

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

WRIT PETITION NO.8061 OF 2025

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Shubha Iswarchandra Pandey

.. Petitioner

Vs.

The Union of India & Ors.

.. Respondents

Mr. Ajaydhar Dwivedi with Mr. A. K. Upadhyay, Advocates
for the Petitioner

Mr. Aniruddha A. Garge, Advocate for Respondent No.1.

Mr. Harsh Dedhia, Advocate for Respondent Nos.2 and 3

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 2nd APRIL 2026

Per, Shree Chandrashekhar, CJ:

This writ petition has been filed being aggrieved by the order pronounced on 21st April 2025 in Original Application No.1189 of 2023. The petitioner who made an application as a general category candidate pursuant to Advertisement No.12 dated 25th January 2020 approached the Central Administrative Tribunal, Mumbai Bench, Mumbai (in short, the Tribunal) to challenge the decision taken by the respondent-authorities not to fill up the vacancies under the EWS category and, in particular, the post of PG Teacher in Sociology (Gujarati medium).

2. The Tribunal dismissed Original Application No.1189 of 2023 observing that clause 6.3 in the Office Memorandum dated 31st January 2019 vests a discretion in the Employer to treat unfilled vacancies as unreserved vacancy under general category. Distinguishing the decision by the Principal seat of the Tribunal at New Delhi in Original Application No.1849 of 2023 titled “Seema &

Anr. v. Government of NCT of Delhi & Ors.” decided on 27th June 2023, the Tribunal held that the said decision is not a binding precedent inasmuch there was no contest in the case of “Seema” by the respondents. Whereas, in the present case, the respondents have taken a firm stand that the applicant has no legal or statutory right to claim appointment on unfilled vacancy under EWS quota.

3. The Tribunal held in paragraph no.8 as under:-

“8. So far as the contention of the applicant on the basis of order dated 27.06.2023 passed by C.A.T., Principal Bench, New Delhi in case of Seema (Supra), in the said case there was only direction for consideration of representation and there appears to be no contest made on behalf of the respondents in the case. Whereas in the present case, the official respondents have also contested the case of the applicant on merit by filing reply. Applicant has failed to show any legal or statutory right against vacant seats of EWS quota. In this view of the matter no direction can be issued by this Tribunal to consider the case of the applicant.”

4. Advertisement No.12 was issued on 25th January 2020 inviting applications for appointment of 101 posts of PG Teachers out of which 8 posts were reserved for EWS candidates. There were two posts of PG Teachers reserved under different subjects in EWS quota. There is material on record to show that these seats could not be filled up in EWS quota as no suitable candidate was identified by the Staff Selection Commission. One of the posts was for a PG teacher in Sociology (Gujarati medium). The petitioner is a general category candidate seeking appointment as PG Teacher in Sociology (Gujarati medium). She is the candidate next below the selected candidate under the said category. The respondent took a stand before the Tribunal that the petitioner is not a candidate for EWS quota. She does not belong to SC/ST/OBC/EWS category and did not furnish any certificate thereof. Furthermore, in the representation dated 3rd November 2022 the petitioner made a request which is an after-thought.

5. The respondent-Union Territory Administration of Dadra & Nagar Haveli and Diu & Daman took a specific stand before the Tribunal that the Department has revisited the requirement of teachers subject-wise and medium-wise and after analyzing the requirement it has realised that there was no requirement of Sociology and PG Teacher of any medium in Union Territory of Dadra & Nagar Haveli and Diu & Daman. Moreover, a fresh advertisement was issued on 6th January 2024 for filling up the vacancies of 75 PG Teachers and the said advertisement did not include a post in Sociology (Gujarati medium). In the present case, the respondent-Director of Education has stated that by virtue of Dadra & Nagar Haveli and Diu & Daman (Merger of Union Territories) Act, 2019 which was brought into force by the Notification dated 26th January 2020 the two Union Territories have been merged to form Union Territory of Dadra & Nagar Haveli and Diu & Daman. A similar objection has been taken by the respondent-authorities in the present proceedings stating as under:-

“25. That, in lieu of constitution of the merged UT of Dadra & Nagar Haveli and Daman & Diu, the department has merged the available sanctioned posts & Recruitment Rules (RRs) for the posts of PGTs of aforesaid both the erstwhile UTs by preparing and notifying the afresh Recruitment Rules (RRs) for the posts of PGT. Copy of Notification Dated 27.07.2021 is annexed and marked as Annexure - 'II'.

26. That, subsequent, to notification of the RRs, afresh Reservation Roster has been prepared and subject wise/Medium wise requirement of teachers for the Government higher Secondary Schools of the UT of DNH&DD has been assessed by the department.

27. That, on the basis of the aforesaid Reservation Roster prepared and assessment made on requirement of subject wise & medium wise teachers, the department through the Staff Selection Board (SSB), Daman, has issued advertisement on 06.01.2024 for 75 (seventy-five) subject wise & medium wise teachers. Copy of the Advertisement Dated 06.01.2024 is annexed herewith and marked as Annexure - 'III'.

28. In the aforesaid advertisement, the posts that remained vacant subsequent to the previous advertisement Dated 25.01.2020 of the erstwhile UT of DNH, has also been considered and advertised.”

6. Having examined the materials on record, we have formed an opinion that the order pronounced on 21st April 2025 in Original Application No.1189 of 2023 cannot sustain the scrutiny in law and is liable to be set aside. In our opinion, this is not a matter of discretion for the Employer not to implement Office Memorandum dated 31st January 2019 which is applicable in the present case. The said Office Memorandum provides for reservation to the extent of 10% in direct recruitment to the civil posts and services in the Government. There is a mention of exemption from reservation to the Scientific and Technical posts which satisfy the criterion laid down thereunder. Under clause 6.2 of the said Office Memorandum, it is provided that every government establishment shall recast group wise post-based reservation roster register for direct recruitment in accordance with the format given in Annexure II, III, III and V, as the case may be, for effecting 10% reservation for EWS candidates. Under clause 6.3, it is provided that if any vacancy was earmarked for EWS candidates but not filled up due to non availability of a suitable candidate belonging to such category then such vacancy for that particular recruitment year cannot be treated as backlog.

7. Office Memorandum dated 31st January 2019 reflects a policy decision taken by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training. The mandate under clause 6.3 cannot be avoided by the Employer either on a plea that a candidate has no vested right to seek appointment on a particular post or on the ground that there has been merger of two Union Territories. Just to indicate, Advertisement No.12 was published and the posts were advertised before the merger of two Union Territories came into force. Even so, the Office Memorandum dated 31st January 2019 shall bind the new entity and there is no plausible

reason put-forth by the Director of Education in the counter-affidavit as to how the Office Memorandum dated 31st January 2019 vests a discretion in the Employer to avoid the direction issued by the Ministry of Personnel, Public Grievances & Pensions. As noticed above, the said Office Memorandum contains an exemption clause and there is no provision under the said Office Memorandum which gives an option to the Employer not to fill up unfilled EWS vacancies and to treat the same as backlog. A right of consideration which accrued to the petitioner by virtue of a mandate under the said Office Memorandum cannot be taken away by the Employer that there is no need now to appoint a PG Teacher in Sociology (Gujarati medium). At the relevant time, there was a need and posts were advertised for appointment of such PG Teacher. The decision rendered by the Tribunal is definitely flawed in law and, therefore, is set aside. Writ Petition No.8061 of 2025 is allowed.

8. The respondent-authorities shall consider the claim of the petitioner for appointment as PG Teacher in Sociology (Gujarati medium), if found eligible.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]