
(2005) 04 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition No's. 3311, 3942, 3943 and 6113 of 2004

Narendra Ishulal Rahangdale

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 — Rule 61.1
Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 37
Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 28
Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 — Rule 13, 14
Secondary School Code — Rule 10, 17, 3.2(10), 59, 64

Citation : (2005) 4 ALLMR 222 : (2006) 1 BomCR 890 : (2005) 3 MhLj 567

Hon'ble Judges : B.R. Gavai, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari and P.P. Shende, for the Appellant; A.G. Mujumdar, A.G.P., M.P. Munshi, S.K. Pardhy and P.N. Shende, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith.

In Writ Petition No. 3311/2004, Mr. A. G. Mujumdar, A.G.P. waives notice for respondent No. 1; Mrs. Munshi waives notice for respondents No. 2 and 3 and Shri Pardhy waives notice for respondents No. 4 and 5.

In Writ Petition No. 3942/2004 and Writ Petition No. 3943/2004, Mr. A. G. Mujumdar, A.G.P. waives notice for respondent No. 1; Mrs. Munshi waives notice for respondents No. 2 and 3.

In Writ Petition No. 6113/2004, Mr. D. B. Patel, the learned A.G.P. waives notice for respondents No. 1, 2 and 3; Shri Pardhy waives notice for respondents No. 4 and 5.

Heard by consent of parties.

2. Since a common question, as to whether the service conditions of Teachers working in the Secondary Schools managed by Zilla Parishads, are governed by the provisions of the Secondary School Code (hereinafter referred to as the Code) or by the provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, (hereinafter referred to as the MCSR rules) is involved in all these four petitions, they are being decided by this common judgment. The facts in brief in each of the petitions are as under:

The petitioner in Writ Petition No. 3311 of 2004, was appointed as Assistant Teacher in the High School run by Zilla Parishad, on 5th June, 1975. The petitioner was possessing the requisite qualifications i.e. Degree in Education (B.Ed.) on the date of his appointment. Whereas respondents No. 4 and 5 were appointed on 1st July, 1974. They acquired the qualifications i.e. B.Ed. subsequent to the date on which the petitioner was appointed. The petitioner has challenged the position in seniority list wherein respondents No. 4 and 5 have been shown senior to the petitioner. It is the contention of the petitioner that the seniority list will have to be prepared on the basis of the dates on which the Teachers acquired the necessary teaching qualifications i.e. B.Ed. and as such he is entitled to be shown senior to respondents No. 4 and 5. The petitioner claims that the promotions given to the respondents No. 4 and 5 to the posts of Head Master vide order dated 14-6-2004, are liable to be quashed and set aside and the petitioner is entitled to be promoted with effect from the date on which the respondents No. 4 and 5, were promoted to the posts of Head Master.

3. Twelve petitioners in Writ Petition No. 3942/2004 and five petitioners in Writ Petition No. 3942/2004 are challenging the seniority list published by the respondent Zilla Parishad as on 1st January, 2004. It is the contention of the petitioners in these petitions that though the seniority list ought to have been prepared by the respondent-Zilla Parishad, on the basis of the dates on which Teachers acquired B.Ed. qualifications, the seniority list is prepared on the basis of the date of entry in the service, without taking into consideration the date on which the Teacher has acquired the necessary teaching qualification. It is the contention of the petitioners that this is not permissible in law and as such, the seniority list is liable to be quashed and set aside and the respondent-Zilla Parishad needs to be directed to prepare the seniority list in accordance with law.

4. The petitioner in Writ Petition No. 6113/2004, who has been declared surplus on the basis of the seniority list, has also raised similar challenge. According to this petitioner also, the seniority list is to be prepared on the basis of the dates on which the Teachers acquired B.Ed. qualification. According to the petitioner, if the seniority list is prepared in accordance with this principle, then he will be placed above the respondents No. 4 and 5 in the seniority list and as such the respondent No. 5 is liable to be declared surplus in place of the petitioner.

5. We have heard the learned counsel on behalf of the petitioners as well as the

respondents.

6. The learned counsel for the petitioners contended that the seniority of the Teachers working in the Schools managed by Zilla Parishad, will have to be determined in accordance with the provisions of the Code and as such the persons who acquired the professional qualification i.e. B.Ed. degree, will be entitled to be placed higher in the seniority list irrespective of the fact that the Teacher who has been appointed at an earlier point of time will be shown below, though his length of service is longer.

7. On the contrary, a preliminary objection has been raised on behalf of the respondent-Zilla Parishad as well as on behalf of the Teachers who are claiming seniority on the basis of their length of service, to the effect that the petitioners have an alternate efficacious remedy, in view of Rules 13 and 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, to prefer an appeal to the Divisional Commissioner. On merits, it is submitted that in view of the order issued by the Government of Maharashtra dated 17th July, 1989, in exercise of its powers, MCSR Rules have been made applicable to the employees of the Zilla Parishad and as such the seniority will be determined only on the basis of the continuous length of service irrespective of the fact as to whether the Teacher has acquired the professional qualification or not. It is contended on behalf of the learned counsel for the Zilla Parishad that acquiring of professional qualification i.e. B.Ed. is relevant only for the purpose of granting promotion to the post of Head Master and has nothing to do with the question of seniority. It is stated that only on obtaining the professional qualification, a Teacher is considered as eligible for the post of Head Master. It is, however, contended that for getting the higher placement in the seniority list, it is not necessary that such a Teacher should have acquired the professional qualification and what is relevant is the date of his initial entry in the service.

8. We will first deal with the objection regarding alternate remedy available to the petitioners and non-maintainability of the present petitions on the said ground. Rule of non-entertaining a writ petition by this Court in its jurisdiction under Article 226 of the Constitution of India, on the ground of availability of alternate remedy, is a rule of self-constraint. In case where this Court finds that the facts of the case demand entertaining the grievance of the parties under Article 226 of the Constitution of India, it is not necessary that such a party should be relegated to the alternate remedy available to such a party. In the present case, the question involved is an important question as to whether the seniority of the Teachers in Zilla Parishad would be governed by the said Code or MCSR Rules. We, therefore, find that the present case is a fit case wherein the petitioners should not be relegated to an alternate remedy of an appeal before the Divisional Commissioner. We, therefore, reject the preliminary objection raised by the learned counsel for the respondents regarding maintainability of the present petitions.

9. To consider the submissions on merits, it will be necessary to refer to the

provisions of Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (hereinafter referred to as the Act), the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (hereinafter referred to as the Regulations) certain orders issued by the State Government in exercise of its powers u/s 248 of the Zilla Parishads Act and certain provisions of the Code. The Act has been passed with an aim to provide for the establishment of the State Board and Divisional Boards to regulate certain matters pertaining to Secondary and Higher Secondary Education in the State of Maharashtra. The said regulations have been made by the State Government in exercise of the powers vested in it under the provisions of Section 37 of the Act.

10. Regulation No. 28 of the Regulations deals with the procedure for recognition of institution by the Divisional Board. The relevant clause of Regulation 28 for determination of the present issue, is Clause 7(xvi). Said clause reads thus :

"(7) No Secondary School shall be recognized or continued to be recognised by a Divisional Board unless it fulfils the following requirements, namely:--

xxx xxx xxx xxx (xvi) The School shall comply with the provisions of the Secondary Schools Code of the State Government insofar as they are not inconsistent with the provisions of the Act and the Regulations."

Clause 17 of Chapter 1 of the Code which deals with definitions, defines the Management as under :--

"(17) The Management means an Association, Body or a person having a general and financial control over a school. In the case of a Government Institution, it means the Government Department concerned and in the case of schools managed by local bodies, a Zilla Parishad, a Municipal Council, a Municipal Corporation or a Cantonment Board having general and financial control over a school."

Rule 59 of the said Code reads as under --

"59. An untrained teacher shall acquire training qualifications within a period of five years from the date of his appointment."

Rule 64 of the said Code which deals with appointment of untrained Teachers, reads as under:--

"64. An untrained teacher other than a specialist teacher should not be appointed permanently in any recognised school. Special cases of teachers of outstanding merit, who may not possess the necessary academic and/or professional qualifications, should be referred to the appropriate authority for approval."

Rule 65 of the said Code reads thus:--

"65. A teacher will be considered as trained only if he possesses any of the following qualifications :

(1) For graduate teachers :

- (i) The B.T./B.Ed. degree of any of the statutory University/or its equivalent;
- (ii) The Teaching Diploma of any of the statutory Universities if the person holding it is appointed before 1-10-1970;
- (iii) The S.T. Certificate of the Education Department of this State if the person holding it is appointed before 1-10-1970;
- (iv) The Diploma in Education of the Graduates Basic Training Centres;
- (v) The Diploma in Physical Education recognised by Government or its equivalent;
- (vi) Any other degree, diploma or certificate which Government or the Inter-University Board may sanction as equivalent to any of the above qualifications."

The relevant provision of Rule 67.1.(a) reads thus:--

"67.1.(a) Unless otherwise specifically mentioned, the service condition rules including the rules governing the termination of employment given in this section apply to both full-time and part-time teachers and the non-teaching staff employed in non-Government schools except that:

- (i) the requirement of professional qualifications will not hold good in the case of the non-teaching staff who will be treated as permanent for all purposes on completion of two years" satisfactory service. However, the clerical staff shall have to undergo an inservice training course, if any, provided by the Department in order to be eligible for confirmation;

Rule 68.3(b) of the Code reads thus --

"68.3(b) A teacher who has completed two years" post-training service in the school will be treated as permanent. The confirmation order should be issued immediately. For the purposes of termination of services and leave, the Department will treat such teacher as permanent even though the authority competent to appoint them may not have formally confirmed them."

Rule 68.4 of the Code reads as under --

"68.4 No untrained teacher on probation will be made permanent unless he is trained. No untrained teacher will ordinarily be retained in service for more than five years."

The relevant provisions of Annexure-45 of the said Rules which deals with the seniority list of Teachers in the non-Government Secondary Schools reads thus --

"Government has decided to lay down the following revised guidelines for fixation of seniority of teachers in non-Government Secondary and Higher Secondary Schools.

2. For the purpose of fixation of seniority of teachers in non-Government Secondary and Higher Secondary Schools the following categories of teachers in

the ladder of seniority should be taken into account:

Category A: This category is applicable to;

Higher Secondary Schools only. M.A.II/M.Sc.II/M.Com., II/M.Sc. (Agriculture), II, B.T./B.Ed. Teachers of the above qualifications appointed in higher secondary schools and teaching a subject offered by them at their Master's Degree Examination to the top standard of the higher secondary school.

Category B : Holders of;

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

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

B.A./B.Sc., Dip.T. (old two year Course); or

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

Category C : Holders of:

B.A./B.Sc., S.T.C./Dip.Ed. (one year Course) or its equivalent.

Category D: Holders of

S.S.C. S.T.C./Dip.Ed./Dip.T. (one year Course) or its equivalent.

Category E : Untrained Graduates or equivalent qualifications.

Category F : Untrained Matriculates or holders of equivalent qualifications.

Category G : The rest."

"3. The categories wise mentioned above represent the ladder of seniority and have been mentioned in descending order. The inter se seniority of teachers falling in any single category should be determined on the basis of their length of continuous service in that category, in a single school or in schools run by the same management."

11. It can, thus, be seen from Rule 17 of Chapter 1 of the Code that the definition of the Management could also take in its compass the Zilla Parishads who are having general or financial control over the Schools run by it. It can be seen from Rule 65 that a teacher can be considered as a trained Teacher only if he possesses the qualifications mentioned in Sub-rule (1) of Rule 65. It can be seen from the Rule 61.1(a) that the said Rules apply to both full time as well as part time Teachers and also to non-teaching staff with an exception that the requirement of professional qualifications will not hold good in case of non-teaching staff, thereby making it clear that the requirement of professional qualification will be necessary in case of teaching employee. It is also clear from Rule 68.3(b) that a Teacher who has completed two years" post-training service in a School, will be treated as permanent. It is also clear from Rule 68.4 that no

untrained Teacher shall ordinarily be retained in service for more than five years. It can be seen from Annexure-45 that the Teachers with M.A., M.Sc., M.Com. and M.Sc. (Agri.) in second division along with B.T./B.Ed. degree, have been placed in category A. Whereas the Teachers holding postgraduate or graduate degree with B.T./B.Ed. degree or its equivalent and graduate with Diploma in Teaching (old two years' course), have been placed in category B. Such of the Teachers having graduate qualification along with S.T.C./Diploma in Education/Diploma in Teaching (one year course) with 10 years post S.T.C. service, have also been placed in Category B. Holders of graduate degree with S.T.C. or Diploma in Education having one year's duration, have been placed in category C. Holders of S.S.C., S.T.C./Diploma in Education/Diploma in Teaching (of one year) are placed in category D, whereas untrained graduates or holders of equivalent qualifications have been placed in category E. Untrained matriculates or holders of equivalent qualifications have been placed in category F, whereas the rest of the employees have been placed in category G. It is also clear from Clause 3 of Annexure-45 that the categories wise mentioned above represent ladder of seniority and have been mentioned in descending order. It is also clear that inter se seniority of Teachers falling in any single category is required to be determined on the basis of their length of continuous service in that category in a single School or Schools run by the same management.

12. The State Government, vide circular dated 10th January, 1975, has itself directed that for the purpose of promotion to the post of Head Master in an aided secondary school, a common seniority should be maintained of all the Teachers on the basis of length of service in the trained graduate scale. Vide communication dated 7th August, 1979, this position has been reiterated. Vide Government Resolution dated 30th June, 1981, the Government has again reiterated that seniority of the Teachers has to be determined on the basis of length of their continuous service after obtaining training qualifications i.e. B.T. and B.Ed. Vide an order issued by the State Government dated 5th December, 1981, in exercise of powers vested in it by virtue of the proviso to Section 248 of the Zilla Parishads Act, it is directed that till such period a provision is made in the Zilla Parishad District Services (Recruitment) Rules, 1967, the provisions of the said Code are made applicable to the Schools run by the Zilla Parishads. Vide another order dated 23rd September, 1998 issued by the State Government in exercise of the aforesaid powers, the provisions of the said Rules have been made applicable with necessary changes. Vide communication dated 21st May, 2004, addressed by Under Secretary to the State of Maharashtra to the Chief Executive Officer, Zilla Parishad, Nanded, it has been informed that while effecting promotions, the seniority should be based on the basis of the date on which the B.Ed. qualification has been acquired by the concerned Teacher. It is further provided that if two or more Teachers have acquired the qualifications on the same date, then seniority of such Teachers should be prepared on the basis of their initial entry in the service. Some confusion is created for the first time vide communication dated 12th August, 2004 addressed by Under Secretary of

the State of Maharashtra to the Chief Executive Officer of the Zilla Parishad, which provides that while giving promotion to the post of Center Incharge, the graduate trained Teachers should be taken into consideration on the basis of their seniority in the cadre of Primary Teachers.

13. The question as to whether the provisions of the School Code are statutory in nature or not, was under consideration before the Apex Court in the case of M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, . Their Lordships of the Apex Court held thus --

"8. The provisions of the Maharashtra Act and the Maharashtra Regulations quoted above give statutory recognition to the Code. Under the Maharashtra Regulations it is obligatory for the schools, which have been given recognition under the Maharashtra Act and the Maharashtra Regulations, to follow the provisions of the Code. Once a school is recognised, the management is bound to extend to the teachers employed by it the conditions of service as laid down in the Code."

14. It can, thus, be seen that the Apex Court in the case of M. G. Pandke (cited supra) has in unequivocal terms held that the provisions of the Maharashtra Act and the Maharashtra Regulation give statutory recognition to the Code. It is further held that it is obligatory for the schools, which have been given recognition under the Maharashtra Act and the Maharashtra Regulations, to follow the provisions of the Code. It is further held that once school is recognised, the management is bound to extend to the teachers employed by it the conditions of service as laid down in the Code.

15. A similar controversy with respect to the seniority list of the Teachers working in the Municipal Councils in Vidarbha arose for consideration before the Division Bench of this Court in the case of Hanumansingh Laxmansingh Thakur v. Municipal Council, Malkapur and Ors. reported in 1989 Mh.L.J. 511, wherein it is held as under:

"9. It may be seen that it is also held in N.J. Katakwar's case, cited supra, that unless there was a condition of service relating to the age of retirement fixed under statutory provision made under the Municipalities Act, the exception carved out in Rule 82.1 in relation to the teachers in the Vidarbha Region was applicable to the teachers of the secondary schools run by the local authorities because there was nothing to show in the Secondary School Code of the State of Maharashtra that the provisions therein were not applicable to the secondary schools of the local authorities. The fact that a secondary school run by the local authority requires recognition under the School Code and that as per the conditions of recognition such a school has to abide by the conditions of service in the School Code would show that unless exempted the secondary school of a local authority is bound by the conditions of service laid down in the School Code."

Division Bench of this Court in the case of Saramma Varghese v. Secretary/

President, S.I.C.E.S. Society and Ors. reported in 1989 Mh.L.J. 951, after analysing the provisions of the Act, Rules and the Code, deduced the following principles :

"23. The provisions of the Act, Rules and the Code when analysed reduce themselves to the following principles:

Firstly, the Act and the Rules clearly stipulate that all teachers having B.A., B.Ed. or B.Sc. B.Ed. rank together for the purpose of fixation of seniority (Note 1 paragraph 2 Schedule F to the Rules).

Secondly, the Act, Rules or the Code make no distinction based on the Division of the School in which a teacher teaches. The only distinction made is between permanent and temporary teachers. (Rule 10, categories wise of Employees. Rule 68.1, Chapter III, Section 11 of the Code). Thirdly, the Rules and the Code reject the relevance of pay scale for the purpose of seniority. That is why Note 8 quoted at foot-note 26, enjoins the School to prepare a combined seniority list of teachers, notwithstanding the fact that trained graduate teachers in junior Colleges draw higher scale of pay. (Note 8, Paragraph 2, Schedule F to the Rules).

Fourthly, for the purpose of appointment of Head Masters and Supervisors in the S.S.C. level Schools, the trained teachers with M.A./M.Sc./M.Com. are considered equal to trained teachers with B.A./B.Sc./B.Com. degree. Therefore, a higher academic qualification too is not relevant for fixation of seniority of trained teachers (Note 3, Annexure 45 of the Code).

Fifthly, the only criterion for fixation of seniority of trained graduate teachers is the continuous officiation in such post of teacher (Notes 1, 2 and 3 below paragraph 2 of Schedule F to the Rules) depending upon, their position on the ladder."

Division Bench of this Court in the case of Madhav Govindrao Budhe v. Education Officer, Zilla Parishad, Nagpur reported in 1994 Mh.L.J. 42, held that even if a Teacher in a lower cadre improves his qualification and is placed in higher cadre, his seniority in that cadre will be counted from the date on which he acquired qualifications, irrespective of the date of his initial appointment. It held that since Clause 3 of Annexure-45 of the said Code said provisions require a categories seniority to be prepared, the date of initial appointment is of no consequence in such cases.

In the case of Devlal Jagatram Chauhan and Anr. v. Municipal Council, Gondia and Ors. reported in 1999(1) Mh.L.J. 163, the Division Bench of this Court, after considering the provisions of M.P. Act and the Code framed thereunder and Clause 5 of Annexure-45, held that service conditions of such Teachers would be governed by the provisions of the M.P. Act and the Code framed thereunder, upto 31st December, 1965 and thereafter will be governed by Secondary School Code as framed by the State of Maharashtra.

16. It can, thus, be seen that this Court has taken consistent view that the Code

is also applicable to the Schools managed by local authorities. Not only this, but the Apex Court in the case of M. G. Pandke (cited supra) has also ruled that the provisions of the said Act and the said Regulations give statutory recognition to the Code. It is, thus, clear to us that services of the Teachers employed in Schools managed by the Zilla Parishads would be governed by the service conditions laid down in the said Code.

17. Not only this, but various Government Resolutions and the orders passed by the State Government, in exercise of the powers vested in it in view of the provisions of Section 248 of the Zilla Parishads Act also make it clear that it has been the consistent stand of the State Government that the provisions of the said Code are applicable to the Teachers employed in the Schools managed by the Zilla Parishads. We have also referred to the various resolutions and the order issued by the State Government in exercise of powers vested in it u/s 248 of the Zilla Parishads Act, including the one dated 5th December, 1991. Insofar as the order issued by the State Government dated 23rd September, 1998, thereby making applicable the provisions of the said Rules to the employees of Zilla Parishad, is concerned, we, find that since the provisions of the said Code have statutory recognition, the provisions of the said Rules which are of general nature, will not be applicable in the areas occupied by the said Code. It is needless to state that the Teachers employed in the Schools run by the Zilla Parishads form a separate class in themselves and that their seniority list is prepared separately. It is also not disputed that a combined seniority list of all the employees inclusive of teachers working in the Zilla Parishads is not maintained. It is also not disputed that separate seniority list of Teachers working in Secondary Schools managed by the Zilla Parishad, is maintained. We have, therefore, no hesitation to hold that the said Rules would not be applicable, insofar as the service conditions of the Teachers working in the Schools managed by the Zilla Parishad are concerned, in the fields occupied by the said Code. It can also be seen that the said order dated 23rd September, 1998 itself states that the said Rules would be applicable with necessary changes.

17-A. Perusal of Rule 3.2(10) obliges all the school managements to adopt for its staff the conditions of service as prescribed by the Rules in the Code or as may be laid down by the Government from time to time. The Secondary Schools Code provides for grant of recognition to the schools and release of grant-in-aid including salary and non-salary grants. Schools administered by the Zilla Parishad are admittedly recognized schools receiving grants from the State exchequer. The School Code proceeds to regulate admissions of students, examinations, curriculum, text books, fees, school terms, holidays, school hours and amongst other things also lays down condition of service of the employees including the eligibility criteria for appointment of Teachers, educational qualifications, teaching/training qualifications and maintenance of inter se seniority amongst the teaching members of the staff. Annexure-45 specifically provides for the criteria for preparing seniority list of Teachers in non-Government schools and in case it is held that the Secondary Schools Code is not

applicable to the schools administered by the Zilla Parishad or local authorities, then the same would result in creating a vacuum and the above referred matters cannot be regulated by any other service condition such as MCSR as the said Rules do not make any special provision in regard to the matters referred to hereinabove. If and in case it is held that the provisions of the Schools Code has no application to the schools administered and managed by the local authorities, then the said schools would not be capable of being run on an uniform basis i.e. on the same lines on which other schools are being run which are administered by the private management. The very purpose of introducing Schools Code was to have a unified code for recognition and grant-in-aid and other matters related to the day to day working of the Schools. For this reason as well, we hold that the schools conducted by the Zilla Parishads are regulated by the provisions contained in Secondary Schools Code.

18. Insofar as the reliance placed by the learned counsel for the respondents on the so-called communication of under Secretary of the State dated 12th August, 2004 is concerned, we find that the same is not of any assistance inasmuch as the said communication deals with the Teachers employed in the Primary Schools.

19. We, therefore, hold that the seniority of the Teachers working in the Schools managed by the Zilla Parishads will be governed by the provisions of the said Code. As such, the date of acquiring training qualifications is relevant date for the purpose of determining seniority in view of provisions of Annexure-45. In the light of what we have held, we dispose of the petitions as under:

20. Insofar as Writ Petition No. 3311/2004 is concerned, admittedly, the petitioner was a trained graduate on the date of his appointment and as such was entitled to be placed in Category B. Admittedly, the respondents No. 4 and 5 were not trained graduates on the date of their initial appointments and as such they were entitled to be placed in the category E. The respondents No. 4 and 5 would be entitled to enter into category B only on the date of their acquiring training qualification. It is not disputed that respondents No. 4 and 5 have acquired teaching qualifications subsequent to the entry of the petitioner in the service. We, therefore, hold that the petitioner was entitled to higher placement in the seniority list than the respondents No. 4 and 5. However, since we are informed by the learned counsel for the Zilla Parishad that six posts of Head Master are vacant in the Schools run by the Zilla Parishads, we are not inclined to disturb the promotions already effected in favour of the respondents No. 4 and 5. However, we direct the respondents No. 2 and 3 to promote the petitioner to the post of Head Master and give him deemed date with effect from the date on which the respondents No. 4 and 5 have been promoted i.e. 14-6-2004. Writ Petition No. 3311/2004 is, therefore, allowed in the aforesaid terms with no orders as to costs.

21. Insofar as Writ Petition No. 3942/2004 and 3943/2004 are concerned, we quash and set aside the seniority list prepared by the respondent-Zilla Parishad (Annexure-VIII to W.P. No. 3942/2004 and Annexure-E to W.P. No. 3943/2004)

and direct the respondents No. 2 and 3 in the said petitions to prepare a fresh seniority list in accordance with what has been held hereinabove. Petitions are allowed in the aforesaid terms with no order as to costs.

22. Insofar as Writ Petition No. 6113/2004 is concerned, it is undisputed that the petitioner was a trained graduate Teacher on the date of his appointment. It is also undisputed that the respondents No. 4 and 5 acquired their training qualifications subsequent to the petitioner. We, therefore, hold that the petitioner is entitled to higher placement in the seniority list. We also hold that the communication dated 13-12-2004 declaring the petitioner as surplus is not sustainable in law and, therefore, the same is quashed and set aside. By the impugned order, there has been reduction in rank of the petitioner and his pay scale has also been reduced. We, therefore, direct the respondents No. 2 and 3 to immediately restore the petitioner to the position and the pay scale in which he was working prior to the date of the impugned communication. Petition is, therefore, allowed with no order as to costs.

23. Rule made absolute in the aforesaid terms.