

(2018) 03 BOM CK 0111

In the Bombay High Court

Case No : Public Interest Litigation No. 20 of 2018

KU. SHEETAL D/O SHIVKANT CHAVAN

APPELLANT

Vs

THE STATE OF MAHA. THR. SECRETARY, RURAL
DEVELOPMENT AND WATER CONSERVATION DEPT. MUMBAI
AND OTHERS

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 03 BOM CK 0111

Hon'ble Judges : B. R. GAVAI , J, M. G. GIRATKAR, J

Bench : Division Bench

Advocate : P.S. Tiwari, . R. P. Tiwari, S. M. Ghodeswar, S. D. Chopde

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsels appearing for the parties.

2. The original writ petitioner has approached this Court praying for following directions :

Direct the Respondents particularly the respondent nos. 3 and 4 to make applicable the pay scale of untrained teacher along with the applicable

increments to the petitioners and pay arrears as prayed for in the light of the Respondents, communication 24/04/2007 and also in view of the

observations contained in judgment dated 24/04/2012 in Writ Petition No. 7118/2011, for the period she has worked as untrained teacher.

3. The claim of the petitioner is based on the judgments and orders passed by various Benches of this Court, the first one being in Writ Petition No.

7116/2011 at Aurangabad Bench dated 24/04/2012, which has been consistently followed by various Benches.

4. However, when the petition came up before this Court, the Division Bench of this Court (consisting of B. P. Dharmadhikari & Mrs. Swapna S.

Joshi, JJ.) on February 6, 2018 observed thus :

“4] Petitioner ought to have pointed out Division Bench judgment of this Court reported at 2016(4) Mh.L.J. 158 (Smita

Manohar Ramteke .vs. State of Maharashtra and others), wherein after accepting inability of State Government to put complete data on record,

judgments of which copies are annexed with this petition have been distinguished and found to be not laying down correct law. Hence, we direct

Registry to register this Writ Petition as P.I.L.

5] Notice to respondents returnable on 14.3.2018.

6] Till then, we restrain respondents from releasing any pay scale to any untrained teacher.”

It appears that learned Judges of the Division Bench have found that the view taken in a reported judgment in the case of Smita d/o Manohar

Ramteke (KU.) Vs. State of Maharashtra and others [2016(4) Mh.L.J. 158] ought to have been pointed out by the present petitioner which would

have resulted in denial of her claim.

5. The Division Bench also directed the present proceedings to be registered as P.I.L.

6. The Division Bench consisting of Hon'ble Shri Justice B. P. Dharmadhikari and Hon'ble Shri Justice P. N. Deshmukh in the reported judgment of

Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others has referred to the view taken by the Division Bench of this Court

(consisting of A.S. Oka and Sunil P. Deshmukh, JJ.) at Aurangabad in Writ Petition No. 7116/2011 (Seema D/o Khandu Takale Vs. The State of

Maharashtra and others) and also referred to various judgments passed by various Benches, following the said judgment. Not only this, but the

Division Bench observed that the Division Bench of this Court at Nagpur has also taken the similar view in Writ Petition No. 2443/2014 on 31.10.2014.

2014.

7. However, the Division Bench came to the conclusion that the view taken by the Aurangabad Bench in the case of Seema D/o Khandu Takale Vs.

The State of Maharashtra and others on 24.4.2012 does not lay down the correct position of law and, therefore, by the said judgment, the Division

Bench has rejected the similar relief which was consistently granted to various petitioners right from 2012 till the judgment was delivered by the

Division Bench in the case of Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others dated 16th 10th 2015.

8. We are at pains to say that the learned Judges of the Division Bench have patently erred in delivering such a judgment. A reference in this respect

can be made to the judgment of the Apex Court in the case of Official Liquidator Vs. Dayanand and others reported in (2008) 10 SCC 1. It will be

appropriate to refer to the following observations of Their Lordships of the Apex Court which reads thus:

78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger

Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise,

there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches

including the Constitution Benches. These cases are illustrative of non[^]adherence to the rule of judicial discipline which is sine qua non for sustaining

the system. In Mahadeolal Kanodia v. Administrator General of W.B., this Court observed : (AIR p. 941, para 19)

19. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate

jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision

of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion.

The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a

question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how

to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between

dissentient judgments of their own High Court."" (Emphasis added)

79. In Lala Shri Bhagwan v. Ram Chand Gajendragadkar, C.J. observed : (AIR p. 1773, para 18)

18. ...It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself.

80. In *Union of India v. Raghubir Singh*, R.S. Pathak, C.J. while recognizing need for constant development of law and jurisprudence emphasized the necessity of abiding by the earlier precedents in the following words : (SCC p. 766, para 9)

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court.

81. In *Sundarjas Kanyalal Bhatija v. Collector, Thane*, a two-Judges Bench observed as under : (SCC p. 407, para 22)

22. ...In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute.

82. In *Vijay Laxmi Sadho (Dr.) v. Jagdish* this Court considered whether the

learned Single Judge of Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held : (SCC p. 256, para 33)

33. As the learned Single Judge was not in agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

83. In Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others the Constitution Bench noted that the two learned Judges denuded the correctness of an earlier Constitution Bench judgment in Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha and reiterated the same despite the fact that the second Constitution Bench refused to reconsider the earlier verdict and observed : (Pradip Chandra Parija case, SCC pp. 34, paras 3 & 56)

3. We may point out, at the outset, that in Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench binds a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.

5. The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three

learned Judges was binding on Benches of two learned Judges — a proposition that learned counsel for the appellants did not dispute. The learned

Attorney General drew our attention to the judgment of a Constitution Bench in *Sub-Committee of Judicial Accountability v. Union of India* where it

has been said that 'no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment

rendered in a cause or matter before another coordinate Bench' (SCC p. 98, para 5). The learned Attorney General submitted that the appropriate

course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in *Nityananda Kar* was incorrect, was to make a

reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of *Nityananda Kar*, could have

referred the case to a Bench of five learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They

have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two

learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment

of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it

to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the

Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a

Bench of five learned Judges is justified.â?? (emphasis supplied)

84. In *State of Bihar v. Kalika Kuer* the Court elaborately considered the principle of *per incuriam* and held that the earlier judgment by a larger

Bench cannot be ignored by invoking the principle of *per incuriam* and the only course open to the coordinate or smaller Bench is to make a request

for reference to the larger Bench.

85. In *State of Punjab v. Devans Modern Breweries Ltd.* the Court reiterated that if a coordinate Bench does not agree with the principles of law

enunciated by another Bench, the matter has to be referred to a larger Bench.0

86. In *Central Board of Dawoodi Bohra Community v. State of Maharashtra* the

Constitution Bench interpreted Article 141, referred to various earlier judgments including *Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha and Pradip Chandra Parija v. Pramod Chandra Patnaik* and held that the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status – both would be immediate casualty (Central Board of Dawoodi Bohra Community case, SCC p. 682, paras 12 & 10)

87. In *State of U.P. and others v. Jeet S. Bisht* when one of the Hon'ble Judges (Katju, J.) constituting the Bench criticized the orders passed by various Benches in the same case, the other Hon'ble Judge (Sinha, J.) expressed himself in the following words : (SCC p. 623, para 100)

100. For the views been taken herein, I regret to express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz. Judicial Discipline and respect for the Brother Judges.

88. In *U. P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj* the Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that part-time tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed : (SCC p. 149, para 26)

26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to

take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger

Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.

89. It is interesting to note that in Coir Board, Enakulam v. Indira Devi P.S., a two-Judges Bench doubted the correctness of the seven-Judges

Bench judgment in Bangalore Water Supply & Sewerage Board v. A. Rajappa and directed the matter to be placed before Hon'ble the Chief Justice

of India for constituting a larger Bench. However, a three-Judges Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and

observed that the two-Judges Bench is bound by the judgment of the larger Bench Coir Board, Enakulam v. Indira Devi P.S.

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving

violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law

laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become

necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and

encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in

this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system

inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be

followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those

who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in

accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This

principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate

upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for

effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and

rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

9. It could thus be seen that Their Lordships of the Apex Court in unequivocal terms have held that if one Division Bench of a High Court is unable to

agree with a previous decision of another Division Bench or the view taken by the earlier Bench is not correct according to it, then the only option is to

refer the matter to The Hon'ble Chief Justice for placing the same before the Larger Bench, if The Hon'ble Chief Justice deems fit. The Hon'ble

Apex Court has clearly observed that increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the

system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one

should be followed.

10. It has been held by Their Lordships that if one thing is more necessary in law than any other thing, it is the quality of certainty. It has been held

that the said quality would totally disappear if Judges of High Court start overruling one another's decisions. It has been held that if a subsequent

Division Bench holds that the previous decision of another Division Bench is wrong, the result would be of utter confusion. As has been held by Their

Lordships of the Apex Court, one Bench of the same court does not sit in appeal over the other Bench, particularly, when it is a Coordinate Bench.

Their Lordships observed thus : "we should not forget other doctrines which are equally developed viz. Judicial Discipline and respect for the

Brother Judges." The Apex Court also observed that the discipline is sine qua non for effective and efficient functioning of the judicial system.

11. Their Lordships of the Apex Court observed that if the courts command others to act in accordance with the provisions of the Constitution and

rule of law, it is also expected from the Courts to follow the same. As has been observed by the Hon'ble Apex Court that in such a situation, lawyers

would be in a predicament and would not know how to advise their clients.

12. Perusal of the material placed on record would reveal that initially in Writ

Petition No. 7116/2011 (Seema D/o Khandu Takale Vs. The State of

Maharashtra and others), the Division Bench of this Court at Auranagabad (A.S. Oka and S. P. Deshmukh, JJ.) vide judgment and order dated 24.12.2012

observed thus :

8. We have perused the communication dated 24th April, 2007 issued by the State Government to the Chief Executive Officers of all the Zilla

Parishads. The letter records that there was some confusion as regards the grant of benefit of Vth and Vith pay commissions to the untrained

teachers who are S.S.C. pass. The pay scale admissible to the untrained teachers who are S.S.C pass has been set out in the said letter. From the

policy reflected from the said letter, we do not find any requirement of the Petitioner completing D.Ed course.

The reason is separate pay scales are set out in the said letter for teachers having S.S.C, D.Ed qualification and the untrained teachers having only

S.S.C qualification. The Petitioner will fall in second category. The Petitioner completed three years of service as a Shikshan Sevak in the year 2007.

Hence, in view of clause (e) of the appointment order, he became entitled to be considered for appointment as a primary teacher in regular pay scale

provided the performance of the Petitioner was satisfactory. In the reply, no case is made out that the performance of the Petitioner was not

satisfactory. Therefore, in the year 2007, on completion of three years of satisfactory service, the Petitioner become entitled to pay scale of untrained

primary teacher. On the basis of the subsequent Government Resolution dated 17th September, 2011, the said right cannot be defeated.

The said judgment was followed by another Division Bench at Nagpur (Anoop V. Mohta and Z. A. Haq, JJ.) in Writ Petition No. 629/2013 delivered

on 27.06.2013. The said Bench also took a similar view in Writ Petition No. 2077/2013 vide order dated 30.07.2013. The Division Bench at Principal

Seat in bunch of petitions being Writ Petition No. 6938/2013 along with companion petitions vide order dated 30.10.2013 (A. S. Oka and Revati

Mohite Dere, JJ.) also took a similar view following the judgment of Seema D/o Khandu Takale Vs. The State of Maharashtra and others. The

Division Bench of this Court at Nagpur consisting of one of us (B.R. Gavai and S. B. Shukre, JJ.) in bunch of writ petitions being Writ Petition No.

237/2014 vide judgment dated 18.06.2014 observed thus :

6. The issue raised in these petitions is no more res integra. The Division Bench of this Court in W.P. No. 7118/11 decided on 24.4.2012 taking into

consideration the Government Communication dated 24.4.2007 has in unequivocal terms held that such teachers who have completed three years on

probation and who have not yet been brought on the scale of trained teachers, were entitled to the scale of untrained teachers. In W.P. No. 629/13

decided on 27.6.2013, another Division Bench of this Court has taken a similar view.

7. The point as regards to non-maintainability of petition on the ground of delay and laches is concerned, by now it is settled principle of law that for

invoking the jurisdiction under Article 226 on the ground of delay and laches is concerned, same is not a hard and fast rule but a rule of self-restraint.

In the present petitions, various Division Benches at Nagpur and Aurangabad have held that such teachers, for the period as mentioned aforesaid, are

entitled for the salary in the scale of untrained teachers as per Government communication dated 24.4.2007. Denying equal treatment to the petitioners

before us, in our considered view, would be doing injustice to them and depriving them the benefits as are provided by the Government through out the

State of Maharashtra. In that view of the matter, the objection raised by the learned counsel for Zilla Parishad does not survive.

8. Insofar as merits are concerned, when various coordinate Benches of this Court have taken a similar view, we find no reason to not to follow the

same. In this view of the matter, the writ petitions are allowed. Respondent Zilla Parishad is directed to pay arrears of salary to the petitioners for the

period between their three years of completion of service as Shikshan Sewak and the date on which they were paid salary as trained teachers in

terms of the Government communication dated 24.4.2007.

Another Division Bench at Aurangabad (R. M. Borde & Sunil P. Deshmukh, JJ.) in Writ Petition No. 4709/2013 vide judgment and order dated

26.8.2013 issued similar directions following the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others. The another Division

of this Court at Nagpur consisting of one of us (B.R. Gavai and Mrs. Mridula Bhatkar, JJ.) in Writ Petition No. 6569/2014 vide judgment and order

dated 13.2.2015 and in Writ Petition No. 341/2015 vide judgment and order dated 30.1.2015 also took a similar view. Another Division Bench at

Aurangabad (R. M. Borde & T. V. Nalawade, JJ.) in Writ Petition No. 7675/2012 vide judgment and order dated 25.10.2013 had also followed the

judgment in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others and issued similar directions. Not only this, the

Division Bench of this Court at Nagpur (B.P. Dharmadhikari and P.R. Bora, JJ.) in Writ Petition No. 2443/2014 vide order dated 31.10.2014 passed

the following order.

Learned counsel for petitioners as also for respondent nos. 2 and 3 state that the petition can be disposed of in terms of paragraph no.5 and 6 of the

orders dated 03.10.2013 in Writ Petition No. 427/2013 and other matters, passed at Bombay and recent orders passed on 18.06.2014 at Nagpur in

Writ Petition No. 237/2014 and others.

In view of these orders, we also dispose of the present writ petition with following directions :

(i) The respondent nos. 2 and 3 are directed to make applicable the pay scale of untrained teacher to the petitioners and pay arrears as prayed for in

the light of the communication dated 24.04.2007 (Annexure E) and also in view of the observations contained in judgment dated 24.04.2012 in Writ

Petition No.7116/2011 (Annexure G) for the period mentioned in Chart at Annexure A with the present petition, i.e. for the period they have

worked as untrained teacher.

(ii) The concerned respondents shall dispose of the representations, if any, and if pending at the earliest. No costs.

13. It appears that, however, subsequently, Division Bench of this Court (B. P. Dharmadhikari and P.N. Deshmukh, JJ.) in the case of Smita d/o

Manohar Ramteke (KU.) Vs. State of Maharashtra and others (cited supra) took a different view on 16.10.2015. It can thus be seen that view

taken in the case of Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others had the effect of upsetting the view as expressed in the

case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others by a coordinate Bench of this Court, which has been consistently

followed by various Benches including the Bench presided over by Hon'ble Shri Justice B. P. Dharmadhikari.

14. The effect of judgment of Division Bench in the case of Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others is that though

similarly circumstanced employees have been granted benefits as per the law laid down by this Court in the case of Seema D/o Khandu Takale Vs.

The State of Maharashtra and others which has been consistently followed by various Benches, the petitioners in the case of Smita d/o Manohar

Ramteke (KU.) Vs. State of Maharashtra and others were denied the same benefit. As such, in view of conflicting judgments, a situation has arisen

which has resulted in denying the equal treatment to equals.

15. It will be relevant to refer to the following observations of the Hon'ble Apex Court in the case of Sunil Kumar Verma and others Vs. State of

Uttar Pradesh and others reported in (2016) 1 SCC 397.

â??Be it stated, there had already been interpretation of the 2003 Rules by the learned Single Judge which has been affirmed up to this Court. In such

a situation, we really fail to fathom how the Division Bench could have thought of entering into the analysis of the ratio of the earlier judgment and

discussion on binding precedents.â??

16. We are of the considered view that the aforesaid observations of Their Lordships of the Apex Court are aptly applicable to the facts of the

present case. No doubt that the Division Bench in the case of Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others was entitled

to take a different view than the view taken by coordinate Bench in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others

which was consistently followed by various Benches including the Division Bench presided over by Hon'ble Shri Justice B. P. Dharmadhikari.

However, if the learned Judges of the Division Bench were of the view that the position of law as laid down in the case of Seema D/o Khandu Takale

Vs. The State of Maharashtra and others was not correct, then the only option that was available to the learned Judges of the Division Bench was to

refer the matter to the Hon'ble Chief Justice for referring it to the Larger Bench.

17. We clarify that we should not be misunderstood to have entered into the issue as to whether the view taken in the case of Seema D/o Khandu

Takale Vs. The State of Maharashtra and others lays down the correct position of law or as to whether it is the view in the case of Smita d/o

Manohar Ramteke (KU.) Vs. State of Maharashtra and others which lays down correct position of law. We are only on the question of judicial

propriety and discipline. When the view taken in the case of Seema D/o Khandu

Takale Vs. The State of Maharashtra and others was consistently followed by various Division Benches of this Court, if the learned Judges in the case of Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others found that it was not correct in law, then they could have only referred it to a Larger Bench by giving the reasons as to why they found the view in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others was not correct in law. In no case, they could sit in appeal and hold that the view taken in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others does not lay down correct position of law. As the Judges of the Bench having equal number of strength with that Judges in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others either the Division Bench in the case of Smita d/o Manohar Ramteke (KU.) Vs. State of Maharashtra and others should have followed the same or if disagreed, then refer the matter to a Larger Bench.

18. We find that as a matter of fact when the earlier view rendered by the Coordinate Bench is in existence, the subsequent view by the Bench of same strength taking a contrary view to the view taken by earlier Benches, without referring it to a Larger Bench would not be legal and binding.

19. In that view of the matter, we find that the respondent authorities were bound to follow the dictum of law as laid down by the Division Bench in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others (supra) which has been consistently followed. No doubt that the learned Division Bench was right in observing that dismissal of a SLP by the Hon'ble Apex Court does not and cannot improve the situation for the petitioners. However, as a Coordinate Bench consisting of same number of Judges, the Division Bench was bound to follow the view taken in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others which was consistently followed unless it was set aside by a Larger Bench or by the Hon'ble Apex Court.

20. In that view of the matter, we have no hesitation to hold that the view taken in the case of Smita Manohar Ramteke vs. State of Maharashtra and others which is contrary to the earlier view in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others would not be legal and binding, in view of the law laid down by the Apex Court in the case of Official Liquidator Vs. Dayanand and others (supra).

21. We further find that since the view taken in the case of Smita Manohar Ramteke vs. State of Maharashtra and others is contrary to the earlier

judgment of the Division Bench of this Court in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others which was

consistently followed, it is the view in the case of Seema D/o Khandu Takale Vs. The State of Maharashtra and others which will hold the field, till it

is set aside by the Larger Bench or by the Hon'ble Apex Court.

22. We further find that in view of the law laid down by the Apex Court in the case of Girjesh Shrivastava and others Vs. State of Madhya Pradesh

and others reported in (2010) 10 SCC 707 that in service matters, the public interest litigations are not to be entertained, the order treating the present

proceedings as public interest litigation is liable to be recalled and as such is recalled. The proceedings are restored as Writ Petition No. 592/2018.

23. Since we find that the facts in the present case are identical with the facts in the case of Seema D/o Khandu Takale Vs. The State of

Maharashtra and others (supra) which hold that after successful completion of three years of service as Shikshan Sevaks, the said Shikshan Sevaks

are entitled to be regularized as Assistant Teachers and if they are not qualified, they are entitled to be regularized in the scale of Untrained Teachers

till the date they acquire the requisite qualification, the present petition deserves to be allowed.

24. In the result, rule is made absolute by directing the respondents to treat the petitioner's services as Untrained Teacher from the date on which she

has successfully completed 3 years tenure as Shikshan Sevak till the date of her regularization as trained Assistant Teacher.

25. The arrears to be paid to the petitioner on the basis of aforesaid shall be paid within a period of three months from today.

26. Notices issued to respondent nos. 3 and 4 are discharged.

27. In the facts and circumstances of the case, no order as to costs.