

(2019) 03 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 1391 Of 2016

Chagan

APPELLANT

Vs

Education Officer (Secondary) And Ors

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 3, 3(3), 3(1)(b), 6, 12

Citation : (2019) 03 BOM CK 0081

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : N.R. Saboo, Ritu Kaliya, A.M. Sudame

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties. This writ petition was initially dismissed by this Court by judgment and order dated 28.09.2017. But, thereafter application for review was filed by the petitioner, which stood allowed by order dated 05.09.2018 and the writ petition was restored for being considered on merits again. This is how the present writ petition came up for final hearing again and it has been considered on merits by this Court.

2. The grievance of the petitioner in the present case is that the respondent no.4 herein was wrongly promoted to the post of the Headmaster on 31.05.2014 in the respondent no.3 School and that by proper application of law to the facts of the present case, respondent nos. 4 to 7 should all have been treated as junior to him and that he was entitled to be appointed in the post of Headmaster, being the senior most teacher in the respondent no.3 School. The petitioner is aggrieved by the dismissal of his appeal on 01.01.2016 by the impugned order passed by the School Tribunal, Amravati, whereby his contentions have been rejected. It is the case of the petitioner that upon proper application of the provisions of the Maharashtra Employees of Private Schools (Conditions of

Service) Regulation Act, 1977 (MEPS Act) and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (MEPS Rules), he ought to have been appointed as the Headmaster.

3. The facts in brief, necessary to decide the contentions raised on behalf of the parties, are that the petitioner was appointed as an Assistant Teacher in the respondent no.3 School on 01.08.1985 for teaching 5th to 7th standards and that he was fully qualified for the said post, as he was possessing the qualification of S.S.C. D.Ed. Respondent nos. 4 to 7 were holding the qualification of Graduation and B.Ed. degree. The respondent no.4 was initially appointed on a temporary basis on 16.07.1985 for the section in which the petitioner was also teaching, but the respondent no.4 was not appointed against a regular vacancy. Later, on 24.11.1988, the respondent no.4 was appointed in a regular vacancy in the respondent no.3 school as he was holding the requisite qualification of B.Sc. B.Ed. to teach higher standards. Respondent Nos. 5 to 7 were appointed on 15.07.1989 in the respondent no.3 school also to teach higher standards and all of them held the necessary qualifications of Graduation with B.Ed. degree.

4. With the passage of time, the petitioner was brought in the category in which the requisite qualification was Graduation when the petitioner acquired the qualification of B.Sc. degree and came into the said category from 21.02.1997. The emphasis of the petitioner in the present case before the School Tribunal and before this Court was on the fact that he was appointed on 01.08.1985 in a post for which he was holding requisite qualification and that respondent nos. 4 to 7 were appointed later in point of time against vacancies, although to teach higher standards in the school. According to the petitioner, upon acquiring the qualification necessary for teaching the higher standards of the school, the petitioner was taken in the said category and he continued to work as a teacher in the said school. According to the petitioner when the question of seniority and consideration arose for the post of Headmaster, due to longer continuous officiation as a teacher in the said school, the petitioner was the senior most and by application of the relevant rules, he ought to have been appointed as the Headmaster, instead of promoting respondent no.4 in the said post on 31.05.2014. It was only the date of joining and period of continuous officiation that was relevant in the present case, according to the petitioner, and not the date when the petitioner acquired higher qualification to be able to teach in the higher standards of the school.

5. As opposed to this, according to respondent nos. 4 to 7, as also the Management -respondent no.2 and the School - respondent no.3, in the present case, since the appointment to the post of Headmaster of a Secondary School was involved, what was relevant was the date of acquiring the qualification for being able to teach in the higher standards of the secondary school and acquisition of such qualification was the determinative factor for ascertaining inter se seniority of the employees, as per Schedule F of MEPS Rules read with Rule 12 thereof. It was submitted that the earlier date of joining of the petitioner

under the primary or middle section of the school was irrelevant because seniority on the basis of continuous officiation was relevant only in case of primary school teachers in a primary school and not in a school like the respondent no.3-School, which was a secondary school. On this basis, it was contended that the seniority of the petitioner was correctly reckoned from 21.02.1997, when he acquired the higher qualification and came into category C of the aforesaid Schedule F of the MEPS Rules.

6. It is on such contentions that the rival parties placed their respective cases before the Tribunal. By the impugned judgment and order dated 01.01.2016, the Tribunal rejected the contentions raised on behalf of the petitioner while accepting the contentions of respondent nos. 2 to 7, to hold that there was no wrong committed by respondent nos.1 to 3 in granting promotion to respondent no.4 to the post of Headmaster of the School. Aggrieved by the said judgment and order of the Tribunal, the present writ petition has been filed by the petitioner.

7. Mr. N.R. Saboo, learned counsel appearing for the petitioner, placed the above mentioned facts before this Court and contended that the Tribunal had erred in dismissing the appeal of the petitioner and that the position of law in respect of interpretation of the MEPS Rules as laid down by the Hon'ble Supreme Court and this Court, was not appreciated in the correct perspective by the Tribunal. According to the learned counsel, the position of law was laid down completely in favour of the petitioner by the Hon'ble Supreme Court in the judgment in the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust reported in (2014) 13 Supreme Court Cases 219, wherein date of joining and continuous officiation as a teacher was held to be the only basis for determination of seniority under the MEPS Rules. The learned counsel also relied upon Full Bench judgment of this Court in the case of Vaijanath Tatyarao Shinde .vs. Secretary and others reported in 2006 (6) Mh.L.J. 682, to contend that initial date of joining and continuous officiation was the only basis for determination of inter se seniority between the employees. It was contended that the subsequent judgment of this Court in Writ Petition No. 1153 of 2018 (Sahakar Vidya Prasarak Mandal and another .vs. Smt. Shreelekha Sunil Ghag and ors.) and the order in Review Application against the said judgment, as also the judgment of this Court in Writ Petition No. 983 of 2016 (Satish Ramchandra Kamdi .vs. State of Maharashtra and others) and in Writ Petition No. 1964 of 2016 (Ashok Daduji Dongare .vs. Adarsha Shikshan Prachar Sabha and ors.) and judgment of this Court in Writ Petition No. 2280 of 1997 (Sunil Gopalrao Pande and ors. .vs. The Amravati Zilla Parishad, Amravati and ors.) and connected writ petitions, all followed the said position of law laid down by the Hon'ble Supreme Court in the aforesaid judgment. It was further contended that this Court in the case of Umesh Balkrishna Vispute .vs. State of Maharashtra reported in 2001 (1) Mh.L.J. 486, had laid down that the Tribunal had the power to decide any dispute relating to seniority list while deciding a controversy concerning the supersession of an employee. The learned counsel also placed reliance on Government Resolution

dated 14.11.2017 issued by the State of Maharashtra to contend that the manner of determination of seniority as contended by the petitioner was the scheme that was envisaged in the said G.R. On this basis, it was contended that only the petitioner, being seniormost teacher in the respondent no.3 School, ought to have been appointed as Headmaster.

8. On the other hand, Mr. Akshaya Sudame, learned counsel appearing for respondent nos. 2 to 7 contended that the Tribunal had correctly appreciated the facts of the present case and the position of law to hold that there was no merit in the contentions raised on behalf of the petitioner. The learned counsel emphasized that if the scheme of Schedule F of MEPS Rules is appreciated in the correct perspective, it becomes clear that seniority only in the case of primary teachers of a primary school has to be determined on the basis of continuous officiation and that in the case of teachers in a secondary school, the categories given in clause 2 of Schedule F are relevant, wherein the said categories represent ladder of seniority in descending order. On this basis, the learned counsel for respondent nos. 2 to 7 contended that inter se seniority between the said respondents and the petitioner had to be determined from the date when they entered Category C of Clause 2 of Schedule F of MEPS Rules. It was the date when the aforesaid respondents and the petitioner entered the said category by holding qualification of Graduation and B.Ed. degree that the inter se seniority was to be determined. In the present case, admittedly respondent nos. 4 to 7 had already held the qualification of Graduation with B.Ed. degree as per Category C on the dates of their respective appointments i.e. 24.11.1988 insofar as respondent no.4 was concerned and 15.07.1989 insofar as respondent nos. 5 to 7 were concerned, while the petitioner acquired the said qualification to enter into Category C on 21.02.1997 and, therefore, the petitioner was certainly junior to respondent nos. 4 to 7. It was submitted that the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust (supra) concerned a primary school and primary teachers to whom Clause 1 of Schedule F was applicable and that therefore, the Tribunal had correctly distinguished the said judgment on facts. It was further contended that even the Full Bench judgment of this Court in the case of Vaijanath Tatyrao Shinde .vs. Secretary and others (supra) concerned question of appointment to the post of Headmaster of a primary school and hence reliance placed on the same on behalf of the petitioner was misplaced. It was submitted that a recent judgment in the case of Ku. Bhawana .vs. State of Maharashtra reported in 2019 SCC Online SC 9, the Hon'ble Supreme Court had categorically held in the context of inter se dispute of seniority between the Assistant Teachers of a secondary school, that as per the ladder of seniority in Clause 2 of Schedule F to the MEPS Rules, the inter se seniority of teachers has to be determined from the date of acquiring the requisite qualification. On this basis, it was contended that the judgments of this Court relied upon by the petitioner on the basis of judgment in the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust (supra) was also misplaced and that the writ petition was required to be dismissed.

9. The question raised on behalf of the petitioner as regards determination of seniority and entitlement to the post of Headmaster by operation of the MEPS Rules, needs to be decided on the basis of interpretation of Rules 3,6,12 read with Schedule F to the MEPS Rules. Some of the said rules have been amended recently, but for deciding the present case, the then existing rules applicable to the case of the petitioner and respondent Nos. 4 to 7 need to be considered. The said rules read as follows:

"3. Qualifications and appointment of

Head. - (1) A person to be appointed as the Head -

(a) (i) of a primary school having an enrollment of students above 200 or having Standards I to VII shall be the seniormost trained teacher who has put in not less than five years' service; and

(ii) of any other primary school shall be the seniormost trained teacher in the school;

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education :

Provided that, in the case of a person to be appointed as the Head of a night secondary school -

(i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and

(ii) the experience laid down in clause (b) of sub-rule (1) may be as a part-time teacher.

(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons, though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in clause (b) of sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.

Note: In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963,

the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head.

(3) The Management of a school including a night school shall fill up the post of the Head by appointing the seniormost member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfills the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice, death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement before the Education Officer to enable him to approve the appointment, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid it shall be assumed that he has relinquished his claim on the said post;]

(4) In the case of a girls' secondary school or Junior College of Education for Women, the seniormost lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that school irrespective of her seniority vis-a-vis the male teachers.

(5) (a) If a suitable teacher possessing qualifications laid down in the foregoing provisions of this rule is not available to fill in the post of a Head of a school, the Management shall, with the prior permission of the Education Officer in case of primary schools, or of the Deputy Director in the case of other schools, advertise the post and select and appoint a person possessing the requisite qualifications and experience.

(b) The application for permission to advertise the post shall be made at least two months in advance. The period of two months may be relaxed by the Education Officer or the Deputy Director, as the case may be, in the case of new schools or in emergency cases wherein the vacancy could not have been anticipated. The advertisement shall be given after the permission of the Deputy Director or the Education Officer is received. Management shall ensure that the

advertisement appears in at least two daily newspapers one of which shall be a Marathi newspaper having wide circulation in the region wherein the primary schools or secondary schools or Junior College of Education is located.

(6) The Education Officer or the Deputy Director shall direct the management to cancel the appointments made without following the procedure laid down in this rule.

4 to 5

6. Qualifications of Teachers.

The minimum qualifications for the posts of teachers and the non teaching staff in the primary schools, secondary schools, Junior Colleges and Junior Colleges of Education shall be as specified in Schedule "B".

Provided that, the Education Officer may allow Managements to appoint untrained Science graduate teachers for teaching Mathematics and Science subjects or untrained Arts or Commerce graduates for teaching or subjects in secondary schools in exceptional circumstances, such as non-availability of trained graduates. Such appointments shall, however, be allowed on an year to year basis, on the clear understanding that they shall have to obtain training qualification at their own cost and further subject to the condition that their services shall be liable for termination as soon as trained graduate teachers become available.

[Provided further that the untrained graduate appointed as a teacher after obtaining the permission from the Education Officer before the commencement of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and who continues to be in service in any school on the date of commencement of the Maharashtra Employees of Private Schools (Conditions of Service) (Amendment) Rules, 1984 shall be continued in service on the condition that he obtains the prescribed training qualifications at his own cost before 1st June, 1987, unless he has already obtained such qualifications, failing which his services shall be terminated]

7 to 11

12. Seniority List. -

(1) Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly

taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision."

Schedule "F"

1. Guidelines for fixation of seniority of teachers in the primary schools:-

The seniority of primary school teachers in Primary Schools shall be based on continuous officiation counted from the date of acquiring the educational qualification as prescribed under Schedule "B" appended to these rules.

2. Guidelines for fixation of seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College classes attached to Secondary Schools and Senior College:-

For the purpose of fixation of seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College classes attached to Secondary Schools the teachers should be categorized as follows:-

Category A : Heads of secondary schools having an enrolment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of the dates of their appointments to the respective posts.

Category B: Heads of secondary schools having an enrolment of students of 500 and below, Principals of Junior Colleges of Education having four or less Divisions and Assistant Heads of Secondary schools having more than 20 classes on the basis of the dates of their appointments to the respective posts.

Category C: Holders of -

M.A./M.Sc./M.Com., B.T./B.Ed.or its equivalent; or

B.A. B.Sc./B.Com.,B.T./B.Ed., or its equivalent; or

B.A./B.Sc./B.Com. Dip.T(old two years course); or

B.A./B.Sc./B.Com.,S.T.C./Dip. Ed./Dip. T.(one year course) with 10 years post-S.T.C. etc. service.

[B.A. or its equivalent Plus Senior Hindi Shikshak Sanad with five years service; or Junior Hindi Shikshak with ten years service after obtaining both academic and training qualifications.]

Category D: Holders of-

B.A., B.Sc./B.Com., S.T.C./Dip. Ed.(one year course) Senior or Junior Hindi Shikshak Sanad or its equivalent.

Explanation- On and after the date of publication of this notification in the Official Gazette, and without affecting the promotion made until that date, the inter se seniority of teachers with qualification Senior Hindi Shikshak Sanad or Junior

Hindi Shikshak Sanad in service should be fixed in Category 'C' with reference to the date of their acquiring both the qualifications, i.e. B.A. or its equivalent and the Senior (5 years) or Junior Hindi Shikshak Ssanad (10 years) as the case may be by the teachers concerned.

Category E: Holders of-

S.S.C., S.T.C./ Dip. Ed./Dip.T (one year course) Senior or Junior Hindi Shikshak Sanad or its equivalent.

Category F: Untrained Graduates or holders of equivalent qualification.

Category G: Untrained Matriculates or holders of equivalent qualification.

Category H: All teachers other than those mentioned in categories A to G.

Note 1. - For the purpose of categories C, D and E teachers with S.T.C., T.D., Jr. P.T.C. Dip. T., Dip. Ed. (post- S.S.C. one year course) qualifications appointed on or after 1st October 1970 shall be considered as untrained and their seniority shall be fixed in the 'F' or 'G' category of untrained teachers, as the case may be.

Note 2. - The following training qualifications which can be secured two years after S.S.C. Examination shall be considered as training qualification for the purpose of seniority even after 1st October 1970-

(1) D.Ed. (2 years)

(2) T.D. (Bombay University).

(3) Dip. Ed. (Nagpur University).

Note 3.- In the case of teachers whose date of continuous appointment in one and same category is common, the teachers who is senior by age will be treated as senior.

Note 4- The categories mentioned above represent the ladder of seniority and have been mentioned in descending order.

Note 5-

Note 6-

Note 7 -

Note 8-

Note 9 -.....

Note 10-...

3. Guidelines for fixation of seniority of non-teaching staf-

Clerks-

Librarian. -

Laboratory Assistants.-

Lower Grade Staf."

10. The present case is not the first case when the aforesaid rules have come up for consideration and interpretation before this Court or the Hon'ble Supreme Court. The sheet anchor of the arguments raised on behalf of the petitioner is the judgment of the Hon'ble Supreme Court in the case *Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust* (supra) wherein the said rules have been considered exhaustively by the Hon'ble Supreme Court and a dictum has been laid down regarding determination of inter se seniority between teachers by applying the MEPS Rules, to further determine the claim of teachers for being appointed as Headmaster under Rule 3 of the MEPS Rules. It is the case of respondent nos. 2 to 7 that the said judgment of the Hon'ble Supreme Court is distinguishable on facts and that, therefore, the contentions raised on behalf of the petitioner by relying upon the said judgment, cannot be sustained. The main reason put forth on behalf of respondent nos. 2 to 7 is that in the said judgment in the case of *Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust* (supra), the Hon'ble Supreme Court was concerned with a primary school and primary teachers. It was contended that since the present case concerns the question of inter se seniority of teachers in a secondary school and eligibility for appointment as Headmaster under Rule 3 of the MEPS Rules, the ratio of the said judgment would not be applicable to the present case. The said contention raised on behalf of the respondent Nos. 2 to 7 cannot be accepted because a perusal of paragraphs 4 and 7 of the said judgment shows that the Hon'ble Supreme Court was dealing with a secondary school and with the question of inter se seniority of teachers in such a secondary school with emphasis on entitlement of appointment to the post of Headmaster.

11. The said judgment of *Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust* (supra) has been followed by this Court in the cases of Writ Petition No. 983 of 2016 (*Satish Ramchandra Kamdi .vs. State of Maharashtra and others*), Writ Petition No. 1964 of 2016 (*Ashok Daduji Dongare .vs. Adarsha Shikshan Prachar Sabha and ors.*) and Writ Petition No. 2280 of 1997 (*Sunil Gopalrao Pande and ors. .vs. The Amravati Zilla Parishad, Amravati and ors.*)

12. The facts in these cases need to be referred to, in order to examine as to whether the position of law enunciated therein would apply to the facts of the present case. In *Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust* (supra), the Hon'ble Supreme Court was concerned with a situation wherein both the teachers competing for the post of Headmaster and claiming seniority, were appointed as teachers holding requisite qualifications for the posts in which they were appointed. Both the teachers improved their qualifications with passage of time and they came into Category C of Clause 2 to Schedule F of the MEPS Rules. The said category required qualification of Graduation with B.Ed. and the question was as to whether the inter se seniority between the teachers was to be determined on the basis of the initial date of appointment or from the dates on

which the teachers had acquired higher qualifications. The Hon'ble Supreme Court, upon appreciating the relevant MEPS Rules and applying the position of law, found that the date of initial appointment and continuous officiation was to be the basis for determination of inter se seniority. In the case of Sahakar Vidya Prasarak Mandal .vs. Smt. Shreelekha Sunil Ghag (supra), this Court followed the dictum laid down in the aforesaid judgment of the Hon'ble Supreme Court in the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust (supra) and held that it was the initial date of joining and continuous officiation that would be the basis for determination of inter se seniority, as well as the claim for appointment to the post of Headmaster. In the review order (Review Application No.86 of 2018 in W.P.No. 1153 of 2018) in the said case, the High Court specifically noted that a document placed on record, obtained under the provisions of the Right to Information Act, 2005, showed that the school in the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust (supra) was indeed a secondary school, thereby rejecting the very argument sought to be raised in the present case on behalf of respondent nos. 2 to 7, to distinguish the present case from the judgment of the Hon'ble Supreme Court in the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust (supra). The other judgments of this Court in the cases Writ Petition No. 983 of 2016 (Satish Ramchandra Kamdi .vs. State of Maharashtra and others), Writ Petition No. 1964 of 2016 (Ashok Daduji Dongare .vs. Adarsha Shikshan Prachar Sabha and ors.) and Writ Petition No. 2280 of 1997 (Sunil Gopalrao Pande and ors. .vs. The Amravati Zilla Parishad, Amravati and ors.) also have followed the said dictum.

13. It was strenuously contended on behalf of respondent nos. 2 to 7 that Full Bench judgment of this Court in the case of Vaijanath Tatyrao Shinde .vs. Secretary and others (supra) supported their arguments and that the relevant date for determining seniority was the date when the petitioner acquired the higher qualification and entered Category C of Clause 2 to Schedule F of the MEPS Rules. But, the said Full Bench judgment of this Court has been distinguished in the aforesaid judgment of the Hon'ble Supreme Court in the case of Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust (supra). It has been found that in the Full Bench judgment of this Court, what was being considered was a situation where at the time of initial appointment one of the teachers was not possessing the requisite training/teaching qualification and that in such a situation the inter se seniority between teachers could be determined only when such training/teaching qualification was obtained by such a candidate. In that context, the Full Bench of this Court held that acquisition of the requisite qualification would be the determinative factor.

14. The other judgment on which much emphasis is placed on behalf of respondent nos. 2 to 7 is the recent judgment of the Hon'ble Supreme Court in the case of Ku. Bhawana .vs. State of Maharashtra (supra). But, a perusal of the facts of the said case shows that the dispute arose between teachers who were appointed in a secondary school and at the stage of initial appointment, one of the teachers did not possess the basic qualification for being appointed as the

secondary school teacher and that such requisite qualification was obtained later in point of time. In that context, the Hon'ble Supreme Court in the said case held that by applying the ladder of categories given in Clause 2 to Schedule F of the MEPS Rules, the inter se seniority was to be determined from the date on which the requisite qualification was obtained by the concerned teacher.

15. In the present case, the situation on facts is different and typical, requiring appreciation of the same in the proper perspective to apply MEPS Rules, in the context of the ratio of the aforesaid judgments of the Hon'ble Supreme Court and this Court, to come to a conclusion as to whether the petitioner is justified in claiming that the impugned order passed by the Tribunal is unsustainable and that he is entitled to be appointed as Headmaster by being treated as the seniormost teacher. The facts of the present case show that the petitioner was appointed on 01.08.1985 as an Assistant Teacher to teach 5th to 7th standard of respondent no.3 School. At the time of appointment, the petitioner was holding qualification of S.S.C. D.Ed., which was the requisite qualification for being appointed as a teacher for teaching the said classes. As opposed to this, the respondent no.4 was appointed on a vacancy in the respondent no.3 School to teach higher classes on 24.11.1988, when he was holding the requisite qualification of B.Sc. B.Ed. for teaching such classes. It is undisputed that the respondent no.4 was also appointed in the primary section of the school on 16.07.1985, only on temporary basis till the end of the session and that such appointment was not relevant for determining the inter se seniority between the petitioner and respondent no.4. It is also undisputed that respondent nos. 5 to 7 were appointed on 15.07.1989 in the respondent no.3 School while holding qualification of Graduation and B.Ed.

16. Therefore, what emerges from the material on record is that while the petitioner was appointed to teach 5th to 7th standards of the school on 01.08.1985, holding the basic required qualification for such a post, the respondent no.4 was appointed on 24.11.1988 in the school, also holding the basic required qualification of B.Sc. B.Ed. The fact that the petitioner was appointed to teach 5th to 7th standards in respondent no.3 school and he was duly qualified, is evident from such statement made by respondent nos. 2,3 and 4 before the Tribunal in their written statement. Respondent Nos. 5 to 7 were appointed on 15.07.1989 while holding the requisite qualifications to teach in the said section. There could be no dispute about the fact that the petitioner was appointed with requisite qualifications much earlier to respondent nos. 4 to 7. The only difference was that while the petitioner was appointed to teach 5th to 7th standards of the school, respondent nos. 4 to 7 were appointed directly to teach higher standards.

17. It is undisputed that with passage of time the petitioner completed graduation and also acquired the qualification of B.Ed. and he was brought in category C of Clause 2 to Schedule F of MEPS Rules, which required qualification of Graduation with B.Ed. The contention of respondent nos. 4 to 7 is that when

the petitioner entered the aforesaid Category C, he entered a category in which respondent nos. 4 to 7 were already placed from the first date of their respective appointments. On this basis, it was contended that as per note 4 to Clause 2 to Schedule F of the MEPS Rules, the petitioner climbed the ladder of seniority to be placed in Category C, while respondent nos. 4 to 7 were placed in the said Category C right from the beginning. On this basis, it was contended that the petitioner could not claim seniority over respondent nos. 4 to 7 on the basis of initial appointment in the school.

18. At this stage, it would be necessary to refer to Rule 3 of the MEPS Rules quoted above, which provides for qualifications and appointment of head. Rule 3(1)(b) of the said Rule makes it very clear that eligibility for appointment as Headmaster of a Secondary School is the qualification necessary for being a secondary school teacher and possessing not less than five years total full time teaching experience after graduation in a secondary school of which at least two years experience shall be after acquiring Bachelor degree in teaching. There is no dispute about the fact in the present case that the petitioner indeed possessed the aforesaid qualifications and experience. Rule 3(3) of the MEPS Rules mandates that the management of a school shall fill up the post of head by appointing the seniormost member of the teaching staff in accordance with the guidelines laid down in Schedule F from amongst those employed in a school. In the present case, a distinction is sought to be made on behalf of respondent nos. 2 to 7 between Clause 1 and Clause 2 of Schedule F of the MEPS Rules to contend that while seniority of primary school teachers in primary school has to be determined on the basis of continuous officiation, seniority of secondary school teachers under Clause 2 has to be determined on the basis of ladder of categories provided therein and that it is only when the requisite qualification of a secondary school teacher is obtained that a teacher can claim seniority in the category of secondary school teachers, thereby showing that in the present case the relevant date for determining the seniority of the petitioner was the date when he acquired the higher qualification of Graduation and B.Ed. upon being placed in Category C. It is contended on behalf of respondent nos. 2 to 7 that since respondent nos. 4 to 7 were already in Category C, right from the dates of their initial appointments, there was no substance in the claim made on behalf of the petitioner that his service prior to acquiring the higher qualification was required to be taken into consideration.

19. The facts of the present case show that it was not as if the petitioner did not hold the requisite qualifications when he was appointed in the respondent no.3 School on 01.08.1985. It would have been a completely different scenario if the petitioner did not hold even the requisite qualification for being appointed to teach 5th to 7th standards of the school on 01.08.1985. In such a situation, acquisition of requisite qualification on a later date would have been relevant for determination of seniority as per the ratio of the Full Bench judgment of this Court in the case of *Vaijanath Tatyrao Shinde .vs. Secretary and others (supra)*. The petitioner was clearly holding the necessary and requisite qualification right

from the first date of appointment and joining in the respondent no.3 school. Respondent nos. 4 to 7 were also holding the necessary qualifications for being appointed in the school right from the first date and joining in the respondent no.3 school. In this scenario, upon the petitioner improving his qualifications and teaching in the secondary school would not be the determinative factor for inter se seniority between the petitioner and respondent nos. 4 to 7. This is because Rule 3 of the MEPS Rules nowhere shows that a teacher who has been working in the secondary section of the school would only be eligible for the post of Headmaster in secondary school. All that the said Rule provides is that the concerned teacher must possess qualification for being a secondary school teacher with full time teaching experience after Graduation in secondary school of five years, of which at least two years shall be after acquiring Bachelor Degree. In the present case, the petitioner clearly satisfied the said requirement, despite having been initially appointed to teach the lower classes in the respondent no.3 School. The only question that would remain in such a scenario is, as to who would be treated as the senior most teacher under Rule 3 (3) of the MEPS Rules for being appointed as Headmaster in such a School. In order to answer the said question, the basis for determination of inter se seniority needs to be fixed. In *Viman Vaman Awale .vs. Gangadhar Makhriya Charitable Trust* (supra), the Hon'ble Supreme Court has clearly found that when a teacher was qualified to be appointed as Assistant Teacher in primary school on the date of his appointment, acquisition of a higher qualification at a later date, even when such higher qualification was requisite qualification for the higher post, it would not be determinative for fixing the seniority. The Hon'ble Supreme Court held in this context as follows:-

"18. In the present case, as already mentioned above, the appellant was having the requisite minimum qualification for appointment to the post of Assistant Teacher in the Primary School and it was not a case of appointment of an unqualified teacher when the appellant was appointed to the said post on 24.08.1979. This makes all the difference and renders the judgment in the case of *Shri Vaijanath* as inapplicable to the facts of the present case. The High Court has failed to notice this relevant distinction and mechanically applied the ratio of the judgment in *Shri Vaijanath*.

19. In the present case, when we find that the appellant was qualified to be appointed as Assistant Teacher in Primary School on the date of his appointment, acquisition of higher qualification at a later date, even when such a higher qualification is requisite qualification for the higher post, will not be determinative for fixing the seniority. Direct answer thereto is provided by this Court in *R. B. Desai Vs. S. K. Khanolkar*. The appellants therein were appointed to the post of Forest Officer in the year 1964-65 and after the required training joined the Forest Department of the Government of Goa as Foresters with effect from 27.01.1965. They were promoted to the next higher cadre of RFO with effect from 08.03.1974. The first respondent therein directly joined as RFO on 01.11.1975 a date subsequent to the date of promotion of the appellants. In the

various seniority lists, including the final seniority list, prepared and published on 30.07.1991 of the officers in the cadre of RFOs, the appellants were shown at S.Nos. 5 and 8 whereas respondent No.1 was placed at S.No. 11. The ranking assigned in that seniority list was not been challenged at any point of time. Next promotion was to the post of ACF. As per the relevant Rules, the said post was a selection post and the method of recruitment to this post was in the ratio of 75% by promotion and 25% by direct recruitment."

The Hon'ble Supreme Court further held as follows:-

"22. That apart, we find that in the case at hand there is a specific Rule, namely, Rule 12 of the Rules, which deals with seniority. The clear and unambiguous criterion for determining seniority is the continuous officiation counted from the date of acquiring the educational qualification as prescribed under Schedule "B". It is stated at the cost of repetition that since the appellant was holding the requisite qualifications, i.e. D.Ed., for appointment to the post of Assistant Teacher in Primary School, as prescribed under Schedule "B" to the Rules, her seniority was to be counted on the basis of continuous officiation. Since she joined the post of Assistant Teacher on 24.08.1979 and respondent No.4 came to be appointed subsequently, i.e. on 01.09.1980. The appellant would naturally be senior to respondent No.4.

23. Insofar as manning the post of Head of the School is concerned, Rule 3 of the Rules provides for the qualifications. It is not in dispute that as on the date of which the Head of the School was to be appointed, the appellant fulfilled all the requisite qualifications mentioned in the said Rule. Further, as already found, she was senior to respondent No.4 as well. Therefore, it is the appellant who was the rightful claimant to the post of Head of the School. Depriving her of this legitimate right and making the appointment of respondent No.4 as the Head Master of the School was, therefore, clearly erroneous, which resulted in infringement of the rights of the appellant to hold that post."

20. The aforesaid ratio has been followed by this Court in the cases Writ Petition No. 983 of 2016 (Satish Ramchandra Kamdi .vs. State of Maharashtra and others), Writ Petition No. 1964 of 2016 (Ashok Daduji Dongare .vs. Adarsha Shikshan Prachar Sabha and ors.) and Writ Petition No. 2280 of 1997 (Sunil Gopalrao Pande and ors. .vs. The Amravati Zilla Parishad, Amravati and ors.) As noted above, the judgment of the Hon'ble Supreme Court in the case of Ku. Bhawana .vs. State of Maharashtra (supra) is clearly distinguishable because in the said case, one of the teachers was appointed before holding the qualification of B.Ed. and it was during service that the said teacher acquired the qualification, while the competing claimant was a teacher already holding such qualification on the date of initial appointment. It was in these facts and circumstances that the Hon'ble Supreme Court held that the date of acquiring the minimum eligibility qualification would be the relevant date for determining inter se seniority under the MEPS Rules.

21. In this backdrop, reliance placed by learned counsel for the petitioner on Government Resolution dated 14.11.2017 appears to be justified. The said Government Resolution is issued by way of clarification on the issue of seniority. While it is true that the said Government Resolution cannot be binding on a Court or Tribunal, it does indicate the approach adopted by the State while considering the question of seniority and promotion in the context of the MEPS Rules and the system that is adopted for determination of claims of various employees. The said Government Resolution lays down that a common seniority list would be prepared for the teachers teaching various sections within the school i.e. teachers teaching standards 6th to 8th and standards 9th and 10th, as also teachers teaching standards 11th and 12th. It has been laid down that the date of first appointment and continuous service shall be the basis for determining the inter se seniority and promotion to a promotional post would be granted on the basis of such seniority, subject to the teacher satisfying requirements of educational qualifications and experience specified for such promotional posts. Thus, it becomes clear that in the present case as long as the petitioner satisfies the requirements of educational qualifications and experience for the post of Headmaster in the respondent no.3 School, the only basis for determining inter se seniority between the petitioner and respondent nos. 4 to 7 could have been the date of appointment and continuous service. In the present case, there is no dispute about the fact that the petitioner satisfies the requirements of educational qualifications and experience for appointment to the post of Headmaster as per Rule 3 of the MEPS Rules and, therefore, on the basis of seniority determined from the date of first appointment and continuous service, it was the petitioner who deserved to be promoted to the post of Headmaster. In this regard, it is crucial that the petitioner did hold the requisite qualifications at the time when he was appointed as an Assistant Teacher in the respondent no.3 School on 01.08.1985.

22. Thus, it becomes clear that when the petitioner and respondent nos. 4 to 7 were all holding the necessary qualifications for being appointed as Headmaster in the respondent no.3 school, the inter se seniority between them could be determined only on the basis of initial date of appointment and joining in the respondent no.3 school. This shows that the tribunal in the present case committed a grave error in passing the impugned order and dismissing the appeal filed by the petitioner.

23. Consequently, the present writ petition is allowed. The impugned order passed by the Tribunal is quashed and set aside and the appeal filed by the petitioner is allowed, thereby holding that the petitioner ought to have been promoted to the post of Headmaster on 31.05.2014 in place of respondent no.4. Consequently, the promotion order dated 31.05.2014 passed in favour of respondent no.4 is quashed and set aside. Respondent Nos. 1 to 3 are directed to promote the petitioner to the post of Headmaster. Accordingly, the petitioner shall be entitled to all consequential benefits.

24. Rule made absolute in the aforesaid terms with no order as to costs.