



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

**WRIT PETITION NO. 4730 OF 2024**

( Yogesh s/o Waman Fase ..vs.. The State of Maharashtra, through its Secretary, School Education & Sports Department, Mantralaya, Mumbai and others )

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Mr. Ram Karode, Counsel for the petitioner,  
Mr. A.V. Palshikar, AGP for the respondent Nos.1 and 2,  
Mr. R.G. Kavimandan, Counsel for the respondent Nos.3 and 4,  
Mr. Anand Parchure, Counsel for respondent No.5.

**CORAM : AVINASH G. GHAROTE &  
ABHAY J. MANTRI, JJ.**

**DATE : 08-04-2025**

Heard Mr. Karode, learned Counsel for the petitioner,  
Mr. Palshikar, learned Assistant Government Pleader for the  
respondent Nos. 1 and 2, Mr. Kavimandan, learned Counsel  
for the respondent Nos.3 and 4 and Mr. Parchure, learned  
Counsel for the respondent No.5.

2. The petition questions the transfer of the respondent  
No.5 from the non-aided division to the aided division to the  
respondent No.4 institution, by virtue of the transfer order  
dated 24-11-2022, on the ground, that the petitioner does not  
satisfy the requirement of Schedule-B III(1)(b)(ii) of the  
Maharashtra Employees of Private Schools (Conditions of

Service) Rules, 1981 (hereinafter referred to as the “MEPS Rules”), which is in terms of Rules 2(1)(j) and 6 of the MEPS Rules. By the said transfer order, the respondent No.5, who had the qualifications of M.A. B.Ed. and was teaching Economics in a division which was non grant, has been transferred to the grant-in-aid section, on the condition that she would acquire Master’s Degree in the concerned subject, which is secretarial practice, within a period of three years from the date of the transfer.

3. It is contended, that the requirement of having the requisite educational qualifications will have to be satisfied on the date on which the transfer is effected from the non grant to the grant-in-aid section and the law does not permit granting of an opportunity to an unqualified teacher, of acquiring the requisite qualifications subsequent in point of time. Mr. Kavimandan, learned Counsel for the respondent Nos.3 and 4, does not dispute, that on the date of the transfer order dated 24-11-2022 (Page No.25-A), the petitioner was not having the qualification of M.Com., as required by Clause III (1)(a) of Schedule B of the MEPS Rules, or for that matter, the qualifications as contemplated by Clause III (1)(b)

(i)(ii) of Schedule B. Since it is an admitted position that the respondent No.5 did not hold a Master's Degree in Commerce as on 24-11-2022, it was necessary for the respondent No.5, to at least satisfy the requirement of holding a Bachelor Degree in Second Class in Commerce and also to hold the qualification of a Chartered Accountant. It is an admitted position that the respondent No.5, as on 24-11-2022, was not a Chartered Accountant. It is perhaps for this reason that the impugned transfer order dated 24-11-2022 by virtue of Clause IV grants permission to the respondent No.5, to obtain the qualification of M.Com. within a period of three years.

4. The requirement of educational qualifications for teachers in junior colleges as contemplated by Schedule B, stem from statutory rules and, therefore, though Mr. Kavimandan, learned Counsel for the respondent Nos. 3 and 4 as well as Mr. Parchure, learned Counsel for the respondent No.5 placed reliance upon the Government Resolution dated 01-12-2005 (Page No.79), however, it is a settled position of law that a Government Resolution cannot override statutory mandate or the mandate flowing from the rules framed under the statute.

5. In that view of the matter, we do not see any reason to sustain the impugned transfer order dated 24-11-2022. The same is hereby quashed and set aside and the respondents are directed to fill in the vacancy by following the mandate of Schedule -B III of the MEPS Rules.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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