in the seniority list of *Education Officers* in the Single Cadre.

14. The post of *Administrative Officer* has not been abolished but merely included in the cadre of *Education Officer*. It is now a equivalent post to the post of *Education Officer*. The *Administrative Officers* cadre had only 6 posts as compared to the 144 posts of regular *Education Officers*. Therefore, their inclusion into the Single Cadre of *Education Officer*, will not adversely effect their chances of promotion to the post of *Deputy Director*, of Education. Therefore, the Tribunal has rightly been pleased to uphold the validity of the Maharashtra Education Service Group- A (Administrative Branch) Recruitment Rules, 2022, issued vide

notification dated 28 December 2022.

15. The Petitioners have challenged the order of Tribunal rendered on 20 October 2023. The said order has been challenged by the Petitioners on the grounds that (i) the Recruitment Rules, 2022 have a prospective application (ii) The powers and responsibilities of the *Administrative Officer* are different from that of an *Education Officer* (iii) The Rule – 8 can be made applicable only for other purpose like pay scale etc. However, the said Rule can not be made applicable for effecting promotions on the basis of seniority.

16. The State of Maharashtra has issued notification dated 18 January 2018 in exercise of powers conferred by proviso to the Article 309 of the Constitution of India framing recruitment rules to the post of *Deputy Director* of Education in Maharashtra Education Service, Group- A (Administrative Branch) Recruitment Rules, 2018, for the appointment to the post of *Deputy Director* of Education. The recruitment to the post of *Deputy Director* is made only by way of promotion from a suitable person on the basis of merit-cum-seniority amongst the persons holding the post of *Education Officer* with experience of five years. Hence, the suitable officer from amongst the *Education Officers*, Group- A (Administrative Branch) who have not completed five years of service as *Education Officer* are not eligible for the promotion of *Deputy Director*.

17. The Petitioners admit that they did not challenge the G.R. dated, 20 November 2019, amalgamating the post of *Education Officer* and *Administrative Officer* (Administrative Branch). It is the stand of the Petitioners that, since the said amalgamation did not affect their seniority, they have not challenged the same. However, when they realised that Rule- 8 had affected their seniority, they have challenged the same. It is the ground of the Petition that feeder cadre for the post of *Education Officer* remains as a Deputy *Education*, whereas feeder cadre for *Administrative Officer* is not Deputy *Education Officer* as per the Recruitment Rule. In spite of that, Rule – 8 to the Recruitment Rules, 2022 has been introduced, whereby the seniority of a person working as *Administrative Officer* under the Maharashtra Education Service, Group – A has been fixed in the cadre of *Education Officer* or equivalent post from the date of their appointment/promotion to the said post, resultantly, unsuitable candidates have been integrated in the *Education Officers* Cadre and are held eligible for promotion, which is unconstitutional and inappropriate.

18. The Petitioners have further taken exception to the provisional seniority list dated 10 April 2023 for the Maharashtra Education Service, Group – A (Administrative Branch) as on 1 January 2023. The Petitioners have taken exception to the placement of Respondent Nos. 2 and 3 in the present Petition at Serial Nos. 1 and 2 in the gradation list dated 10 April 2023. According to the

Petitioners, merely on the basis of Rule – 8 as per the Recruitment Rules, 2022, these two candidates who were otherwise ineligible, have been placed at Serial Nos. 1 and 2.

19. It is contended that as a result of introduction of Rule- 8, competition for the post of *Deputy Director* of Education has been increased and candidates with less experience in the feeder cadre of *Education Officers* may be promoted to the said post. According to Rule – 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules 1982, the seniority of the Government Servant in any post, cadre, or service is ordinarily determined on the length of his continuous service. Applying the said rule, the *Administrative Officers* who have entered into the cadre of *Education Officer* will have to complete period of five years in order to be eligible for the post of *Deputy Director* of Education.

20. The State has supported the decision rendered by the Tribunal. According to Respondent No. 1- State, the amalgamation of two cadres of *Education Officers* in the Maharashtra Education Service, Group – A (Administrative Branch) and *Administrative Officer*, Maharashtra Education Service, Group – A (Administrative Branch) is a conscious decision taken by the State Government. The said amalgamation is a policy decision taken by the Government and G.R. to that effect has been issued on 20 November 2019. After taking the said policy decision, the recruitment rules in exercise of

powers of proviso to Article 309 of the Constitution of India have been framed, in furtherance of the said decision which is valid and legal.

21. The Recruitment Rules for *Administrative Officer* for the first time were framed on 7 September 1971, which were modified on 23 December 1988. The recruitment rules for the post of *Education Officer* were framed in the year 1978 and they are amended in the years 2013 and 2016 respectively. The State Government have changed the Educational qualification for the post of *Education Officer* and has dispensed with the degree of B.Ed vide Recruitment Rules notification dated 29 June 2013. The said notification was issued, as a result of the decision by the Maharashtra Administrative Tribunal, Mumbai dated 17 November 2015, in Original Application Nos. 576 of 2014 and 872 of 2013.

22. Respondent Nos.2 and 3, who are private individuals have also filed their affidavit opposing the Petition. Respondent Nos. 2 and 3 are placed at Serial Nos. 1 and 2 in the gradation list which is challenged by the Petitioners herein. According to Respondent Nos. 2 and 3, the challenge of the Petitioners is not sustainable for the reason that the definition of *Education Officer* is provided in Rule 2(f) of the Recruitment Rules, 2022. The said definition includes the post mentioned in the schedule appended to the said Rules and in the said schedule, the post of *Administrative Officer* have been included at Serial Nos. 11 to 15. Therefore, the challenge by the

Petitioners that the *Administrative Officers* are not eligible for appointment to the post of *Deputy Director*, on the ground that amendment has not been made to the Recruitment Rules for the post of Deputy Director dated 18 January 2018, to include the post of *Administrative Officer* in the feeder cadre of *Deputy Director* is not sustainable.

23. The objection is raised by Respondent Nos. 2 and 3 to the locus of the some of the Petitioners to challenge their placement in the seniority. According to Respondent Nos. 2 and 3, all the Petitioners from Nos. 1 to 22 except one of the Petitioners namely Sangita Bhagwat, are not eligible for the promotional post. It is submitted that the process of amendment of Schedule – B to the Recruitment Rules of Deputy Director dated 18 January 2018, to bring it in tune with the Recruitment Rules for *Education Officer* dated 28 December 2022 is under progress. The G.R. for the proposed amendment has also been issued on 22 November 2023, whereby sanction is given to include the post of *Administrative Officer* into the Schedule – B of the Recruitment Rules of Deputy Director of Education and notification to that effect would be issued in the near future.

24. The question before us is whether (i) The said Rule – 8 of Recruitment Rules, 2022 is violative of the right of the Petitioners? (ii) Whether the Rule – 3 of the Recruitment Rules, 2022 is contrary

to Rule – 8 of the said Rules? (iii) Whether the said Rule – 8 is also contrary to Rule – 3 of the Recruitment Rules of Deputy Director of Maharashtra Education Services, Group – A (Administrative Branch)?

25. The undisputed position is that upon amalgamation of the two cadres of *Education Officers* and *Administrative Officers* dated 20 November 2019 was never matter of challenge by any of the parties. The said policy decision of amalgamation culminated in framing of Rules for the post of *Education Officer* in Maharashtra Education Service, Group – A (Administrative Branch) Recruitment Rules, 2022. Prior to such amalgamation, the hierarchy in the cadre of *Education Officer* and the *Administrative Officer* as it existed then is as under:

Promotional Post		
3.	Administrative Officer	Director
	Superintendent (M.S.S.)	Joint Director
	Superintendent (S.R.S.)	Deputy Director
	Head Clerk	Education Officer
		Deputy Education Officer

26. Both the cadres belong to one and same Administrative Branch of the Maharashtra Education Services. According to the Recruitment Rules, 2016, the qualifications for the post of *Education Officer* is degree of in its statutory University or any other

qualification equivalent to the said qualification. The recruitment is either by way of promotion from the persons holding post of Deputy *Education Officer* with five year experience or by nomination. The Recruitment Rules for the post of *Administrative Officer*, which were framed in the year 1988 provided the qualification of degree in Art, Science, Commerce or Law, the appointment could be made either by promotion or nomination at the ratio of 50 50.

27. The responsibilities of *Education Officer* and *Administrative Officer* are same. Only difference being the *Administrative Officers* are working at the State level offices and the *Education Officers* are working mostly at District level offices. Considering the fact that after 6th Pay Commission, both the posts which were exercising similar power and discharging similar functions were placed in same pay scale. The policy was taken by the State to amalgamate the said cadre.

28. The State is empowered by virtue of proviso to Article 309 of the Constitution of India, to frame Recruitment Rules and to amend it from time to time. Accordingly, in exercise of the said powers, the State has framed the Recruitment Rules for the post of *Education Officer* and also has amended it from time to time, last of such Recruitment Rules being framed vide notification dated 28 December 2022.

29. The definition of the post of *Education Officer* in the Recruitment Rules, 2022 is provided in 2(f) of the said Rules. The *Education Officer* means, *Education Officer* in the Maharashtra Education Service, Group – A (Administrative Branch) and it includes the post mentioned in Schedule – A appended to the Rules. The *Administrative Officers* have been added to the Schedule – A at Serial Nos. 11 to 15. Therefore, inclusion of their names in Schedule – B of the Recruitment Rules of Deputy Director is just of formality and steps have already been taken in that direction.

30. As a result of amalgamation of two cadres in 2019, regular transfers on Administrative grounds have also been effected from one cadre to other cadre. Various transfer orders have also been placed on record to demonstrate the same. The *Education Officer* and the *Administrative Officer* belong to the same branch of administration, the qualification nature of duties, scale of pay of both the posts is one and the same therefore the decision for amalgamation of the said two cadres was taken by the State Government. The Petitioners herein have never challenged the amalgamation of these two cadres, therefore, now they cannot challenge the Recruitment Rules. Though the Petitioners have challenged the Rule – 8, the said challenge is incomplete without challenge to the Rule 2(f) of the said Rules which is the definition of *Education Officer*, which included the post mentioned in the Schedule.

31. The Petitioners do not challenge the Recruitment Rules, 2022 as a whole, they are only taking exception to Rule – 8 of the said Recruitment Rules, whereby the seniority of the persons working in the post of *Administrative Officers* in Maharashtra Education Service, Group – A, has been fixed in the cadre of *Education Officer* and its equivalent post, as per their date of appointment by nomination or regular promotion on the post of *Administrative Officers*, on the date of publication of the said Rules.

32. According to the Petitioners, they do not have any objection for amalgamation of the post of *Administrative Officer* in the cadre of *Education Officer*. They do not have any objection for extending them the benefit of pay scale etc. and their only objection is as regards maintaining of common seniority for both the posts. They are taking objection for counting the earlier services of the *Administrative Officers* rendered by them on their nomination or promotion on the said post of *Administrative Officer*. It is claimed by the Petitioners that the *Administrative Officers* are born in the cadre of *Education Officers* on the day, when the said post were merged. Therefore, the seniority of *Administrative Officer* can be counted only from the date on which the said post was merged in the cadre of *Education Officer*.

33. The said contention of the Petitioners is not at all tenable and maintainable for the reason that if such contention is accepted, then

the *Administrative Officer* would be required to again complete 5 years of service on the said post for being considered for further promotion. Even otherwise, the designation of the said post has not been changed the post of *Education Officer* and *Administrative Officer* are distinct posts which form part of the same cadre of *Education Officer*. Even today the two posts are independent posts, they have been granted equivalence, as a result, a common seniority list is prepared.

34. The seniority of the Government employee is governed by Rule – 4(1) of the MCS (Regulation of seniority) Rules of 1982, the said Rule is now substituted by Rule – 3(1) of the MCS (Regulations of Seniority) Rules of 2021. The said Rule provides that the seniority of a Government servant shall be determined from the length of his continuous service in the said cadre or post. Therefore, considering the said Rule, the seniority of Respondent Nos. 2 and 3 is decided, taking into account their length of service from the date of their joining in the cadre of *Administrative Officer*.

35. Though the Petitioners have claimed that chances of their promotion to the post of *Deputy Director* are jeopardized, on account of inclusion of *Administrative Officers* in the cadre of *Education Officer*, the said assumption is not correct. There are in all 6 sanctioned posts of *Administrative Officers* in the State, out of which, presently only 2 are occupied and rest of 4 posts are vacant. As against that, there are 144 sanctioned posts of *Education Officer*,

therefore, the amalgamation of only two working *Administrative Officers*, is in no way going to adversely affect the Petitioners, if we consider their seniority and eligibility for the promotional post of *Deputy Director* as on today.

36. The Petitioners have challenged the said Rule – 8 on the ground that post of *Administrative Officer* is in the lower pedestal and the qualifications for both the posts are different. The posts of *Administrative Officers* are governed by Recruitment Rules of 1988. According to the said Rules, the qualification required for the post of *Administrative Officer* possess degree in Arts, Science, Commerce or Law at least in second class or any other equivalent degree or a post graduate degree in any of the faculties. The said post can be filled in by either promotion or by nomination in the ratio of 50 : 50 from the feeder cadre of Superintendent. The last of the Recruitment Rules for the post of *Education Officer* in the State of Maharashtra before coming into the Recruitment Rules, 2022 is concerned, the said Recruitment Rules have been framed in 2016, which provides that ratio for appointment by promotion and nomination for the post of EO would be 50:50. The qualification is similar to that of *Administrative Officer* that is degree of any statutory University or any equivalent qualification declared by the Government. Both these posts belong to the Administrative Branch of the Maharashtra Education Service, meaning thereby, they exercise administrative functions in the said Department. Therefore, there cannot be any

distinction as regards qualification, pay scale, exercise of powers and functioning on the said two posts. Though the Petitioners claimed that the post of *Education Officer* is on a high pedestal than that of a *Administrative Officer*, the placement of the said officers would itself indicate that said assumption is incorrect. The *Education Officers* are usually placed in the offices at District level as against that, the *Administrative Officers* are placed in the offices at State level or regional level. Therefore challenge on that count is not maintainable.

37. The Petitioners have placed reliance on the communication placed on record, whereby the information was called from the respective offices, for consideration of eligible candidates for promotion to the post of *Deputy Director* by communication dated 31 October 2022. Therefore, according to the Petitioners, since the said Recruitment Rules have come into force subsequently on 28 December 2022, the said Rules will not be applicable to the said recruitment process, which was to be carried down for the then existing vacancies. In our view, it is merely a communication to forward the names of the *Education Officers* for consideration of promotion after collecting necessary data and apart from that, the amalgamation of the said posts was made in the year 2019 itself, vide G.R. dated 20 November 2019. Therefore, the said communication merely calling upon the concerned regional offices to provide the data of officers eligible for promotion cannot be considered unless

the DPC was convened in furtherance thereof.

38. The other ground raised by the Petitioners is that, the Recruitment Rules for the post of *Deputy Director* of Education prescribed the qualifications and eligibility for appointment to the post of *Deputy Director*. In the said Rules, Rule 2(c) defines *Education Officer* and the said Rule refers to *Education Officer* means the officer mentioned in the Schedule – B of the said Rules, the said Schedule – B does not include the post of *Administrative Officer*. Therefore, according to the Petitioners, unless the said Rule 2(c) and the Schedule – B is amended, the *Administrative Officer* cannot be considered for promotion to the post of *Deputy Director* of Education in Maharashtra Education Service, Group- A (Administrative Branch). Though *prima facie* the said interpretation appears to be correct, however, minute reading of definition of the *Education Officer* as provided under Rule 2(f) of the Recruitment Rules, 2022 of *Education Officers*, which reads thus:

*2(f) “Education Officer” means the Education Officer in the Maharashtra Education Service, Group - A (Administrative Branch) and it **includes** the posts mentioned in Schedule A appended to these rules;*

and Rule 2(c) of the Recruitment Rules, 2018 for the post of Deputy Director of Education in the Maharashtra Education Service, Group – A (Administrative Branch) which reads as under:

*2(c) “Education Officer” means the Education Officer in the Maharashtra Education Service, Group A and it **includes** the posts mentioned in Schedule “B” appended to these Rules;*

39. We have gone through both the definitions of *Education Officer*, both the definitions refers *Education Officer* to mean *Education Officer* in the Maharashtra Education Service, Group – A and it **includes** posts mentioned in the Schedule appended to the Rules. So far as the *Education Officer* in Maharashtra Education Service, Group – A is concerned, Rule – 2(f) of Recruitment Rules, 2022 provides that it **includes** the post mentioned in the Schedule – A, which **includes** the *Administrative Officer*, Group – A. Therefore, the *Education Officer* mentioned in the Recruitment Rules of Deputy Director of Education specifically mentions about *Education Officer* in Maharashtra Education Service, Group – A, which is defined in Recruitment Rules, 2022 and both the Rules mention that it **includes** the posts mentioned in Schedule appended to the Rules. Therefore, the said posts are not limited to the post mentioned in the Schedule but it is inclusive of the posts mentioned in the Schedule.

40. On going through the dictionary meaning of **include**, it means to have as one part, to contain among other things, to take in or comprise as a part of a whole group. Therefore, the said Schedule – B does not exclude any other posts apart from the posts mentioned in the Schedule. Therefore, the contention of the Petitioners on this

count is also not at all tenable. Therefore, Rule – 8 is not contrary to Rule- 3 of Recruitment Rules for the post of Deputy Director of Education. So also Rule – 3 of the Recruitment Rules, 2022 is not contrary to Rule – 8.

41. The respective parties have also relied on the certain case laws. The Petitioners have relied on the judgment of this Hon'ble Court in *Vaijanath Tatyarao Shinde V/s. Secretary, Marathwada Shikshan Prasarak Mandal, & Ors.*¹ The Full Bench of this Hon'ble Court has decided the reference made to it which is: "For promotion to the post of Head Master of a Primary School, whether seniority of the teacher is to be counted from the date of initial appointment, or from the date of acquisition of educational and training qualification." Since the question in the said judgment which is formulated for the reference is totally different, therefore, the said judgment would not be applicable in the present case.

42. The other judgment on which much stress was given by the Petitioners in the case of *K. P. Sudhakaran and Anr. V/s. State of Kerala and Ors.*² In the said case, the question of determination of seniority was considered. However, even in the said case a person who has been transfer on request at his free will with understanding that he will be placed at the bottom below the junior most employee has been considered. Therefore, the case law in the said matter

¹ 2006 (6) Mh.L. J.

² (2006) 5 SCC 386

would also not be applicable in the present case.

43. The Petitioners have placed reliance on the judgment in the case of *Saramma Varghese V/s. Secretary/President, S.I.C.E.S. Society and Ors.*³ The Petitioners have placed reliance on the observation made by the Court in the said judgment, wherein it has been observed that the *Education Officer* is conferred with adjudicatory function by virtue of Rule 12(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

44. In our view, the *quasi judicial* function of the *Education Officer* is not a substantive function. This function is discharged owing to his Administrative duties. It merely confers him power to decide dispute about the seniority amongst the employees of a school in accordance to the rules applicable. Therefore, the said post can by no stretch be equated with full fledged *quasi judicial* Authorities. The predominant function remains administrative function. The *Education Officer* is undoubtedly is an officer discharging Administrative functions. Therefore only on account of one of his functions being adjudicatory the post of *Education Officer* cannot be placed on higher pedestal than that of an *Administrative Officer* other things being equal. As it is the issue in the said matter was whether the higher pay scale was relevant for fixation of seniority or the length of service. Therefore, merely certain observations in the

3 1989 Mh. L. J., 951

said judgment will not be applicable and binding precedent in the present case.

45. The Respondents on the other hand have placed reliance on the judgment of this Court in the case of *Hemant Mhatre and Ors. V/s. Union of India and Ors.*⁴, wherein the issue was in respect of merger of Ministerial Cadre (Junior Clerks) with that of 'Tool Checkers'. The issue in respect of determination of seniority in the merged cadre has been answered in this matter by this Court. This Hon'ble Court relying on the decision of the Supreme Court in *R. L. Marwaha V/s. Union of India & Ors.*⁵ has observed that it is settled position of law that the rule against retrospective construction is not applicable to a statute merely because a part of requisites for its action is drawn from a time antecedent to its passing. If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and the rule may well result in virtual nullification of most of the statutes.

46. This Hon'ble Court in the abovementioned matter as further observed that:

“Mere chances of promotions are never regarded as conditions of service. Therefore, on the ground that such chances might be affected, it cannot be said that there is any taking away of Vested Rights”.

4 WP No. 1708 of 2004 (dated 16.04.2018).

5 (1987) 4 SCC 31

“If the seniority of persons is considered from the date of merger then their entire service prior to merger will stand wiped out.”

47. The observation of this Hon’ble Court in paragraph 17 in the case of *Hemant Mhatre and Ors. V/s. Union of India and Ors.* would be relevant for the present case, wherein it has been observed that:

“We are required to note that restructuring or merger is basically, a policy decision. Therefore, the issues as to whether such restructuring or merger, ought to be from a particular date, prospective or retrospective, are again, matters of policy, merely because these are matters of policy, there can be no arbitrariness or unreasonableness. However, in the absence of any mala fides, unreasonableness or arbitrariness, and scope of judicial review in such matters, is extremely limited”

Resultantly, the said Writ Petition was dismissed.

48. Hence, considering that as per the policy decision of the State Government, the post of *Administrative Officer* which has been merged in the cadre of *Education Officer* does not lose its independent entity, but merely equivalence is granted to the said post for consideration of further promotion and the said decision has been taken after taking into consideration the similarity, eligibility, qualifications, pay scale, nature of duties and exercise of powers of the said two posts, the said decision of amalgamation has been taken. As a result we hold that, the Rule – 8 incorporated in the Recruitment Rules, 2022, are not arbitrary, illegal or ultra vires.

49. Having considered the relevant Rules, regulations and arguments made by the parties during the course of hearing, we are of the opinion that, the Judgment and order passed by the Tribunal does not need any interference resultantly the challenge fails. Hence, the Writ Petition is dismissed. No order as to costs.

50. In view of the dismissal of the Writ Petition, the Interim Application does not survive and the same is also disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)