

(2000) 05 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 4159 of 1998

Smt. Jayashree Sunil Chavan

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 16, 2, 3

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
2(1), 6, 66

Citation : AIR 2000 Bom 394 : (2000) 3 ALLMR 465 : (2000) 3 BomCR 803 :
(2000) 3 MhLj 605 : (2002) 1 UPLBEC 157

Hon'ble Judges : Vijay Daga, J;Smt. Ranjana Desai, J;N.J. Pandya, J

Bench : Full Bench

Advocate : A.M. Joshi, for the Appellant; P. Janardanan, Addl. A.G., V.P.
Malvankar, A.G.P. and D.R. More, for the Respondent

Judgement

Vijay Daga, J.—A Division Bench at Mumbai having differed with the view expressed by similar Benches at Nagpur and other at Aurangabad, the Hon'ble the Chief Justice has, in the circumstances, constituted the present Full Bench to resolve the difference.

BACKGROUND FOR REFERENCE

2. An occasion arose for the Division Bench presided over by Mr. Justice Ashok Agarwal and Mrs. Justice Ranjana Desai to make this reference as the services of one Shri Rajendra Raut having B.Ed. qualification were terminated on the ground that he did not hold requisite qualification namely; D.Ed. for teaching in primary school. He was sought to be replaced by a person holding requisite qualification i.e. D.Ed. He had thus invoked writ jurisdiction of this Court by way of Writ Petition No. 2103 of 1998 to challenge the said action. While hearing the said petition for interim reliefs, relevant question raised for consideration was as to whether the qualification of B.Ed. can be said to be requisite qualification for

teaching the students of primary schools. The Division Bench found that the said question was the subject matter of consideration in several judgments rendered by different Benches of this Court in the case of *Sau. Alka Jagannath Bharati v. The State of Maharashtra and ors.*, Writ Petition No. 3006 of 1991 by order dated 3-12-1991 Mr. Justice K. Sukumaran and Mr. Justice V.V. Kamat have taken a view that the qualification of B.Ed. is a higher qualification than D.Ed. Thus, it was held that the petitioner therein had not only a necessary requisite qualification for the post of primary teacher but had a qualification more than necessary for the said post. Similar view was reiterated in the case of *Smt. Aminabai Husain Shakir v. The State of Maharashtra & ors.*, in Writ Petition No. 1925 of 1996 decided by A.A. Desai and S. Radhakrishnan, JJ., as also in case of *Dhondiba s/o Govindrao Lawte v. The State of Maharashtra & ors.*, in Writ Petition No. 348 of 1998, decided by B.N. Srikrishna and S.P. Kulkarni, JJ., on 23rd March 1998.

3. A contrary view to the one in the aforesaid cases was also noticed by the Division Bench in the case of *Smt. Nandini Arunkumar Kalaskar v. State of Maharashtra & ors.*, in Writ Petition No. 4644 of 1997 decided by Bench presided over by Ashok Agarwal, J., wherein the Division Bench had taken a view that as per the provisions of the Act and the Rules qualifications for primary teachers are as mentioned in Schedule B-I whereas qualifications for secondary teachers are as mentioned in Schedule B-II of the Rules. Schedule B-I prescribes D.Ed. as requisite qualification for primary teacher whereas Schedule B-II prescribes B.Ed. as requisite qualification for higher secondary teachers. Based on the aforesaid provisions it was held that B.Ed. is not a requisite qualification for primary teachers.

4. In view of the conflict in the aforesaid judgments, it was found necessary by the Division Bench, presided over by Mr. Justice Ashok Agarwal and Smt. Justice R.P. Desai, to resolve the difference by reference to the larger Bench. The Learned Chief Justice has in the circumstances, referred the above issue to this Bench for resolving the difference. Pending the hearing and disposal of these petitions, many more petitions joined the group as such all the petitions are taken up for hearing and all of them shall govern by this judgment.

Question referred to Full Bench

Whether the qualification "B.Ed." is a requisite qualification for teaching the students in the primary Schools?

BACKGROUND LEGISLATION

5. In order to appreciate the present controversy before considering the merits of the case, it will be convenient to notice few relevant provisions of the statute applicable to the facts of the case.

6. As the preamble shows the, Act was enacted by the State Legislature to regulate the recruitment and conditions of service of employees in private

schools in the State of Maharashtra and with a view to provide such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and society in general and further to lay down the duties and functions of such employees with a view to ensure that they become accountable to the management and contribute their might for improving the standard of education, called the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "Act" for short).

7. The section 2 of the Act defines certain words and expressions used in the body of the statute out of which necessary for the purpose are reproduced hereinbelow :

2(17) "prescribed" means prescribed by rules.

2(18) "primary education" means education imparted in such subjects and up to such standards as may be determined by the State Government, from time to time, located either in a primary or a secondary school;

2(19) "primary school" means a recognised school, or a part of such school, in which primary education is imparted;

2(20) "private school" means a recognised school established or administered by a Management, other than the Government or a local authority.

2(23) "rules" means the rules made by the State Government under this Act :

2(24) "school" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level.

8. Section 3 of the Act mandates that the Act shall be applicable to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

9. The power to make rules are conferred on the State Government u/s 16 of the Act, to carry out the purposes of the Act. One of such purpose is to provide for the minimum qualifications for recruitment of employees of private schools (including its procedure).

10. The State Government in exercise of its powers conferred by sub-sections (1) and (2) of section 16 of the Act, framed rules known as the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "Rules" for short).

11. The Rules define "trained teacher" means a teacher who has secured a professional certificate, a diploma or a degree recognised by the department,

which qualifies him for a teaching post in school, whereas "trained graduate" means a person possessing the qualifications mentioned in sub-clauses (i) to (iv) of Clause (1) of Item II in Schedule "B".

12. The qualifications of Teachers are provided in Rule 6 of the Rules which lays down that the minimum qualifications for the post of teachers and non-teaching staff in primary schools, Secondary schools, Junior Colleges and Junior Colleges for education shall be as specified in Schedule "B". The proviso to this rule provides for some relaxation in exceptional circumstances, with which we are not concerned in this petition. The relevant portion of Schedule "B" thus reads"

Schedule "B"

(See rules 2 (1)(j) and 6)

Qualifications for Primary Teachers.

"Appointment to the post of Primary school (other than special teachers-Drawing Teachers) shall be made by nomination from amongst candidates who have passed S.S.C. examination or matriculation examination or Lokshala examination or any other examination recognised as such by government and the primary Teachers certificate Examination or diploma in Education examination or a Diploma in Education (pre-primary of two years duration).

The conjoint reading of the above extracted provisions shows that the persons possessing S.S.C., D.Ed. qualifications or equivalent thereto are considered to be eligible for appointment to the post of Primary Teachers.

BACKGROUND FACTS.

13. The facts giving rise to the question involved in almost all the cases are more or less similar. However, in order to have the clarity, we have decided to refer to the facts of Writ Petition No. 4159 of 1998 for the purpose of this judgment.

14. The petitioner in Writ Petition No. 4159 of 1998 (hereinafter referred to "petitioner" for short) holds a qualifications of B.A., B.Ed. She was appointed to the post of Assistant Teacher by an order dated 1-6-1988 with immediate effect, in late Smt. Kondabai Golande Vidyalaya, Chinchwad, primary school, run by Nutan Shikshan Sanstha Chinchwad, a public charitable trust. Since then she is in continuous employment of the said school run by the said Trust.

15. The Government of Maharashtra has issued a circular dated 5-11-1997, whereunder the Deputy Secretary to the Government of Maharashtra directed that all the teachers who are untrained should be placed in the S.S.C., scale viz. Rs. 975-1660 and further directed that all such untrained teachers should get themselves trained within the stipulated period at their own costs and expenses failing which their services shall be terminated.

16. The Administrative Officer, Municipal School Board, who is the drawing and disbursing officer of the salary and non-salary grant to primary schools within the

municipal area of Pimpri Chinchwad has directed all the heads of the school, pursuant to the above circular to place the petitioner and like others in the S.S.C. scale of Rs. 975-1660, even though they may have been placed in the degree scale. Accordingly, the petitioner has been placed in a reduced scale i.e. S.S.C. scale with effect from 1-3-1998.

17. The petitioner, being aggrieved by the said Government circular dated 5-11-1997 and consequent follow up action, invoked writ jurisdiction of this Court under Article 226 of the Constitution of India.

RIVAL CONTENTIONS

18. The main contention of the petitioners who are holding B.A., B.Ed. qualifications is that they are trained graduate teachers. They are having more than the required qualifications. According to them, insistence that they should obtain the diploma in education is nothing but an insistence on obtaining qualifications of much lower degree. According to them, what is contemplated under Act and the Rules is a minimum qualification. Therefore, in their submissions, persons with higher classification can not be held to be non-qualified teachers to teach primary students.

19. The learned Counsel representing the teachers holding B.A., B.Ed. qualifications strenuously contended that the trained graduates are better qualified than the matriculates with D.Ed. as such they cannot be treated inferior to the teachers holding S.S.C. with D.Ed. qualifications for the post of teachers in the primary schools. All of them submitted that there is absolutely no justification for the directions issued by the State that persons with better qualifications should be placed in the lower pay scale meant for S.S.C. teachers. It is thus contended that the policy of the State reflected in the form of instructions issued by the State Government vide their circular dated 5-11-1997 makes an unreasonable and arbitrary classification between two groups of teachers without having any nexus with the object sought to be achieved, as such it offends Articles 14 and 16 of the Constitution of India. In their submissions, the circular issued by the State Government dated 5-11-1997 directing reduction in the pay scale of degree holder teachers and prescribing D.Ed. as essential qualification to teach primary students deserves to be set aside with directions to the respondents to restore status quo ante. In order to bolster up their contentions they sought to place reliance on the judgments delivered by the Division Benches at Nagpur and Aurangabad in support of their contentions. The said judgments are in the matter of (1) Sou. Alka Jagannath Bharati v. The State of Maharashtra & ors., Writ Petition No. 3006 of 1991 (2) Smt. Aminabai Ashique Husain Shakir v. The State of Maharashtra & ors., Writ Petition No. 1925 of 1996 and (3) Dhondiba s/o Govindrao Lawte v. The State of Maharashtra & ors., Writ Petition No. 348 of 1998.

20. The State has filed affidavit in reply wherein the reasons for formulating such policy have been enumerated. According to the State the D.Ed. syllabus has been

specifically designed to meet the requirements of teaching the students of primary schools whereas that of B.Ed. is geared to meet teaching needs of the students of the secondary schools. The State Government has given under mentioned reasons as to why D.Ed. has been prescribed as professional qualifications for the post of Primary Teachers. The said reasons are enumerated hereinbelow :

(1) In primary education integrated teaching approach has been accepted by the government. The contents of the D.Ed. syllabus have been framed in such a way that a teacher holding this qualification is in a position to teach all subjects that are taught in primary standards suitable for the students falling in the age group upto 14 years especially considering their hostile attitude towards school.

(2) The syllabus also contains special training programme on Early Childhood Education and non-formal Education, Tribal Education, Girls Education, Population Education, Multi grade teaching, Educational Technology and Moral Education. This training course specially covers the contents data in primary Schools pertaining to school subjects and gives insight in methodology to be adopted in teaching these subjects in primary schools.

(3) The D.Ed. teachers are taken to primary schools for practical sessions.

21. The State has also stated that the State Education Board has specifically prepared and designed the D.Ed. syllabus to meet the requirement of teaching in primary schools and the Government of Maharashtra has accorded its sanction to the above syllabus.

22. The State has not only filed their affidavit-in reply to justify their contentions but have also produced opinion of State Teachers Board to show how D.Ed. education is better suited for teaching primary teachers in comparison to B.Ed. education which is essentially meant for teaching students of higher secondary classes. The Minutes of the third annual general meeting of the seventh State Teachers Training Board dated 5th March 1998 thus reads as under :

"(1) B.Ed. is a course of one year and on the other hand D.Ed. is the course two years.

(2) In case of D.Ed., Course, the abilities of the candidates are developed in such a way that he is able to teach all the subjects in preprimary, primary and higher primary courses successfully. In B.Ed. course the abilities of the candidate are developed in such a way that he is able to teach successfully to the classes on secondary level only.

(3) Only after considering the fact that ability required for teaching pre-primary, primary as well as on secondary level is different, provision was made in the form of Rule No. 66 of Secondary School Code providing for the proportion of B.Ed., and D.Ed., teachers for standard 5th, 7th in Secondary School, as 25 : 75 only.

(4) B.Ed. course includes knowledge of the subjects and teaching methods in connection with only two subjects related to graduation subjects. On the other hand D.Ed. course includes all subjects on primary level along with the guidance about the subject knowledge and teaching methods meant for all the subjects viz. Arts, Sports, Work experience and Music and, therefore, D.Ed. trained candidate can teach all the subjects to one class or several classes successfully.

(5) On pre-primary level, the effective use of child centered teaching, joyful education, playful education system, ability based teaching, is inevitable. The D.Ed. course provides thorough knowledge of these subjects.

Hence considering the over-all extent of D.Ed., course and the aforesaid facts, the State Teachers Training Board opines that the candidates holding B.Ed. qualification can not be treated as the candidate holding the qualification equivalent to D.Ed., by giving them mere training of 2/3 months.

The comparative chart of D.Ed. and B.Ed. course was also filed on record to show that the B.Ed. course cannot be treated as equivalent to D.Ed. or superior to D.Ed. course. The details of comparative chart are as under :

D.Ed. B.Ed.

Qualification admission.

Candidate passing exam, for 12th std. or any U.G.C. recognised similar exam, equivalent to H.S.C.

Candidate passing degree exam, of any faculty conducted by any U.C.G. recognised University.

Period 2 years. 1 year.

Total periods 2400 clock hours 1200 clock hours.

Teaching level Primary Age Group 6 to 14. Secondary Age Group 12 to 16.

Teaching method.

Emphasis on practicals, use of child centered, multi classes, playful, joyful methods.

Emphasis on principle portion.

Syllabus.

Subject Knowledge and teaching methods in respect of all subjects in school education. 3 languages (first, second and third) Mathematics, Science, Social Science and work experience.

Subject Knowledge and teaching method in respect of only two subjects (one subject- of graduation and one other sub., thus only two subjects.)

2.

Physical Education health, drawing and modern arts, work experience, music etc. subjects from school education can be successfully taught to classes of std. 1 to 7.

The subject knowledge and teaching methods in respect of only two subjects of B.Ed, can be successfully taught.

3.

Two years training is given to solve the problems and to fulfil the needs of the students on primary level. The problems of students on primary level are very complicated. A thorough study in respect thereof is made.

One year training is given to solve the problems and to fulfil the needs of the students on secondary level.

23. In short the contention of the State is that the graduate teachers are given training to gain experience of practical teaching to secondary classes VIII to X whereas the S.S.C., with D.Ed. trained teachers get practical training and experience for teaching students taking education in elementary classes from I to VII. According to the State, S.S.C. with D.Ed. trained teachers are better suited and well qualified to teach primary school children than the graduate trained teachers. In the submission of the State, even though, *prima facie*, it may appear that a graduate trained teachers are more qualified or over qualified than that of the teachers having S.S.C. with D.Ed. qualification but in essence, the graduate teachers are not really qualified to teach primary school children as such. B.Ed. educational qualification cannot be considered as equivalent and suitable as compared to D.Ed. educational qualification.

24. The State also sought to place reliance on the judgment delivered by Division Bench of this Court at Mumbai in the matter of *Mrs. Nandini Arunkumar Kalaskar v. State of Maharashtra & ors.*, Writ Petition No. 4644 of 1997 wherein the Division Bench of this Court had taken a view that graduate is not eligible for teaching primary school classes. In other words, the Division Bench at Bombay found that the requisite qualifications for primary school teacher are in S.S.C. D.Ed. looking to the contents of their syllabus whereas syllabus for B.Ed. is entirely distinct and better suited for higher standards.

25. The last submission advanced on behalf of the State is that it is for the State to formulate its own policies in the matter of education and the Court exercising writ jurisdiction should not substitute it with its judgment unless the Court finds that the policies are unreasonable, irrational and cannot be justified on the touchstone of Article 14 of the Constitution of India.

FINDINGS ON THE QUESTION REFERRED

26. The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the

students on whom the future of the Society depends. In fine with this principle, the State has enacted statutes and framed Rules and Regulations to control and regulate establishments running private schools at different levels. The State Government provides grants recognition and/or permission to run private schools with a view to exercise control over the institutions and to ensure that the standard of teaching does not suffer for want of academic control. It needs no emphasis that appointment of qualified and efficient teacher is a sine qua non for maintaining high standard of teaching in educational institutions. In order to achieve, maintain, high and proper standard of education at the entry point i.e. at the stage of primary education, if the State has formulated its policy only to appoint the teacher with requisite professional qualifications, no fault, in our opinion, can be found. The said obligation of the State stands reflected in section 16 of the Act which mandates the State to prescribe minimum qualifications for recruitment of teacher in private schools. The policy of the State reflects through Rule 6 which prescribes qualifications of primary teachers as mentioned in Schedule "B" Part I, whereas qualifications for secondary teachers are mentioned in Schedule B Part II of the Rules. Schedule "B" Part I prescribes D.Ed. as the requisite qualification for primary teachers, whereas Schedule B Part II prescribes B.Ed. as a requisite qualification for higher secondary teachers. Based on the aforesaid provisions, it is to be noticed that B. Ed. is not requisite qualification for primary teachers. The syllabus for B.Ed. is entirely different. The syllabus for D.Ed. is better suited for imparting education to the students taking education in primary schools only whereas syllabus for B.Ed. is entirely distinct and better suited for the students taking education in higher standards. The factual position has been born out from the relevant material placed on record, reference of which have already been made by us in para 22 (supra).

27. The State Board of Teachers Education is constituted to frame syllabus and to advise the State Government to formulate policy relating to the education. If Board in its wisdom considered it necessary to prepare syllabus of D.Ed. in a particular manner to make it relevant for teaching students of tender age taking education in primary schools and the State Government has sanctioned it, with due application of mind, then no fault can be found with the policy of State to insist for appointment of D.Ed. teachers to impart education in primary schools in the State of Maharashtra.

28. The Board is an expert body consisting of persons coming from different walks of life who are engaged in Or interested in the field of education and have wide experience. The decision of such expert body needs to be given due weightage by the Courts. The Apex Court in this behalf in the case of The University of Mysore and Another Vs. C.D. Govinda Rao and Another, , has observed as under :

"..... Board of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them are challenged before the Courts, normally the courts should be slow to interfere

with the opinions expressed by the experts."

The aforesaid observations of the Supreme Court have set out the parameters so far as exercise of powers by the Courts are concerned. Following the said guidelines, we do not find any fault with the requisite qualifications prescribed by the Rules and reiterated by the Education Board while taking a second look.

29. We are also in agreement with the submissions advanced by the learned Counsel for the respondents that the policy of the State in this behalf can not be interfered with unless it is challenged on the ground of mala fide. The Apex Court in this behalf in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., has stated thus :

"It is not normally within the domain of any Court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive."

The Apex Court has also in the case of M.P. Oil Extraction v. State of M.P., (1997) S.C.C. 592 has observed thus :

"The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions comes into effect with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive of the State. Policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India."

In the aforesaid backdrop, the mere higher qualification, without having requisite minimum qualification prescribed by rules, cannot be held to be a requisite qualification. Looking to the tenor of the arguments at Bar, more particularly on behalf of those petitioners who had the qualifications of B.Ed. and were claiming that they should be held to be qualified for being employed as primary teachers, the following supplementary question is also raised.

Could the qualification of B.Ed. be taken as a qualification higher than of D.Ed.

and hence on that basis could it be treated as requisite qualification ?

From the discussion above, it is quite clear that the B.Ed. and D.Ed., both the qualifications are to operate in a separate and distinct fields. There is no question of there being one qualification higher than the other particularly with regard to the requirement of the primary school. It is, therefore, not possible to accept the argument that B.Ed. being the Bachelor's Degree, in comparison with D.Ed., being the Diploma, the degree would be higher than the diploma and, there from on that very count alone a holder of B.Ed. would be superior to D.Ed. holder and hence can be employed as primary school teacher.

Even if that be so, it would be a case of over qualified person being employed for a job and therefore, in a way a total waste. So far as B.Ed. holder is concerned, looking to the paucity of job he may be willing to do, what he considers to be an inferior job but looking to the difference in the curriculum and the requirement of the primary school and secondary school as stated above, it is obvious that he would not be suitable for primary school. For this reason also the said argument of it being the higher qualification has to be refuted.

In the aforesaid factual and legal canvass we hold that the D.Ed. is the requisite minimum qualification for teaching students in primary schools and the B.Ed. qualification cannot be treated as equivalent thereto.

In the result, we answer the reference put to us thus; in the negative.

All petitions now be placed before the Division Bench for disposal in the ordinary course.