

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3203 OF 2025

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Madhubala Bharatnath Yadav alias
Madhubala Mahendrakumar Yadav
Age : 40 years, Occupation : NA
Residing at, Chandak Nishchay Ambadwadi
Flat No. 1607, E-wing, Mumbai,
Maharashtra 4000068.

....Petitioner

Versus

1. The Commissioner,
The Municipal Corporation of
Greater Mumbai,
Having its offices at Mahapalika Bhavan,
Mahapalika Marg, Fort, Mumbai 400 001.
2. The State of Maharashtra,
Through Principal Secretary,
Secretary, School Education and
Sports Department, Mantralaya
Mumbai 400 032.
3. Education Commissioner, Pune
1st Floor, Central Building, Dr. Annie
Besant Road, Agarkar Nagar,
Pune 411 001.

....Respondents

Ms. Purva S. Pradhan a/w. Mr. Vishal V. Shinde, for the Petitioner.
Ms. Vaishali Choudhari, Addl. GP for State of Maharashtra.
Mr. Pratik Garde, for Respondent/BMC.
Ms. Sunita Jadhav, AO (Education)

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.
DATE : 04th FEBRUARY, 2026**

ORAL JUDGMENT (PER : RAVINDRA V. GHUGE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has set out Prayer Clauses 1, 2, and 3 below paragraph 30, which read as under :

1. *This Hon'ble Court be pleased to hold and declare that in the light of law laid down by the Hon'ble Bombay High Court in the matter of Nikhil S. Chaudhari vs State of Maharashtra and ors., in WP no. 6064 of 2014, the Respondent has erred in not converting the posts of ex-serviceman and earthquake affected persons from Open Category to Open General category as the non-availability of candidates from the said category and that the Petitioner is entitled to be shortlisted in open category as per the marks secured by the Petitioner for the post of Primary Teacher in MCGM;*
2. *This Hon'ble Court be pleased to direct the Respondent to revise recommendation list Phase 1 (conversion round) dated 25/06/2024 and thereby covert the posts of ex-serviceman or earthquake affected persons to open category and further be pleased to direct the Respondent No. 1 and 2 to select the Applicant for appointment to the post of Primary Teacher from Open Category as the Petitioner has secured the requisite marks and is immediately next in number after the last selected candidate.*
3. *This Hon'ble Court be pleased to direct the*

Respondent no. 1 to send requisition to Respondent no. 2 and 3 and further be pleased to direct Respondent no. 2 and 3 to recommend name of the Petitioner and further be pleased to direct the Respondent no. 1 to appoint the Petitioner on the post of Primary Teacher, if found fit.

3. The Corporation has filed its Affidavit-in-Reply.

4. The State of Maharashtra issued a notification on 31.01.2023 inviting applications for conducting the Teachers Aptitude and Intelligence Test (TAIT) for the year 2022. The test was conducted on 22.02.2023. The Petitioner scored 83 marks in the TAIT. On 14.09.2023, candidates were directed to submit their self-certification on or before 22.09.2023. The Petitioner submitted her self-certification on 16.09.2023. There was no impediment to appoint her.

5. On 18.01.2024, the Mumbai Municipal Corporation (Sub-Primary Department) published an advertisement for the recruitment of teachers to 239 vacant posts. 193 posts were filled from the Open Category.

6. Respondent No. 2 – State of Maharashtra published the

list of eligible candidates for recommendation on 25.02.2024. On 25.06.2024, category-wise details of the number of posts were published, wherein three posts from the Ex-Servicemen Category and four posts from the Earthquake-Affected Category were converted to the General Category. On 10.09.2024, the State addressed a letter to the Education Commissioner – Respondent No. 3, directing that 10% reserved posts, along with those which had remained vacant due to abstention, disqualification, etc., or where candidates did not join, be filled by meritorious candidates from the same category.

7. On 13.09.2024, Respondent No. 3 issued a letter regarding the recruitment of teachers in Phase II, stating that 10% reserved posts along with the remaining vacant posts were to be filled in. On 16.01.2025, the State Government directed local bodies and private schools to proceed with the recruitment process of teachers in Phase II and to publish an advertisement for the said recruitment.

8. The Petitioner was born on 31.01.1985 and completed 40 years of age on 31.01.2025. Thereafter, the Petitioner became

ineligible on account of having crossed the age bar of 40 years.

9. In the above backdrop, the grievance of the Petitioner is that although posts were available and she had passed the TAIT 2022, her recruitment was kept pending until January 2025. She has been rendered age-barred solely because the State and the Corporation failed to initiate steps for filling up the vacancies that were advertised in 2024.

10. The learned Advocate for the Corporation submits, on the basis of the Affidavit-in-Reply, that after the first phase of recruitment of teachers who had passed the TAIT, the Corporation decided to absorb all eligible surplus teachers. The learned Advocate for the Petitioner submits that there were 804 surplus teachers in the Marathi, Hindi, Gujarati, and Urdu mediums, out of which 66 were surplus in the Hindi - Primary section. Even after keeping aside these posts for absorption, the Corporation still has 85 vacancies today.

11. The learned Advocate for the Corporation submits that, in view of the Affidavit, the Corporation would first absorb all

eligible surplus teachers and thereafter consider the available candidates who have passed the 2022 TAIT.

12. We find that there are candidates who have cleared the TAIT 2022 and are awaiting recruitment. By ensuring that a specific number of 804 posts were earmarked for surplus candidates to facilitate their absorption, the remaining seats could have been utilized for recruiting candidates on the basis of the merit scores of TAIT 2022. The Petitioner is one of them such candidates.

13. The State has now conducted the TAIT 2025. Many candidates, like the Petitioner, who cleared TAIT 2022 and were awaiting their allotments to the available vacant posts, are becoming age-barred, if they are to be considered under TAIT 2025, which has already been conducted and whose results were published on 18.08.2025. This Petition was filed on 01.07.2025, before the said results were declared.

14. We find that candidates who had already cleared the TAIT 2022 could not have been ignored by the State. TAIT 2025 could have been conducted only after the eligible TAIT 2022

candidates were appointed and the select list was exhausted. The Corporation kept a few posts vacant without recruiting candidates like the Petitioner and now submits that it would consider TAIT 2025 candidates despite TAIT 2022 candidates still being available.

15. The Corporation has canvassed in Paragraph Nos. 7 to 19 as under :

7. *I say that, an advertisement for filling the vacant posts of 'Shikshan Sevak' (Education Volunteers) on the establishment of the Education Department of the Brihanmumbai Municipal Corporation (BMC) was published on February 9, 2024. Accordingly, a total of 1342 vacant posts were registered through the government's Pavitra Portal. Out of these, a selection list of a total of 1251 candidates was received through the Pavitra Portal and out of that, 951 candidates who submitted the required documents have been given appointment as 'Shikshan Sevak'.*
8. *I say that, details of post-wise vacant positions and information regarding reservation for filling the vacant posts of Shikshan Sevaks were entered in the Pavitra Portal. The recruitment process was carried out as per the selection list received from Pavitra Portal. It is specifically pointed out that the name of the Petitioner i.e. Smt. Madhubala Badrinath Yadav was not mentioned in that selection list.*
9. *I say that, since the selection process for the Phase-I advertisements was completed, a facility was provided on the portal to release new advertisements (Phase-2) from 20/01/2025 to*

05/05/2025, as per the Government Letter dated 10/09/2024 and the Commissioner of Education's letter dated 13/09/2024.

- 10. I say that, while releasing these Phase-2 advertisements, it was mandatory to consider the SEBC (Socially and Educationally Backward Classes) reservation which came into effect from 27/02/2024. Accordingly, managements were instructed to review their rosters and issue new advertisements. They were also specifically instructed to take due care regarding the status of surplus teachers when issuing advertisements.*

- 11. I say that, in the meantime the Divisional Deputy Director of Education, Mumbai, had issued a letter on 03.04.2025, regarding the adjustment (absorption) of a total of 386) surplus teachers of Hindi, Urdu, and Gujarati mediums within BMC schools as per the government resolution. Subsequently, a list of 418 surplus teachers was received from the government for adjustment (absorption) in BMC schools. Thus, two lists containing 804 (386+418) number of surplus teachers received by BMC for absorption in BMC school. Accordingly, the process of assigning these teachers to the vacant posts in BMC schools for 'temporary work arrangement' (taatpurti karyavyavastha) is currently underway after receiving the approval of the Commissioner of the Brihanmumbai Municipal Corporation. Currently, orders for 399 surplus teachers have been issued as temporary work arrangement and said teachers reported on their duties. Hereto annexed and marked Exhibit "B Colly" is copies of communication and Lists of surplus teachers from Government to BMC.*

- 12. I say that, Therefore, the vacant posts for teachers in the BMC Education Department have been filled, and these teachers have reported for duty at*

the BMC schools. Therefore, an advertisement for vacant posts in the second phase of recruitment through the Pavitra Portal has not been issued.

- 13. I say that, New advertisements were issued in Phase-2, but the Mumbai Municipal Corporation did not advertise on the Pavitra Portal during this phase.*
- 14. I say that, a petitioner cannot claim that their right to appointment has been extinguished merely because an advertisement from a particular management was not published.*
- 15. I say that, considering the advertisements received within the stipulated deadline, the process of recommending eligible candidates based on merit to the respective managements for recruitment as per the Phase-2 advertisements was completed on 21/05/2025 and 18/08/2025.*
- 16. I say that. BMC did not advertise in Phase-2 because they have surplus teachers in Mumbai whose adjustment (absorption) is currently being carried out.*
- 17. I say that, the responsibility of advertising vacant posts on the Pavitra Portal, ensuring there are no surplus teachers, and issuing the recruitment advertisement as per the updated roster lies with the respective managements and thus it is same on the BMC.*
- 18. I say that, the new Teacher Aptitude and Intelligence Test (TAIT)-2025 was held between 27/05/2025 to 30/05/2025 and 02/06/2025 to 05/06/2025. Its result was published on 18/08/2025.*
- 19. I say that, according to clause 2.1 of the Government Resolution dated 10/11/2022,*

candidates are mandated to appear for every new TAIT exam held. The marks obtained by a candidate in the previous test will not be considered for new advertisements released after the final result of the new test is published. Therefore, for subsequent advertisements, only candidates who appeared for TAIT-2025 will be eligible. As per this provision, the petitioner can participate in the newly announced advertisements if they are eligible based on merits.

16. It is, thus, an admitted position that the Corporation had vacancies which could be filled in from candidates eligible under TAIT 2022. The decision to hold TAIT 2025 was taken in 2025, when candidates eligible under TAIT 2022 were still available.

17. The fact situation clearly indicates that had the available vacancies been filled in from candidates who had cleared TAIT 2022 with promptitude, the Petitioner would not have been required to file a Petition invoking our Writ jurisdiction. We do not see any impediment for the Corporation or the State in filling up the available vacancies as per the advertisement of 2024. Had this been done, many candidates like the Petitioner would have been considered for recruitment.

18. The Petitioner is one of the eligible candidates under TAIT 2022 who has approached this Court. There may be many such eligible candidates. As such, we cannot direct the Corporation to issue an order of appointment in favour of the Petitioner. To meet the ends of justice, we are directing the Corporation to complete the exercise of absorption of surplus teachers, and thereafter, depending on the vacancies as they existed when the TAIT 2022 examination was conducted in 2023, candidates like the Petitioner, in accordance with their merit scores, should be considered for appointment.

19. We are constrained to pass the above order, because there are many candidates like the present Petitioner, who waited for two and a half years for their turn and struck the age bar of 40 years, thereby rendering them ineligible for appearing in any future TAIT, though vacancies being available in terms of the advertisement relating to TAIT 2022. Let the Corporation take an appropriate decision by considering such available candidates on the basis of their merit scores after the absorption of surplus teachers.

20. Considering the Government Resolution dated 16.04.1981, which was examined in the judgment of this Court

delivered by the Aurangabad Bench on 05.09.2018 in Writ Petition No. 6064 of 2014 (*Nikhil Santosh Choudhari vs. The State of Maharashtra & Others*), we expect the State Government to consider the conversion of posts reserved for Ex-Servicemen and Project Affected Persons (PAP) - Earthquake-Affected, if there is no other legal impediment.

21. With the above directions, **this Petition is disposed off.**
Rule is discharged.

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)