
(2013) 06 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No's. 7, 688 and 954 of 2011

Ankita Arun Karale

APPELLANT

Vs

Balaji International Education Society and Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2013) 6 MhLj 273

Hon'ble Judges : S.B. Shukre, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : P.N. Shende in W.P. No. 7 of 2011, M.V. Samarth in W.P. No. 688 of 2011 and A.D. Mohgaonkar in W.P. No. 954 of 2011, for the Appellant; S.G. Jagtap for Respondent Nos. 1 and 2, N.S. Khubalkar, AGP for Respondent Nos. 3 and 4, S. Ghate for Respondent No. 5 in W.P. No. 7 of 2011, N.S. Khubalkar, AGP for Respondent Nos. 1 to 3, S.P. Palshikar for Respondent Nos. 4 and 5 in W.P. No. 688 of 2011, D.P. Thakre, AGP for Respondent Nos. 1 and 2 and Shabbir Hussain for Respondent Nos. 3 and 4 in W.P. No. 954 of 2011, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Question whether D.Ed. qualification is enough to claim a post meant for Graduate Trained Teacher in Primary School or then graduate with B.Ed. qualification are alone eligible for is involved in all these petitions. Hence, these petitions are taken up for hearing together. Initially, the matters were taken up for consideration with Writ Petition No. 3046/1995. Later on, it was found that petitioner in said matter was not imparting instructions to his counsel. The said matter thereafter has been disposed of independently by appropriate order. In Writ Petition No. 7/2011, petitioner seeks appointment as trained graduate teacher with effect from 1-10-2003. Her entitlement was looked into by the Education Officer (Secondary) and on 18-7-2011 he has found the present petitioner not eligible because she does not possess B.Ed. The prayer, therefore, is also to quash and set aside said communication. Advocate P.N. Shende has appeared for this petitioner.

2. In Writ Petition No. 688/2011, the petitioner seeks similar relief with effect from 1-9-1992. There is no order passed as such holding that as he does not

possess B.Ed., he is not eligible to that post. But then, the Education Officer has filed reply-affidavit pointing out that as said petitioner does not possess B.T. or B.Ed. degree, he is not eligible. It is to be noted that this petitioner, as also the petitioner in Writ Petition No. 3046/1995 are represented by Advocate Samarth who assisted the Court in considering his grievance.

3. Writ Petition No. 954/2011 is filed by third teacher, who claims that post since August, 2005 with relief to quash and set aside the order dated 18-5-2010. The Education Officer has by said order informed the employer of the petitioner that as she does not possess B.Ed. qualification, approval sought for placing her against 25% post meant for trained graduate cannot be granted. Advocate A.D. Mohgaonkar has assisted the Court in this matter.

4. It is not in dispute that for seeking appointment as teacher in Primary School, basic educational qualification contemplated is S.S.C. and training qualification envisaged is Diploma in Education i.e. D.Ed. However, if there are four posts of teachers or posts in multiple of four in Primary School, every fourth post is treated as a post meant for a graduate trained teacher. Thus, in this situation, the ratio of S.S.C. D.Ed. teachers as to such graduate trained teacher is 3 : 1. None of the petitioners have contended that person not eligible for an appointment as Assistant Teacher in High School can be given said one post which is known as 25% quota post for a graduate trained teacher in Primary School. It is also not in dispute before us that a person in order to qualify for seeking appointment as Assistant Teacher in High School must possess qualification of a degree with training qualification of B.T./B.Ed. etc., as stipulated in Schedule "B" of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 hereinafter referred to as "1981 Rules". Thus, Rules are framed under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 which is referred to as "1977 Act" hereinafter.

5. Advocate Samarth, Advocate Mohgaonkar and Advocate Shende respectively submit that controversy specifically as such has not been looked into in any earlier precedent. Our attention has been invited to a Resolution dated 9-7-1987 issued by the State Government on the subject of promotion of teachers having graduate qualification working on posts meant for non-graduate teachers in non-government aided middle schools. They submit that bare reading of this Resolution itself shows that such teacher holding graduate qualification is not expected to possess B.Ed. only as training qualification.

6. Shri Shende points out that petitioner Ms. Ankita has obtained D.Ed. qualification in 1989 and was graduate (B.A.) in 1985. She has been placed above respondent No. 5-Ms. Anita in seniority list. Ms. Anita obtained Bachelor of Arts qualification in 1993, D.Ed. in 1988 while she also obtained B.Ed. in 1999. Admittedly, Anita has joined services after petitioner. According to Advocate Shende, as petitioner Ankita is already holding training qualification of D.Ed. and is also graduate, she satisfies the conditions stipulated in Government Resolution dated 9-7-1987 and needed to be appointed/promoted against 25% posts meant

for graduate trained teacher. Impugned order dated 18-7-2011 which denies her that placement is, therefore, challenged as arbitrary and capricious. Support has also been taken from unreported judgment of the Division Bench of this Court delivered at Nagpur on 23-3-2004 in Writ Petition No. 2912/2003, Mohan Pise v. State of Maharashtra and others to show that said judgment accepts D.Ed. (two years course) as sufficient training qualification for the said purpose.

7. Advocate Mohgaonkar also adopts same line of arguments and submits that this position is also clear from the Government Resolution dated 14th November, 1979. He also draws support from provisions of section 1981 Rules for the said purpose.

8. Advocate Samarth submits that representation preferred by petitioner Rajendra Tidke in this respect has not been decided but then D.Ed. needs to be accepted as sufficient training qualification for the purposes of post meant for graduate trained teacher in primary school. He invites our attention to a Circular dated 17-1-2001 issued by State Government to show that as per adjudication in Writ Petition No. 4159/1998 State Government has accepted that D.Ed. is the appropriate training qualification for Primary Teachers and also for appointment against 25% posts of trained graduate teacher.

9. Respective counsel have also invited our attention to consideration of controversy by Division Benches of this Court in judgments reported in Kondiba Mirashe Vs. The State of Maharashtra, The Deputy Director of Education, Education Officer, Zilla Parishad and Chief Officer, Nanded Municipal Council, , Vitthal Madavi and Others Vs. Zilla Parishad and Others, and the judgment of Hon''ble Apex Court reported at State of Maharashtra and Others Vs. Tukaram Tryambak Chaudhari and Others, , State of Maharashtra and others v. Tukaram Tryambak Chaudhari and others.

10. Advocate S.P. Palshikar appearing for respondents 4 and 5--Management in Writ Petition No. 688/2011 has pointed out that services of petitioner therein were already terminated by his employers and petitioner presently is working with respondent No. 6. There is no vacancy for him with respondent Nos. 4 and 5.

11. Respective learned A.G.Ps. appearing for the State Government, the Deputy Director of Education and the Education Officer have opposed the petitions. They submit that controversy looked into by the Division Benches of this Court or by the Hon''ble Apex Court is entirely different and distinct. According to them, various Government Resolutions and decisions produced before this Court show that trained graduate candidates, who could have been appointed as Assistant Teachers in High Schools were occupying posts as Primary Teacher. Looking to this situation, the State Government issued necessary resolutions and converted/ treated 25% posts of Primary Teachers as posts on which trained graduate persons could have been appointed. They submit that effort of State Government was to do away injustice which the better qualified Assistant Teachers were suffering because of their selection and appointment as Primary Teachers. Later

on, this benefit/arrangement was extended also to schools of local authorities as provisions of 1977 Act or 1981 Rules are not applicable to those schools. According to them, when this intention behind issuing policy decision is looked into, insistence by respondent that incumbent must possess B.Ed. Degree to be eligible to claim said 25% quota benefit cannot be said to be unjustified. They, therefore, pray for dismissal of all these petitions.

12. In reply, Advocate Mohagaonkar and Advocate Samarth submit that there cannot be a direct recruitment against said 25% posts and Primary Teachers already in employment, who improve their qualifications while in service and procure graduate degree and become eligible for placement as Assistant Teacher in High School can only be conferred with said benefit.

13. We have considered the controversy in the background of these arguments.

14. First Government Resolution shown to this Court is dated 14th November, 1979 and it speaks of facilities to be made available to the standards 5th to 7th in schools of local bodies. Its preamble shows that there was some difference in teachers and other facilities extended to 5th to 7th standards attached to Middle Schools and those standards attached to Primary Schools of local bodies. With a view to remove that anomaly or difference, Government Resolution dated 14th November, 1979 came to be issued. In the process, the Government has noted that in the Middle Schools for each class teachers are appointed in ratio is 1:3. First three teachers possess S.S.C. D.Ed. qualifications while fourth one is a trained graduate teacher. Government then has stated that it had not permitted appointment of trained graduate teachers in Primary Schools and, therefore, similar facility of 25% quota has been extended to standards 5th to 7th attached to Primary Schools of local bodies. It has then mentioned that said 25% posts would carry pay scale of 365-760 and the same would continue in the cadre of Primary School Teachers. Its Clause-5 stipulates that trained primary teachers in service can be appointed against this post in pay scale of 365-760. The other details given for working out the same are not relevant for our purposes. But then this Clause-5 of the Government Resolution dated 14th November, 1979 uses the words "graduate primary teacher" and qualifies that this includes graduate teachers, who have completed training course must for primary schools. Little later i.e. in Clause-6, it is further reiterated that such graduate primary teachers in pay scale 365-760 will not constitute a separate cadre and they will be required to work as teacher under Head Master of Primary School even though such Headmaster may not be a graduate or trained graduate person.

15. This Resolution and arrangement has been looked into by the Hon''ble Apex Court in State of Maharashtra and others v. Tukaram Tryambak Chaudhari and others (supra). The Hon''ble Apex Court was not concerned with the question whether D.Ed. qualification would be sufficient for claiming this graduate trained teachers post. Facts show that special leave petitions were filed questioning the judgment of this Court in several writ petitions. The writ petitions were in turn assailing the decision of authorities treating teachers having B.Ed. qualification

as untrained teachers for primary schools. This judgment of Hon''ble Apex Court also considers the judgment of the Division Bench of this Court in Kondiba S/o. Dattarao Mirashe v. State of Maharashtra and others (supra) and judgment of the Full Bench of this Court reported at Smt. Jayashree Sunil Chavan Vs. The State of Maharashtra and Others, . As we are required to refer to these judgments little later again, we find it appropriate to refer to the judgment of Hon''ble Apex Court also little later. However, it needs to be noted that the Hon''ble Apex Court has found that D.Ed. holders needed to be treated as trained teachers in Middle Schools and Primary Schools.

16. The Government Resolution dated 9-7-1987 has been briefly referred to by us above while answering arguments. It is on the subject of promotion to graduate teachers working on posts meant for non-graduate teachers in non government aided middle schools. Its preamble shows the practice of appointing 75% teachers in such schools in under-graduate or non-graduate pay scale and 25% teachers in graduate pay scale. Though S.S.C. D.Ed. teachers were/are accepted to be appointed on posts meant for non-graduate teachers, State Government noted that Managements have been appointing graduate and trained graduate teachers in said pay scale. Some of the teachers though happen to be under-graduate while joining, improve their qualifications and Government felt that merely because they initially accepted their appointments on untrained pay scale, it would not be proper to continue them in that pay scale permanently. Government then has referred to its orders issued on 24-5-1981 and 10-4-1985 to state that for standards 5th to 7th appointment of teachers subject-wise is not necessary. Hence, by applying norm only of seniority, posts admissible for graduate teachers should be filled in from amongst trained graduate teachers working in S.S.C. D.Ed. pay scale. The State Government Resolution then proceeds to mention a meeting conducted dated 13-11-1984 and consequential orders by which it was stipulated that after considering seniority and merit of trained graduate teacher working against non-graduate pay scale, he should be posted on admissible post of a graduate teacher in school imparting education in 5th to 7th standards. The Resolution mentions that a teacher with graduate degree and training qualification of degree in B.T. or B.Ed. or then Diploma in Education (two years course) of Nagpur-Mumbai University, which can be secured by completing two years course after S.S.C. or then training qualification of a diploma of one year like S.T.C.-T.D. in cases of those who have joined prior to 1-10-1970, are eligible for consideration while effecting posting on such trained graduate posts.

17. Government Circular dated 17-1-2001 notices the fact that for primary school teacher 1981 Rules prescribed S.S.C./H.S.C. with D.Ed. as requisite qualification and hence against three posts in private middle schools persons with these qualifications needed to be appointed. Against fourth post a person with graduate degree and B.Ed. qualification should have been appointed. But then on all posts, the graduate teachers were being appointed and 75% teachers so appointed got S.S.C. D.Ed. pay scale while remaining 25% teachers get graduate

pay scale. It is, in this background that the State Government has referred to judgment of this High Court in Writ Petition No. 4151/1998 and declared that D.Ed. is the requisite qualification for Primary Teachers. We may here mention that the Full Bench judgment of this Court in the case of Jayashree Sunil Chavan v. State of Maharashtra (supra) has resolved controversy then prevailing. Some of the Division Benches had in the wake of qualification prescribed by 1981 Rules, held that B.Ed. is a qualification superior to D.Ed. and hence person holding B.Ed. qualification was eligible for seeking employment as a primary school teacher. The Full Bench has not accepted this and declared that both were independent and distinct training qualifications not meant to substitute each other. It is in this background that this Circular has been issued. The Circular states that against 75% posts in standard 5th to 7th, candidates with S.S.C./H.S.C. D.Ed. only needed to be appointed. It is further stipulated that against 25% posts, trained graduate teachers can be appointed. Thus, this circular does not state that D.Ed. treated as sufficient qualification of training for primary teacher has been accepted to be also sufficient for claiming 25% posts meant for trained graduate teacher. This circular expressly refers to 1981 Rules.

18. Government Resolution dated 11th August, 1999 is, in fact, on subject of facilities to be extended to standards 5th to 7th attached to primary schools. This resolution finds consideration in Division Bench judgment of this Court in the case of Vitthal v. Z. P. Chandrapur (supra). The said Division Bench has considered challenge to seniority list published by Zilla Parishad, Chandrapur purely on the basis of date of entry in service and found the same is incorrect. Determination of seniority is not the question which we are required to answer in present writ petitions. However, said Division Bench in paragraph 7 has noted that this resolution dated 11-8-1999 has superseded all other Government Resolutions for providing higher pay scale to the teachers teaching in Standard V to VII attached to primary schools run by local bodies. None of the employers before us are local bodies. Apart from this, parties have pointed out to us and there is no dispute between them that said resolution does not supersede various other resolutions already holding the field. As rightly pointed out to us, in fact, at the end of this resolution State Government has clarified that if any aspect mentioned in this resolution (dated 11-8-1999) is inconsistent with stipulation about it in earlier Government Resolutions/orders, said earlier Government Resolutions or orders shall be accepted and acted upon. The effort of Government in issuing Government Resolution dated 11th August, 1999 was to consolidate the position emanating from various Government Resolutions. In the light of this position, it is not necessary to refer to this Resolution dated 11th August, 1999 in more details for the purposes of adjudication of present controversy. We only note that the Division Bench in the case of Vitthal v. Z.P. Chandrapur and others (supra) was not required to delve into the question, which has been placed before us for consideration.

19. The Division Bench judgment in the case of Kondiba v. State of Maharashtra (supra) considers the issue in relation to schools run by Municipal Corporation

i.e. local authority and holds that 1977 Act is not applicable to said schools. It then finds that Primary Schools run by Municipal Corporation are governed under the Bombay Primary Education Act, 1947 and the Bombay Primary Education Rules, 1949. The Secondary Schools of such Corporation are regulated by Secondary Schools Code. It is, therefore, held that teachers appointed in primary or secondary schools run by a Municipal Council or Corporation must meet the educational requirements as prescribed under Bombay Primary Education Act or Secondary Schools Code and they have to hold qualifications for appointment as a trained teacher prescribed by the Government by invoking the powers under Bombay Primary Education Act and the Rules framed thereunder or the Secondary Schools Code. It has been held that policy of Government in Government Resolution dated 14-11-1979 applies to Primary Schools having Standards 1st to 7th run by Municipal Council and Assistant teachers possessing B.A. B.Ed. qualification is required to be treated as trained teacher and he is entitled to be appointed as Head Master in said school. This judgment at the end of paragraph 7 observes that 25% of the posts of teachers for 5th to 7th standards have been converted from S.S.C. + D.Ed. to Graduate + B.Ed./D.Ed. posts and they were given higher pay by two stages in pay-scale. The Government Resolution dated 25th October, 2000 as also dated 7th November, 2001 and Full Bench judgment at Jayashree Sunil Chavan v. State of Maharashtra (supra) are taken note of in paragraph 8 and this Division Bench has held that Full Bench has not made any change insofar as this ratio of 75% to 25% is concerned and appointment of trained graduate teacher for classes between 5th to 7th standards continues to be legal and valid. The Division Bench found that holding of B.Ed. degree by a primary teacher would not disqualify him and he continues to be trained teacher eligible to be appointed as Head Master. This judgment, therefore, does not hold that a graduate with D.Ed. qualification, if not eligible to be treated as trained graduate, can still be accommodated against 25% graduate posts.

20. The unreported judgment in Writ Petition No. 2912/2003, Mohan Pise v. State of Maharashtra and others dated 23-3-2004 (supra) looks into G.R. dated 9-7-1987 and reproduces its contents in paragraph 4. In paragraph 5 it finds that petitioner therein was trained graduate teacher with B.A. Degree and D.Ed.. He was found eligible to be trained graduate pay scale as per said G.R. The Division Bench concluded that it was correctly granted to him by communication dated 25-3-2002 and its withdrawal, therefore, was found unjustified. Again the question specifically placed before us for consideration was not required to be gone into and the petitioner therein was found possessing that D.Ed. qualification which entitled him to pay scale prescribed for a graduate trained teacher.

21. The controversy before the Hon"ble Apex Court in State of Maharashtra v. Tukaram Tryambak Chaudhari and others (supra) was about treating teachers possessing B.Ed. qualification as untrained teachers in primary school. The judgment of the Division Bench in Kondiba v. State of Maharashtra (supra) was pressed into service before the Hon"ble Apex Court along with judgment of the

Full Bench in *Jayashree Sunil Chavan v. State of Maharashtra* (supra). The said teachers were appointed as graduate teachers having B.Ed. qualification in primary schools conducting classes up to 7th standard, they were granted approval as trained teachers and in 2001 they were informed that they were to be treated as untrained teachers. The denial to continue them in graduate pay scale was questioned in writ petitions before this Court. The High Court allowed those writ petitions by following Division Bench judgment in *Kondiba v. State of Maharashtra* (supra). State of Maharashtra then approached the Hon'ble Apex Court. Thus, again issue looked into is in entirely different perspective and consideration therein has no relevance before us. The Hon'ble Apex Court has found that judgment of the Division Bench was more close to the controversy looked into than the judgment by the Full Bench.

22. It is clear that continuation of trained graduate teachers in S.S.C. D.Ed. pay scale or their appointment as such necessitated the Government Resolutions noted by us supra. State Government found that such teachers who improve qualifications while in service cannot be made to continue on under-graduate or non-graduate pay scale for all times to come. It, therefore, converted one post out of every four posts of primary teachers in middle schools as a post meant for trained graduate teacher and the higher pay scale available to such trained graduate teacher has been made admissible to such an incumbent holding that post. None of the Government Resolutions or precedents looked into by us stipulate that against three posts meant for primary teachers in 75% quota, a person not possessing D.Ed. qualification but possession B.Ed. qualification can be appointed. The various resolutions and precedents accept the position that against 25% quota post in primary schools, a graduate with training qualification can be appointed.

23. The problem needs to be answered by considering provisions of 1977 Act and 1981 Rules mentioned supra. The intention behind creation of such 25% posts is to provide some relief to trained graduates qualified for better pay but working in primary school on lower pay. Design is not to permit those who are otherwise not eligible to such better treatment, to claim its benefit. Section 2(18) defines "Primary Education" and section 2(19) defines "Primary School". Section 2(20) defines what is "Private School". All petitioners before us are admittedly employed in private schools as defined. School established or administered by Government or a local authority is excluded from the definition of private school. The terms and conditions of service and qualifications are prescribed in 1981 Rules. Rule 2(1)(j) defines trained graduate to mean a person possessing qualifications mentioned in sub clauses (i) to (vi) of Clause (1) of Item II in Schedule "B" of 1981 Rules. Schedule B Part II is about Qualifications for Trained Teachers in Secondary Schools and Junior Colleges of Education. Perusal of various clauses therein show that qualification of a Bachelor's degree in Teaching or Education, a Diploma in Education of Graduates Basic Training Centres are accepted as training qualifications for Graduate Teachers. Some diplomas and certificate are also accepted as training qualifications provided person holding it

is appointed for the first time before 1st October, 1970. None of the petitioners before us are appointed prior to 1-10-1970 and hence, we are not referring to those clauses. A diploma in physical education or other similar qualification in physical education are also recognised to be training qualifications. But then none of the petitioners before us are concerned with physical education. The learned counsel have attempted to contend that petitioners possess diploma in education of graduate basic training centres. Learned A.G.Ps. have disputed this. It is pointed out to us that petitions does not contain such pleadings. In the absence of necessary pleadings, we cannot for the first time hold that qualification of the diploma in education procured by petitioners is from graduate basic training centres. The petitioners in the alternative and without prejudice have also invited our attention to Clause (vi) which speaks of any other degree, diploma or certificate which the Government or the Inter-University Board may sanction as equivalent to any of the qualifications earlier prescribed in said clause 1. Again in absence of necessary pleadings and material on record, for the first time, we cannot appreciate this contention.

24. Clause 2 of this Part II of Schedule "B" deals with qualification for Undergraduate Teachers. A Diploma in Education of Nagpur and Bombay Universities awarded two years after S.S.C. Examination is recognised as a training qualification for undergraduate teachers. There are other four clauses, which prescribed other qualifications including Diploma in Education (Primary), and residuary clause recognizing equivalent qualifications. As we are not concerned with undergraduate teachers, we have avoided to make reference to these clauses. What is important and to be noted is that a Diploma in Education awarded by Nagpur or Bombay University, if said course is of two years duration after S.S.C. has been recognised as training qualification for undergraduate teachers. By implication, it is not recognised as training qualification for graduate teachers.

25. Various circulars or decisions noted by us above do not show the intention of State Government to push an under-graduate teacher holding S.S.C. qualification into higher pay scale by treating him as trained graduate teacher merely because he happens to be graduate, 1981 Rules contemplate only two categories of teachers i.e. "trained graduate" and later is "trained teacher". Rule 2(1)(k) defines "Trained Teacher" to mean a teacher, who has secured a professional certificate, a diploma or a degree recognised by the Department, which qualifies him for a teaching post in a school. Section 2(4) defines "Department" to mean Education Department of the Government of Maharashtra. Thus a trained graduate and trained teacher are two mutually exclusive concepts contemplated in 1981 Rules. A trained teacher, therefore, cannot be always treated as trained graduate within the meaning of 1981 Rules. The above mentioned Government Resolutions/orders need to be understood and implemented in this background.

26. Thus seen when a trained graduate is working in primary school on a post which needed to be occupied basically by a trained teacher, then only such

trained graduate can be given the above mentioned 25% posts created for a trained graduate teacher in ratio of 3:1. Any other interpretation would do violence to the scheme envisaged by 1981 Rules and Schedule "B" Part II with it. Said Schedule in its Part I deals with Qualifications for Primary School Teachers. Person possessing S.S.C. or equivalent qualification with Primary Teachers Certificate examination or Diploma in Education examination or a Diploma in Education (pre-primary of two year's duration) is qualified to be appointed as a primary teacher. A person holding a Diploma in Education (pre-primary of two year's duration) is eligible to teach Standards I to IV only. This stipulation in part I when read in contradistinction with Clause 2 of part II prescribing qualifications for undergraduate teachers clearly establishes the fact that unless and until petitioners establish that diploma in education qualification held by them enables them to claim appointment as trained graduate in secondary school, they cannot claim the placement as trained graduate by invoking the above mentioned Government Resolutions and decisions. Government decisions need to be construed harmoniously with the 1977 Act and 1981 Rules and not to destroy the inherent distinction between a "trained graduate" on one hand and a non-graduate teacher who is not a "trained graduate" on the other hand. If the petitioners' qualifications in training are not sufficient to enable them to function as trained graduate within the meaning of 1981 Rules, they are not entitled to make any such demand.

27. In present matters, the petitioners before us have failed to demonstrate that D.Ed. qualification with them enables them to be treated as trained graduate as per 1981 Rules. However, the respondents also have not come up with any such defence. The respective Education Officer (Secondary) have denied such placement or approval to them only because they do not hold B.Ed. qualification. As the petitioners have attempted to urge before us that their Diploma in Education is of graduate basic training centre or then is recognised as equivalent to qualification prescribed in sub clauses I to V of Clause 1 of part II of Scheduled B of 1981 Rules, we direct respective petitioners to make an appropriate representation furnishing necessary details to concerned Education Officer within a period of four weeks from today. If such representation is made, respective Education officer shall then attempt to find out whether said diploma in education possessed by respective petitioner entitles him/her to claim treatment as trained graduate within meaning of 1981 Rules. Their entitlement shall be examined independently and scrutiny shall not be denied merely because they are not holding B.Ed. qualification. This exercise shall be completed within further four months.

28. Questions whether 25% post for trained graduate becomes available only if in-service candidate improves his qualifications or then, whether there can be no recruitment from open market against such 25% quota post are left open as they are not required to be answered in these matters.

29. Only to enable the scrutiny directed by us above, we partly allow these writ

petitions. If after due scrutiny and evaluation, Education Officer finds any of the petitioners entitled to such placement against 25% quota post meant for trained graduate, the consequential benefit shall be conferred upon him in accordance with law from the date on which the said post became/becomes available within further six months. Writ Petition are thus partly allowed and disposed of with above directions. Rule made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.