
(2025) 12 BOM CK 1703
In the Bombay High Court
Case No : Writ Petition No. 34 Of 2019

Dilip Shankar Aware

APPELLANT

Vs

Balmohan Vidyamandir Trust

RESPONDENT

Date of Decision : 19-12-2025

Acts Referred:

Maharashtra Employees of Private Schools Regulation act, 1977 — Section 9

Citation : (2025) 12 BOM CK 1703

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Yatin Malvankar, Neel G. Helekar, Akhilesh Adhav, Deepali Deherkar,
S. S. Jadhav

Final Decision : Rejected

Judgement

Sandeep V. Marne, J

1) By this Petition, the Petitioner challenges the judgment and order dated 30 August 2018 passed by the learned Presiding Officer, School Tribunal, Mumbai dismissing Appeal no. 28 of 2017 preferred by the Petitioner. In his Appeal, the Petitioner had questioned inter alia his supersession by Respondent no.3 on 1 July 2017. Incidentally, the Petitioner also raised the issue of fixation of seniority in Category 'C' teachers for the secondary school. First Respondent is an Educational Society which has established a prestigious school named Balmohan Vidya Mandir which runs both primary as well as secondary schools. In addition to School at Dadar, Mumbai it appears that the first Respondent-Society also runs another school at Talegaon. The Petitioner joined the services of the Respondent-School on 15 November 1990. At the time of his appointment in the Respondent-School, Petitioner held the qualification of SSC (1987) and D.Ed. (2 years) (1989). Petitioner bettered his qualifications after appointment and acquired the degree of Bachelor of Arts (B.A.) on 18 July 1992. He further bettered his qualifications and acquired the degree of Bachelor of Education (B.Ed) on 3 June 1998. The Respondent-Management prepared seniority list of 'C' category

teachers in the secondary school. Petitioner objected to the said seniority in which he was treated to have entered in 'C' category on 3 June 1998 after acquisition of qualification of B.Ed. Petitioner contended that he ought to have entered in 'C' category on acquisition of qualification of B.A. on 18 July 1992. The Education Officer repelled the objection raised by the Petitioner by order dated 9 May 2017 and held that the seniority list prepared by the School-Management was in order.

2) Based on the seniority list so prepared, Respondent No.3 was promoted to the post of Headmaster in one of the Schools on 1 July 2017. Aggrieved by his supersession, the Petitioner approached the School Tribunal by filing Appeal No. 28 of 2017, and by the impugned judgment and order dated 30 August 2018, the Tribunal has proceeded to dismiss the Appeal.

3) Mr. Malvankar, the learned counsel appearing for the Petitioner would submit that under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation act, 1977, a teacher can raise the issue of seniority while challenging his supersession. He would submit that notwithstanding the order of the Education Officer dated 9 May 2017, the Petitioner was entitled to raise the issue of seniority in the School Tribunal in his challenge to the supersession order. In support, he would rely upon judgment of this Court in Sayyad Yousuf s/o Sayyad Moosa vs. State of Maharashtra 2017 (2) Mh.L.J. 472. Even otherwise, Mr. Malvankar would submit that the School Tribunal has not closed the doors on the Petitioner on the basis of Education Officer's order dated 9 May 2017 and has considered his grievance relating to seniority on merits. He would submit that the decision of the School Tribunal for grant of seniority to the Petitioner in Category 'C' is in the teeth of judgment of this Court in Sahakar Vidya Prasarak Mandal and Ors. vs. Dinesh Karbhari Kute and Ors Writ Petition No. 1221 of 2022 decided on 11 March 2023. He would submit that in that judgment, this Court has held that a secondary teacher possessing the qualification of D.Ed. (2 years) as per Note-2 to Schedule-F enters 'C' category upon acquisition of qualification of B.A. He would therefore submit that upon clearing the qualification of B.A. on 18 July 1992, the petitioner would necessarily be entitled to seniority in 'C' category as held by the Division Bench of this Court in Gaur Pratibha and Ors. vs. State of Maharashtra and Ors. (2019) 4 Bom. CR 100.

4) Mr. Malvankar would also invite my attention to the order passed by the Education Officer on 12 September 2025 and would submit that the Education Officer has accepted the position that the Petitioner is required to be treated as having entered 'C' category on 18 July 1992. He would fairly submit that the Petitioner shall not claim any actual financial benefits arising out of promotion on account of grant of seniority in 'C' category from 18 July 1992 and would be satisfied even if benefit of notional pay fixation is granted.

5) Mr. Helekar, the learned counsel appearing for Respondent Nos.1 and 2 would oppose the Petition submitting that the qualification of D.Ed (2 years) came to be

added in Category 'C' by way of Notification dated 24 March 2023. That at the relevant time when the seniority list was prepared, essential qualification for entry in 'C' Category was B.Ed. That since Petitioner acquired the qualification of B.Ed. on 3 June 1998, the School-Management has rightly granted seniority to the Petitioner from the date of entry into 'C' category on acquisition of qualification of B.Ed. on 3 June 1998 in strict compliance with the Division Bench judgment of this Court in Gaur Pratibha (supra). He would further submit that the School Tribunal did not have jurisdiction to go into the issue of seniority which has already attained finality in view of order dated 9 May 2017 passed by the Education Inspector. Without prejudice, Mr. Helekar would submit that since the issue of seniority has once again attracted the attention of Education Officer vide order dated 12 September 2025, it is better that the Education Officer decides the issue of seniority by grant of opportunity of hearing to all the affected parties. He would accordingly pray for dismissal of the Petition.

6) Ms. Deherkar, the learned counsel appearing for Respondent Nos.3 to 16 would also oppose the Petition. In addition to adopting the submissions of Mr. Helekar, she would submit that the amended qualifications incorporated vide Notification dated 24 March 2023 do not have the effect of upsetting the seniority already settled prior to issuance of the said Notification. She would submit that Note No.2 to Schedule-F cannot determine the qualifications required for entry of a teacher in Category-C. She would therefore submit that the seniority list of 'C' category teachers prior to Notification of 24 March 2023 is required to be prepared from the date of acquisition of qualification of B.Ed. Alternatively, Ms. Deherkar would further submit that what is sought to be canvassed before this Court was never a case of the Petitioner before the School Tribunal, nor this case is pleaded in the present Petition. Ms. Deherkar would submit that in the event of this Court arriving at the conclusion of granting any relief in favour of the Petitioner, the entire issue be remanded to the Education Officer, who alone can go into the issue of seniority after grant of opportunity of hearing to all the affected parties.

7) Rival contentions of the parties now fall for my consideration.

8) The short issue that arises for consideration of the School Tribunal, and which arises before me in this Petition, is about the manner of preparation of seniority of 'C' category teachers in Respondent Nos.1 and 2-School. At the relevant time, in the year 2017, the qualifications necessary for a secondary teacher, who entered category 'C' inter alia was B.A./B.Sc./B.Com. and B.Ed. Guideline-2 contained in Schedule F provided at the relevant time as under:

"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 Colleges. -

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 categorised as follows :

Category A:-.....

Category B:-.....

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.;

or

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 :.....

Category E :

Category F : Untrained Graduates or holders of equivalent qualification.

Category G :.....

Category H :

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 the same category is common, the teacher 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....."

9) In the present case, the Petitioner was appointed in the secondary school of the Respondent-Management on 15 November 1990 with qualifications of SSC (1987) and D.Ed. (2 years) (1989). He acquired qualification of B.A. on 18 July 1992 and B.Ed. on 3 June 1998. On the basis of qualifications then prescribed for 'C' category teachers, the School-Management proceeded to treat entry of Petitioner in 'C' category on 3 June 1998.

10) As per the judgment of the Division Bench in Gaur Pratibha (supra), seniority of teachers in 'C' category is required to be reckoned from the date of entry into that category and the dates of initial appointment become irrelevant. The Division Bench has answered the Reference made to it in Gaur Pratibha in following terms:

The Questions:

2. Here, the question is, once persons from different sources enter a common category, how should their seniority be reckoned?

3. Is it from the date of their entering and continuously officiating in the service or from the date of their acquiring qualification to reach that common category?

4. Is there any universal principle for this proposition or does it depend on the rules of service?

Answers:

123. Once, secondary teachers enter a common category from different sources, how should their seniority be reckoned : is it from the date of their entering and continuously officiating or from the date of their acquiring qualification to reach that common category?

124. The seniority must be reckoned from the date they entered the desired category; that is, from the date they acquired the necessary qualification, but not from the date of their entry into service.

125. Is there any universal principle for this proposition or does it depend on the rules of service?

126. No. the seniority in any cadre depends on the statutory position—principal or subordinate—that governs the employees of

an establishment. Here, it is governed by the Guidelines in Schedule F, under Rule 12, of MEPS Rules.

127. We therefore allow all the writ petitions, holding:

(a) The two Government Circulars of 24th January 2017 and 14th November 2017 may stand unaffected vis-à-vis the Primary Teachers.

(b) Those two Government Circulars, however, cannot be sustained vis-à-vis the Secondary Teachers, to the extent those GRs mandate that the teachers'

seniority be reckoned from the date of their first appointment and continuous service.

(c) The Government and the authorities concerned, including the School Managements, will recalibrate the relative seniority of the Secondary Teachers based on the Category they belong to and based on when they have entered that Category.

11) It appears that by Notification dated 24 March 2023, 'D.Ed. (old two years course)' has also been added as a qualification in Entry No.4 of Category-'C'. However, the said qualification was not applicable at the time when seniority list dated 1 February 2017 was prepared. However, in Note-2 of Schedule-F, following provision is made :

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

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(1) D. Ed. (2 years)

(2) T. D. (Bombay University)

(3) Dip. Ed. (Nagpur University)

12) The provision of Note-2 existed at the time when seniority list dated 1 July 2017 was prepared. Thus, at the relevant time though the qualification of 'D.Ed. (old two years course)' was not available in the 4th category, the Note-2 provided for grant of seniority to teachers possessing qualification of D.Ed. (2 years). Petitioner submits that since he has the qualification of D.Ed (2 years course) after SSC, he fits into Note 2, which provides for 'seniority' in Category C. In Sahakar Vidya Prasarak Mandal (supra), the issue which arose for consideration before the Single Judge of this Court (N.J. Jamadar, J.) was about the effect of Note-2 in relation to seniority in 'C' category teachers. This Court held in paras-26 to 32 as under :

26) The controversy between the parties revolves around the question as to whether the respondent No. 1's case, for the purpose of seniority, would fall within the third entry or the fourth entry after he acquired the qualification of B.A in the month of August, 1990. In the opinion of the learned Presiding Officer School Tribunal since the respondent No. 1 had S.C.C., D.Ed (two years course), the respondent No. 1 entered the third entry after he acquired the qualification of B.A. in August, 1990, and, therefore, the petitioner No. 4, who was appointed as an Assistant Teacher in the year 1991, was junior to respondent No. 1.

27) Mr. Bandiwadekar strenuously submitted the aforesaid approach of the learned Presiding Officer School Tribunal is incorrect. It was nobody's case that Dip.T (old two years course) was equivalent to D.Ed (two years course). Mr. Bandiwadekar further submitted that the learned Presiding Officer School

Tribunal also lost sight of the fact that in first two entries of category "C" the expression, "or its equivalent" has been used and which is conspicuous by its absence in the third entry. Thus the learned School Tribunal committed a manifest error in equating D.Ed. (two years course) with Dip.T (old two years course) .

28) The guidelines contained in Schedule "F" are required to be read as whole. Construing the entries in a particular category in isolation may lead to anomalous consequences. The Notes appended bill the categories further elucidate the intent of the entries in the guidelines. The contrast between Note 1 and Note 2 is unmistakable. Note 1 declares that for the purpose of category 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. In contrast under Note 2, the training qualification of, (1)- D.Ed. (two years course), (2)- T.D. (Bombay University) and (3)-Dip. Ed. (Nagpur University), which can be secured two years after S.C.C. examination, shall be considered as training qualification for the purpose of seniority even after 1st October, 1970.

29) A conjoint reading of Notes 1 and 2 would indicate that the training qualifications described under Note 2 constitute a class by themselves and are required be reckoned for the purpose of seniority even if they are acquired post 1st October, 1970. Secondly, such interpretation is required to be given which gives play to operate both Note 1 and Note 2.

30) This position becomes more clear if the training qualifications subsumed in the third entry are considered. It contains the qualification B.A / B.Sc. / B.Com. Dip.T (old two years course) whereas the forth entry contains post graduate training qualifications of S.T.C./Dip.Ed./Dip.T. (One year course). Again the distinction between two years training qualification course and one year course is maintained and treated differently by putting those qualifications in the succeeding entries. Note 4, thus, ordains that the categories mentioned under guideline 2 represent the ladder of seniority and have been mentioned in descending order.

31) If the entries within Category "C" are considered in juxtaposition with Note 1 and 2, the view taken by the learned Presiding Officer School Tribunal that after acquisition of B.A qualification, the respondent No. 2, with two years D.Ed. Course, catapulted himself to the third entry in Category "C" from Category "F" (of untrained graduate teachers) becomes justifiable. Any other view would render D.Ed. (two years course) not covered by any of the entries in Category "C".

32) The absence of the expression, "or its equivalent" in third entry in Category "C", pressed into service by Mr. Bandiwadekar, in my view, is not of determinative significance. Note 2 removes the ambiguity. It expressly provides that the three

specified training qualifications including D.Ed. (two years course) shall be considered as training qualifications for the purpose of seniority even after 1st October, 1970. Omission of these three qualifications in Note 1 which subsumes in its fold all the training qualifications (post S.C.C. 1 year course) also indicates that they were to be treated at a higher pedestal. I am therefore persuaded to hold that the learned Presiding Officer School Tribunal was justified in reckoning the case of respondent No. 1 as falling within the ambit of the third entry.

13) Thus, in Sahakari Vidya Prasarak Mandal, this Court has held that if a teacher has the qualification of 2 years D.Ed. course within the meaning of Note-2, upon acquisition of B.A. qualification, he would straightaway catapult to the third category in Category-C from Category-F. This Court held that if such interpretation is not given to Note-2, the provisions of Note-2 would be rendered otiose.

14) Applying the ratio of the judgment in Sahakar Vidya Prasarak Mandal, in my view Petitioner also needs to be granted seniority in 'C' category on account of he holding qualification of D.Ed. (2 years) upon acquisition of B.A. degree on 18 July 1992. As upheld in Sahakar Vidya Prasarak Mandal, Petitioner would get catapulted from Category-F to Category-C upon acquiring the qualification of B.A. on account of he holding qualification of D.Ed (2 years). What needs to be noted is that in Sahakar Vidya Prasarak Mandal, this Court has interpreted Schedule-F as it stood prior to amendment by Notification dated 24 March 2023. Therefore, interpretation made by this Court in Sahakari Vidya Prasarak Mandal would apply with full force to the present case as well.

15) It appears that the above principle is ultimately accepted by the Education Officer during the course of hearing held on 25 July 2025. However, on account of pendency of the present petition, the Education Officer apparently did not pass any specific order for grant of seniority to the Petitioner from 18 July 1992. However, it is clarified that Petitioner's entitlement to seniority in 'C' category from 18 July 1992 is not decided on the basis of the findings of the Education Officer in the minutes of the meeting dated 25 July 2025. The entitlement is upheld on account of law declared by this Court in Sahakar Vidya Prasarak Mandal.

16) So far as Ms. Deherkar's objection of the effect of Note-2 not being argued before the School Tribunal or being raised in the present Petition is concerned, it is seen that the seniority list will have to be ultimately prepared in view of law declared by this Court. Even if the said issue was not raised before the School Tribunal at the appropriate time, if a law is declared by this Court after the judgment of the School Tribunal, the seniority list would be governed by the law declared by this Court. Also of relevance is the fact that the issue of seniority is still under active consideration of the Education Officer, who has conducted the hearing as late as on 25 July 2025. Therefore, it would be a travesty of justice if the benefit of law propounded by this Court in Sahakar Vidya Prasarak Mandal is not extended to the Petitioner on a technical plea that the issue was not argued

before the School Tribunal or that the same was not pleaded in the present petition.

17) I am also not inclined to accept the alternate suggestion made by Mr. Helekar and Ms. Deherkar that the entire issue be remanded to the Education Officer for being decided afresh. I have heard all the parties at length. Therefore instead of relegating the parties to another round of litigation, it would be appropriate that this Court draws curtains on the issue of fixation of seniority of the Petitioner.

18) In view of the discussions made above, I find the order made by the School Tribunal to be indefensible. The same is liable to be set aside. I accordingly proceed to pass the following order :

(i) Judgment and order dated 30 August 2018 passed by the School Tribunal in Appeal No . 28 of 2017 is set aside.

(ii) Appeal No. 28 of 2017 is allowed by directing Respondent Nos.1 and 2 to grant seniority to the Petitioner in 'C' category w.e.f. 18 July 1992.

(iii) Petitioner be granted consequential benefits arising out of fixation of his seniority in 'C' category w.e.f. 18 July 1992. However, it is clarified that if Petitioner is found due and eligible for promotion from a retrospective date, he shall be entitled to only notional benefits of pay fixation arising out of his promotion. The actual benefits of pay fixation shall be granted to him only from the date of passing of the present judgment.

(iv) The above direction shall be implemented within 3 months.

19) With the above directions, the Writ Petition is allowed. Rule is made absolute. Considering the facts and circumstances of the case, there shall be no order as to costs.

20) After the judgment is pronounced, Mr. Helekar and Ms. Deherkar would pray for stay to the operation of the judgment for a period of 8 weeks. The prayer is opposed by Mr. Malvankar, Considering the reasonings adopted in the impugned order, I am not inclined to stay the judgment. The request is accordingly rejected.