

(2020) 11 BOM CK 0023

In the Bombay High Court

Case No : Criminal Writ Petition No. 4238, 4239, 4240 Of 2017

Sunil And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 06-11-2020

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Rules, 1981 — Rule 2(1)(j), 6, 12

Citation : (2020) 11 BOM CK 0023

Hon'ble Judges : Sunil B. Shukre, J;Avinash G. Gharote, J

Bench : Division Bench

Advocate : Prashant A. Gode, A.M. Josh, Ajay D. Mohgaonkar, Chaitanya Mohgaonkar

Final Decision : Dismissed

Judgement

Avinash G. Gharote, J

1. In light of the judgment of the Hon'ble Apex Court, in Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust and others, (2014) 13 SCC 219, all the petitions claim a direction to the respondent nos.1 and 2 to rectify the common seniority list prepared by the respondent no.3.

2. In Writ Petition No.4238/2017, the petitioner claims to be placed at serial no.3 of the seniority list. In Writ Petition No.4239/2017, the petitioner claims to be placed at serial no.4 of the seniority list and in Writ Petition No.4240/2017, the petitioner claims to be placed at serial no.30 of the seniority list. A further common relief is claimed of directing the respondent no.3 - Management, upon the seniority list being so rectified as claimed, to forward the proposals for the respective posts, as claimed by the respective petitioners.

3. The respondent no.3 runs three High Schools and two Junior Colleges in various localities of the city.

4. Mr. Gode, learned Counsel for the petitioners relying upon Viman Awale

(supra), submits that since the petitioner in Writ Petition No.4238/2017, who was initially appointed as an assistant teacher on 26/9/1985 in the middle school, was possessing the requisite qualification of S.S.C., D.Ed. for being so appointed and was placed in Category E, in Guideline no.2 of Schedule F under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short, "the MEPS Rules, 1981"), as against the respondent no. 4, who was appointed initially as an assistant teacher in middle school on 16/7/1988 and had the qualification of B. Ed. at the time of his appointment and the respondent no.5, who was initially appointed on 10/7/1989 as an assistant teacher in middle school and had the qualification of B. Ed. at the time of her appointment, due to which both were placed in Category C of Guideline-II of Schedule F under Rule 12 of the MEPS Rules, 1981, the petitioner, though had acquired the qualification of B. Ed. in 1993, and was placed in Category C thereafter, he was in fact senior to the respondent nos.4 and 5, as the initial appointment of the petitioner was prior in point of time.

5. Mr. Gode, learned Counsel for the petitioners also submits that the petitioners in W.P. No.4239/2017 and W.P. No.4240/2017, also claim to have been appointed prior to the respondent nos. 4 and 5, and on this ground in view of Viman Awale (supra) claim seniority over them, though the petitioners have acquired the requisite qualification for entering in Category C, later on.

6. Mr. Gode, learned Counsel for the petitioners, further submits that Viman Awale (supra) was a matter in respect of appointment of teachers in secondary school and not in primary school for which he invites our attention to the observation of the Apex Court in para 8, of the judgment, which in reference to the order as passed by the School Tribunal records that the School Tribunal took note of the fact that the respondent no.3 therein was a secondary school having classes of V to X. Mr. Gode, learned Counsel for the petitioners and, therefore, submits that Viman Awale (supra) is a case which applies to secondary schools, and the case of the petitioners, being squarely covered thereunder, the petitioners are entitled to seniority over the respondent nos. 4 and 5. He submits that the contrary observation in Gaur Pratibha and others Vs. State of Maharashtra Through The Secretary and others, 2019 SCC Online Bom 597, decided by a Bench of this Court at the principal seat, holding that Viman Awale (supra) applies only to primary school, is clearly not correct.

7. Mr. Gode, learned Counsel for the petitioners, further submits that neither Ku. Bhawana Vs. State of Maharashtra and others [Civil Appeal No.11934 of 2018, decided by the Apex Court on 4/1/2019], nor Gaur Pratibha (supra) relied upon by Mr. Ajay Mohgaonkar, learned Counsel for the respondent nos.3 to 5, is attracted in the present matter, which according to him is governed by Viman Awale (supra) and therefore the seniority of the petitioners has to be counted, in light of the dictum as laid down in Viman Awale (supra) from the date of their appointment and not from the date of their acquiring qualification of B.Ed. thereby placing them in Category C, in view of which the petitioners would be

senior to the respondent nos.4 and 5. He submits that this being the position, according to Viman Awale (Supra), the petitions need to be allowed, in terms of the prayer clause.

8. Mr. Gode, learned Counsel for the petitioners also relies upon the following judgments, in support of his argument :

(i)

Sau. Mamta Pandurang Nimje Vs. The State of Maharashtra and others, W.P. No.1679 of 2017, decided by a Division Bench at the Aurangabad Bench of this Court on 15/1/2018.

(ii)

Sahakar Vidya Prasarak Mandal and another Vs. Smt. Shreelekha Sunil Ghag, W.P. No.1153/2018, decided by a Single Judge, of this Court at the principal seat in Bombay, on 4/5/2018, the SLP against which has been dismissed by the Apex Court on 7/3/2019.

(iii)

Anjali Jayant Khatri Vs. Bal Mandir Sanstha and others, 2008 SCC online Bom 925.

(iv)

Chagan s/o Namdeorao Athawale Vs. Education Officer (Secondary), Zilla Parishad, Amravati and others, 2019 (5) Mh. L. J. 305.

9. Mr. Ajay Mohgaonkar, learned Counsel for the respondent nos.3 to 5, submits that the interpretation put by Mr. Gode, learned Counsel for the petitioners upon the judgments in Viman Awale, Bhavana and Gaur Pratibha (supra) is not correct. According to him, Viman Awale (supra) was a case relating to primary school only which would be apparent from a proper appreciation of the entire judgment. He submits that a judgment cannot be read in a piecemeal manner by picking up a sentence here and there, rather the entire judgment has to be construed in the light of the question posed for consideration, the reasoning and the decision. According to him, the reference to para 8 of the judgment in Viman Awale (Supra), deals with the seniority of primary teachers, and therefore, cannot be applied to the case of the petitioners, all of whom, were appointed in the middle school itself, as separate provisions are made for determination of seniority of teachers in Secondary School, in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981. He invites our attention to the provisions as contained in Rule 12 and Schedule F thereunder, and specifically to Guidelines-I and II of Schedule F, to submit, that both these Guidelines, which have Statutory force, operate in a different arena altogether, in as much as Guideline -I lays down the mode for fixation of seniority of teachers in the primary schools, whereas Guideline-II lays down the mode for fixation of seniority of teachers in the secondary schools, junior colleges etc. He thus

submits that there cannot be any mixing of the seniority list of the primary and secondary schools or the mode of their determination. He further invites our attention to para 93 in Gaur Pratibha (Supra), which recognizes a distinction between Vimal Awale and Bhawana (supra), the former being applicable to seniority of primary school teachers and the later being applicable to seniority of secondary and junior college teachers. He, therefore, submits that Viman Awale (supra), is clearly not applicable and therefore, the petitions need to be dismissed. Apart from Bhawana and Gaur Pratibha (supra) he also places reliance upon Yeshwant Vs. Director of Education, Government of Maharashtra, Pune and others, 1987 LAB. I.C. 1611 and Madhav Govindrao Budhe Vs. Education Officer, Zilla Parishad, Nagpur and others, 1994 Mh. L.J. 42.

10. Before we, consider, whether Viman Awale (supra) is a judgment in relation to seniority of primary teachers or secondary teachers, it would be necessary to consider and analyze the relevant provisions of the law, as applicable and in their light and background, to consider the judgments and their respective applicability. The relevant provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 in this regard are as under :

"2 (j) "Trained graduate" means a person possessing the qualifications mentioned in sub-sections (i) to (vi) of clause (1) of item II in the Schedule "B";

(k) "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 a school.

6. Qualifications of teachers and non-teaching staff. - The minimum qualifications for the posts of teachers and the non-teaching staff in the primary schools, secondary schools, higher secondary schools, junior colleges and junior colleges of education shall be as specified in Schedule 'B'.

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

[2nd proviso is not relevant for the present matter]

12. Seniority List. -

(1) Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The

seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

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

Schedules 'B' and 'F' under the MEPS Rules, 1981 deal with the qualifications for appointment of primary and secondary teachers and the mode of determining their respective seniority. The relevant portions of these schedules in a comparative form are reproduced hereunder in order to understand the differences in the qualifications and mode of determining the seniority of the teachers of primary and secondary schools.

The comparative table in respect of the requirements as prescribed in Schedule 'B' under the MEPS Rules, 1981 which deal with the qualifications for appointment of primary and secondary teachers is as under :-

Primary Teacher

Secondary Teacher

Schedule-B under Rules 2(1)(j) and 6 of MEPS Rules

I.

Qualifications for Primary Teachers.

The minimum qualifications for Primary Teachers i.e. from I to VIII standards, shall be as per the qualifications laid down by the National Council for Teacher Education (NCTE) under the Right of Children to Free and Compulsory Education Act, 2000 (35 of 2009), from time to time.] [As Substituted by Notification No. CET2015/ (C.R.149) /TNT-1, dt.22.06.2017]

II

Qualifications for trained Teachers in Secondary Schools and Junior Colleges of Education.

1

For Graduate Teachers :

(i)

A Bachelor's degree in Teaching or Education of any statutory University or a qualification recognised by Government as equivalent thereto;

(ii)

A Teaching Diploma of any statutory University, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date.

(iii)

A Secondary Teachers' Certificate of the Education Department of Maharashtra State, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date];

Before its substitution by notification dt.22.06.2017, clause-I (relevant portion) read as under :

[Qualifications for Primary Teachers.- Appointment to the posts of Primary school teachers (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).

2. Appointment to the post of Special Teacher (Drawing Teacher) in Primary Schools shall be made by nomination from amongst candidates who have passed S.S.C. examination and possess Art Teachers Diploma or Drawing Teachers Certificate or Drawing Masters Certificate.

(iv)

A Diploma in Education of the Graduates Basic Training Centres;

(v)

A Diploma in Physical Education or a qualification recognised by Government as equivalent thereto; or Bifocal Higher Diploma in Physical Education of the Government of Maharashtra (as Physical Education with one of the method subjects) or B.P. Ed. (Marathwada University) or B.P. Ed. (Shivaji University) or B.Ed. (Physical Education) (Poona University) or B.Ed. (Physical Education) (Bombay University) [or B.P.Ed. (Nagpur University)] or Diploma in Physical Education, Culture and Recreation awarded by Hanuman Vyayam Prasarak Mandal, Amravati; or

(vi)

University Board may sanction as equivalent to any of the above qualifications [and.

(vii)

After the commencement of the Maharashtra Employees of Private Schools

(Conditions of Service) (Amendment) Rules, 2017, the persons to be appointed as the Graduate Teachers shall require to appear for the Aptitude Test, as specified by the Government in this regard, from time to time.]

2

(2) For Undergraduate Teachers :

(i)

A Diploma in Education of Nagpur and Bombay Universities which is awarded two years after Secondary School Certificate Examination;

(ii)

A Secondary Teachers' Certificate of the Education Department of Maharashtra State or the Teachers' Diploma of any statutory University, if the person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without

(iii)

A Certificate in Physical Education recognised by Government, if the person had acquired the said qualification before the 31st May 1971 and was appointed on or before the 20th September, 1978.]

(iv)

A Diploma in Education (Primary) awarded by Government; or

(v)

Any other equivalent diploma or certificate approved by Government or Inter-University Board

3

(3) For Drawing Teachers: A Drawing Teachers' or a Drawing Masters' Certificate or an Art Masters' Certificate or Art Teachers' Diploma or Art Masters' Diploma.

4

(4) For Crafts Teachers: A Certificate of having completed the special course in Craft run by the Directorate of Technical Education or any other equivalent course approved by Government with a minimum duration of six months.

5

(5) For language teachers (Arabic, Hindi, Persian, Sanskrit, etc.) :

For Graduate Teachers any degree, diploma or certificate which Government or the InterUniversity Board may sanction as equivalent to the professional qualification as referred to under Item (1).

The comparative table in respect of the requirements as prescribed in Schedule 'F' under the MEPS Rules, 1981 which deal with the mode of determining the seniority of primary and secondary teachers is as under :-

Primary Teachers

Secondary Teachers

SCHEDULE-F under Rule 12 of the MEPS Rules

1

Guidelines for fixation of seniority of teachers in the primary schools

2

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

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

[] Substituted by Not. No.PRASHANYA. 1607/(516/07)PE-3, dated 08.10.2008.

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

prior to which it read as under :

The seniority of primary school teachers in Primary Schools shall be based on the date of joining service and continuous officiation.

Category A :

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

Category B :

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

Category C :

Holders of -

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

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

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

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

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

Category D :

Holders of -

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

[Explanation - On and after the date of publication of this notification in the Official Gazette and without affecting the promotion made until that date, the inter se seniority of teachers with qualification

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

Category E :

Holders of -

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

Category F :

Untrained Graduates or holders of equivalent qualification.

Category G :

Untrained Matriculates or holders of equivalent qualification.

Category H :

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

The notes appended to the guidelines for fixation of seniority of teachers in the secondary schools Junior Colleges of Education and Junior College classes attached to secondary schools and Senior Colleges as contained in Guildeline-II of Schedule-F, being material are also reproduced as under :-

Note 1 : For the purpose of categories C, D, and E teachers with S. T. C., T. D., Jr. P. T. C. Dip, T., Dip. Ed. (post S.S.C. one year course) qualifications appointed on or after 1st October 1970 shall be considered as untrained and their seniority

shall be fixed in the 'F' or 'G' category of untrained teachers as the case may be.

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

(1) D. Ed. (2 years).

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

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

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

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

Note 5 : Where a management runs more than one school and where Junior College classes are or are not attached to any one or more of such schools, the seniority list for a particular cadre shall be a combined seniority list of all persons in that cadre working in all the schools (excluding night schools, if any), or Junior College classes attached to schools of the Management. The total continuous service rendered by the persons in a particular cadre in any school or Junior College class shall be taken into consideration for the purpose of seniority and for the purpose of promotion.

Note 6 : ----- .

Note 7 : -----.

Note 8 : Where a Management runs one or more secondary schools and a Junior College of Education, then notwithstanding the fact that trained graduate teachers in Junior College of Education are in a higher scale of pay, a combined seniority list of all teachers, in both the types of Institutions shall be maintained in such schools and Junior College of Education in accordance with the guidelines laid down in paragraph 2 of this schedule. This seniority list shall form the basis for purpose of promotion to the posts of Head Masters and Assistant Head Masters in secondary school (s) and Principal (s) of Junior College of Education.

Note 9 : -----.

Note 10 : The seniority of secondary school teachers in Vidarbha Region who were permanent on the 31st December 1965 and whose seniority was determined as per the provisions contained in the Madhya Pradesh Secondary Education Act, 1951 and the rules made thereunder shall not be disturbed. If any teacher among such teachers, improves his qualifications and thereby switches over to higher category, these guidelines of seniority shall apply so far as the determination of his seniority in the higher category is concerned."

11. It would thus be apparent that Clause-I and II of Schedule-B under Rules 2 (1) (j) and 6 of the MEPS Rules, 1981 read with the Guidelines under Schedule-F framed under Rule 12 of the MEPS Rules, 1981 clearly delineate that there are not only separate qualifications, but also separate Rules applicable for fixation of seniority of teachers in the primary schools, and for fixation of seniority of teachers in the secondary schools. Whereas the seniority of teachers in primary schools is based upon continuous officiation counted from the date of acquiring the educational qualification as prescribed under item (1) of Schedule "B", in case of teachers in secondary schools, the fixation of seniority, is categorized into Categories A to H based upon the qualifications held at the time of the initial appointment. It is permissible in case of secondary schools to climb the ladder, by improving one's qualifications as contemplated by Notes 3 and 4 thereunder. If any teacher among a particular category, improves his qualification and thereby switches over to a higher category, he would be joining the higher category at the lowest rung and does not steal a march over those already present in that category, even if his initial appointment may have been prior to that of those present in the category to which he is switching over. To clarify this, a teacher, in Category E, holding S.S.C. and diploma in education, in case subsequently improves his qualification by acquiring those qualifications as listed in Category C, and therefore, becomes entitled to be included in Category C, he will be the junior most in Category C, on his date of such inclusion, even though, he may have been appointed in Category E earlier in point of time than those already included in Category C.

Any other interpretation would render Guideline-II and Notes 3 & 4 appended thereunder of Schedule F meaningless, for the reason that once the categories are created, then the seniority is clearly cadre based and the seniority therefore will have to be calculated and maintained categoriwise, based upon the date of entry in the particular category and the length of stay there. This would necessarily mandate that though the ladder of categories can be ascended by improving one's educational and teaching qualification as prescribed by Schedule B, the entry into the higher category on account of such acquisition/improvement of/in qualification, would enable such person to join at the bottom of the seniority list of that cadre/category and not otherwise, which status would continue with such person, till he remains in that category/cadre. In such a situation, the date of his initial appointment, in a lower category would become redundant and all that would matter, for determining his seniority, categorywise, would be the date of his entering such category, otherwise a teacher not qualified to enter or be included in a particular category, upon acquiring the requisite qualification, later on, may claim to have become senior to those already more qualified to him, by reason of which they already stood ensconced in that category earlier in point of time, which in our humble opinion, cannot be the meaning or interpretation given to Guideline-II of Schedule F read with Schedule B of the MEPS Rules, 1981 in the matter of determination of seniority of secondary school teachers.

12. As per Schedule B under the MEPS Rules, 1981 for appointment as a teacher in secondary schools categories have been created such as (1) graduate teacher (2) undergraduate teacher (3) drawing teacher (4) craft teacher (5) language teacher, and the qualifications which one should possess, for entitling him to be included in the above categories are also prescribed, however a degree/diploma or equivalent qualification as prescribed therein in Teaching or education is a must.

13. As against this, there is no question of any category, whatsoever, in respect of teachers in primary schools, as is clear from a plain reading of Clause-I of Schedule F as it now stands after being substituted by Notification no. CET-2015/C.R.149/TNT, dt.22/6/2017 and the minimum qualification for a primary teacher from Standard - I to Standard - VIII, is what is laid down by the National Council for Teachers Education (NCTE) under the Right of Children to Free and Compulsory Education Act, 2009 from time to time, and the seniority, is based on continuous officiation counted from the date of acquiring educational qualifications, as prescribed under Schedule B.

14. The position as to distinction in the channels of determination of seniority, was there even prior to the notification dt.22/6/2017. Prior to its substitution by the notification dt.22/6/2017, Clause-I of Schedule F, prescribed qualifications which made one eligible to be considered for appointment to the post of primary teacher, of having passed the examinations of (a) SSC, (b) Matriculation, (c) Lokshala, (d) any other examination recognized as such by the Government AND (i) the primary teachers Certificate examination or (ii) Diploma in Education Exam or (iii) a Diploma in Education (pre-primary of two years duration).

For appointment to the post of special teacher (drawing teacher) the requirement was of having passed SSC examination and of possessing Art Teachers Diploma or Drawing Teachers Certificate or Drawing Masters certificate.

As against this, the educational qualifications required for being appointed as a Teacher in the secondary school were different and were as prescribed in Clause - II of Schedule B of the MEPS Rules, 1981. The difference is apparent from a look at the comparative table of Schedule 'B' as enumerated above.

15. The comparative tables above, both in respect of the qualifications as prescribed in Schedule B and the guidelines for fixation of seniority of teachers in the Primary and Secondary schools, will demonstrate the marked difference in the qualifications and the separate modes in the fixation of seniority, therefor.

16. That apart even in respect of teachers in secondary schools, for the purpose of determining his seniority, the Category into which a teacher falls, is determined by the nature of qualifications, possessed by such teacher, on the date of the initial appointment, which position, as indicated above could be improved upon by enhancing one's educational qualification, so as to claim, entitlement to inclusion in a higher category.

17. The notes appended under the Guideline-II, to Schedule F, further emphasize the difference and distinction. The notes in fact further supplement and clarify the distinction and so also elucidate the inter se categorisation between Categories A to H in Guideline-II of Schedule F. Note-3, which provides that in the case of teachers whose date of continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior and Note-4, which postulates that the categories mentioned above represent the ladder of seniority and have been mentioned in descending order, leave no manner of doubt that the seniority amongst teachers in secondary school has to follow the path of the categories, and the category into which one falls at the initial stage of appointment, is fixed by the nature of qualifications as possessed by such teacher.

18. Thus, whereas the seniority of teachers in a Primary school earlier was based upon the date of joining of service and continuous officiation, therefrom, the seniority of teachers in secondary school is Cadre based in light of the categories A to H, as mentioned in Guideline-II of Schedule F of the MEPS Rules, 1981 and the seniority is thus to be counted cadrewise and from the date a teacher is placed in the particular category.

19. It is in light of the above, that the judgment of the Hon'ble Apex Court in *Viman Awale* (supra) has to be considered. Though as contended by Mr. Gode, learned Counsel for the petitioner that para 8 of the judgment in *Viman Awale* (Supra), makes a mention, that the respondent no.3 - school therein, was a secondary school and the Education Officer (Secondary) Zilla Parishad, Satara was a party respondent no.5 therein, however, this has to be considered in light of what is mentioned in para 5 therein, which indicates that the Court was considering the entire issue, in light of the proposal by the management, resolving to appoint the respondent no.4 as headmaster of the school, which was forwarded to the Education Officer (Secondary). The judgment in *Viman Awale* (Supra), itself in para 15, has reproduced Schedule B, item - 1, under Rules 2 (1) (j) and 6 of the MEPS Rules, 1981 which deals with the qualifications for primary teachers. In para 16, these qualifications for appointment of a primary teacher are again spelt out. In para 18 the Full Bench judgment of this Court in *Vaijanath s/o Tatyarao Shinde Vs. Secretary, Marathwada Shikshan Prasarak Mandal, Devgiri College Campus, Aurangabad and others* 2006 (6) Mh.L.J. 682, which holds that for valid appointment of a primary school teacher, a person must possess educational and so also training/teaching qualification, has been considered and has been distinguished as inapplicable to the facts in *Viman Awale* (supra). In para 22, it has been held that the clear and unambiguous criteria for determining seniority is the "continuous officiation counted from the date of acquiring educational qualification as prescribed under Schedule 'B'", and since for appointment to the post of assistant teacher in primary school, the petitioner possessed the requisite qualification, i.e. D.Ed., and there was no requirement for acquiring additional qualification, it was in that light held that the respondent no.4, therein, who came to be appointed subsequently, though

possessed an higher qualification of B.Ed., was not senior to the petitioner in Viman Awale (supra). The expression, 'continuous officiation', is found in Guideline-1 of Schedule F, which deals with fixation of seniority of teachers in the primary schools. The expression is not found in Guideline -II of Schedule F. It is therefore clear that the judgment in Viman Awale (supra), deals with an issue, regarding seniority of teachers in primary schools and not otherwise. Though the Court in para 15 has noted item-2 in Schedule F, which categorizes, teachers into Category A to H for the purpose of fixation of their seniority in secondary schools, the same has not been dilated upon in the judgment, which is another indication, that Viman Awale deals with the fixation of seniority of primary schools only and not otherwise.

20. We are supported in the above opinion of us, by the judgment of this Court in Gaur Pratibha (supra), wherein, after posing a specific question to itself, to the effect "Do Viman Vaman Awale and Bhawana conflict ?" the Bench held as under :-

"(f) Do Viman Vaman Awale and Bhawana Conflict?

92. We do not think they do. Viman Vaman Awale concerns the Primary Assistant Teachers; Bhawana, the Secondary Assistant Teachers. So the former case interprets the "Guidelines for fixation of seniority of teachers in the primary schools", under Schedule F, under Rule 12. The latter the "Guidelines for fixation of seniority of teachers in the secondary schools Junior Colleges of Education and Junior College classes attached to secondary schools and Senior Colleges."

93. In Viman Vaman Awale both the teachers had their basic qualifications when they entered service, their additional qualifications notwithstanding. And as per Clause (I) of Schedule F, the seniority of primary school teachers shall be based on the date of joining service and continuous officiation. Both the candidates duly qualified, Viman Vaman Awale upheld the seniority of the teacher that joined the service first.

94. In Bhawana, as we have already observed, the teacher who entered the service first had no prerequisite qualification- B.Ed. So she joined the service as an untrained teacher, falling in category 'F'. The other teacher entered the service as a trained teacher and placed himself straightaway in C Category. The first teacher could get the B.Ed., and enter that Category only later. So as per Clause (II) of Schedule F-and as clarified by Note 4-the categories mentioned in Schedule F represented the ladder of seniority in descending order. Thus, Bhawana has held that a teacher in Category F, on later migration to Category C, cannot steal a march over a teacher already ensconced in that Category.

95. Therefore, we conclude that Viman Vaman Awale and Bhawana do not conflict with each other; they have taken no divergent precedential paths. Though Bhawana may not have been aware of Viman Vaman Awale, both decisions have displayed remarkable interpretative consistency. "

It is thus clear that our view, that Viman Awale (supra) deals with seniority of primary teachers, is completely supported by the view already taken in Gaur Pratibha (supra).

21. The view that the seniority of secondary school teachers, is to be determined on the basis of being placed in a particular category, which may depend, upon the acquiring or improving of qualifications and consequently being included in a higher category, than the one, which the teacher was earlier included in, is also supported by the decision in Bhawana (supra), which was a case, which specifically dealt with the inter se seniority of teachers in secondary schools, wherein, upon consideration of the issue, it was held as under :-

"9. The Scheme of the Rules, 1981 of which reference has been made clearly envisages that the teaching staff holding qualification mentioned in Sub section (i) to (iv) of Clause 1 of Item II in Schedule 'B' are considered trained teachers and the seniority of teachers in primary Schools and teachers in the Secondary Schools, Junior College of Education and Junior College attached to Secondary Schools are being determined in terms of the guidelines laid down for fixation of seniority of teachers in Schedule 'F' annexed to Rule 12 of Rules, 1981. As regards fixation of seniority in the primary school is concerned, it is based on the date of joining service and continuance officiation. At the same time, fixation of seniority in the secondary schools, junior colleges of education and junior college classes attached to secondary schools and senior colleges, it has been graded into separate categories commencing from A H, and as regards category 'A and B' are concerned, the seniority is determined on the basis of the date of appointment to the respective posts and those who are holders of various qualifications falling in categories C to H, their seniority is determined on the basis of total service rendered by the person in a particular cadre in school or junior college of education for the purpose of seniority and for promotion as indicated under Note 5, the rule making authority was conscious of this fact giving preference in descending order to the holders of category 'C, D, E or F', as the case may be, as indicated in Note 4. As a consequence thereof, a person who is a member of category 'F' or 'G', as the case may be, would in no manner can rank senior to the teaching staff who is member of category 'C', 'D' or 'E' based 10 on their continuous service rendered in the category to which the person belongs.

10. Indisputedly, the 5th respondent was holding the qualification of B.A. B.Ed. at the time of his initial appointment dated 13th August, 1997 and became a member of category 'C'. At the same time, the appellant though appointed on 27th June, 1994 as an untrained teacher, having acquired the training qualification i.e. B.Ed. on 19th September, 1997 and became a member of category 'C' after entry of the 5th respondent into service as a trained teacher, could not have claimed seniority in category 'C' over the 5th respondent prior to acquiring professional qualification (B.Ed) as envisaged under the Scheme of Rules, 1981 as trained teacher and this what was considered by the authority

who examined the inter se seniority of the appellant vis a vis 5th respondent under the Rules, 1981 and confirmed by the High Court on dismissal of the writ petition preferred by the appellant.

12. Further submission made by the appellant in reference to nature of appointment as a trained/untrained teacher for the purpose of the determination of inter se seniority being insignificant is without substance for the reason that appointments are made of the teaching staff strictly in terms of rule 9 of the Rules, 1981 and their seniority is determined under Rule 12 read with the guidelines annexed to Schedule 'F' to the Rules, which envisages total continuous service rendered by the person in that particular cadre in any school or college, as the case may be, which may be a relevant consideration for the purpose of seniority and for promotion and later confirmation or becoming permanent in the cadre of teaching staff may not be the decisive factor for the purposes of determination of seniority of the teaching staff in the cadre under the scheme of Rules, 1981 ." (emphasis supplied)

22. Gaur Pratibha, (supra) after considering Viman Awale and Bhawana, (supra) while dilating on the issue of seniority of secondary school teachers, taking into consideration the Full Bench decision of this Court in Vaijanath Vs. Secretary Marathwada Shikshan Prasarak Mandal (supra) has concluded as follows :-

"Conclusion: 115. This Court's series of judicial pronouncements as cited above, with the final cap by the Supreme Court's Viman Vaman Awale and Bhawana, unmistakably lays down the law: Among Primary Teachers, the seniority is counted from the date of the teacher's joining service. On the other hand, among the Secondary Teachers, the seniority is counted based on when the teachers had been placed in a particular category-for their seniority stands graded and categorized by the date of their very joining. This categorization is qualification-dependent. Placed in the descending order of category, the teachers rise in ranks of seniority with their additionally acquired qualifications under Guideline (2) of Schedule F, appended to Rule 12 of the MEPS Rules.

116. Once a few teachers reach a common category, equal they may have all been in rank, but their seniority depends on who entered the specific category first. And this entry depends on the date of the teacher's acquiring qualification, not on the date of his or her joining service.

117. Thus, a teacher who is a member of a lower category can in no manner rank senior to the teacher who is already a member of a higher category. Such a claim could be based neither on his continuous service nor on his acquiring the qualification and reaching the higher category. To be specific a teacher, for example, in Category D, E, or F, on later migration to Category C, cannot steal a march over a teacher already ensconced in that higher Category. That teacher's seniority by length of service and by his or her later acquiring the requisite, additional, or even superior qualifications does not defeat the right of teachers already found placed in Category C. What applies to Primary Teachers cannot

apply to Secondary Teachers, for the Rules do keep these two streams of teachers unmixed.

Answers:

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

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

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

121. No. the seniority in any cadre depends on the statutory position-principal or subordinate-that governs the employees of an establishment. Here, it is governed by the Guidelines in Schedule F, under Rule 12, of MEPS Rules. "

Thus, the view that we have taken, is also supported by Gaur Pratibha (supra). Gaur Pratibha (supra) was challenged before the Hon'ble Apex Court in Special Leave Petition No.10720/2019, Pawar Mahadeo Shankar Vs. B.Ed., Niyukta Madhyamik Shikshak Sangh & ors. and connected petitions for special leave, which came to be dismissed on 06/05/2019. However, another Special Leave Petition (Civil) Diary No.9727/2020, Nandini Vs. Gaur Pratibha, has been permitted to be filed by the Apex Court, considering that the petitioner therein was not a party in the earlier Special Leave Petition and was directly affected by the judgment, and notice has been issued on 07/08/2020. That however does not deter from the efficacy of Gaur Pratibha (supra) as of date, as there does not appear to be any stay by the Hon'ble Apex Court, to the same.

23. The reliance by Mr. Gode, learned Counsel for the petitioners on Sau. Mamta Pandurang Nimje (supra) is clearly misconceived. This was a case in which the petitioner who at the time of her appointment was possessing qualification of SSC D.Ed, later on acquired qualification of B.Ed. in the year 1997, and came to be posted as a Graduate Trained teacher, whereupon her services fell in Category C of Schedule F of MEPS Rules, 1981 in which context it was held that the appointment on the post of Graduate Trained Teacher will have to be considered from the date of the petitioner acquired qualification. This judgment, in fact, assists the case of the respondent nos.4 and 5.

24. In Sahakar Vidya Prasarak Mandal (supra), the appointment of the petitioner as an Assistant teacher, in a secondary school and of her being placed in Category E of Schedule F of the MEPS Rules, 1981 was an admitted position, in light of which the seniority could only have been considered cadrewise based on the length of time in the cadre, and on her acquiring B.A. Degree, she was held entitled to have entered into Category C of Schedule F of the MEPS Rules, 1981

without satisfying the requirement of a B.T or B.Ed. or equivalent degree, which is contrary to the requirement of Category C, as the requirement of B.T./B.Ed. or its equivalent, in the second row of Category C, as a teaching/professional qualification, is not a substitute for B.A. B.Sc./B.Com. but an addition thereto, as otherwise, a teacher, who does not have a teaching/professional qualification as required in Item-II of Schedule 'B', would be held capable of jumping the ladder of seniority. This interpretation, ignores the requirement of Schedule B, as well as the comma after B.A. B.Sc./B.Com. in the qualifications as listed in the second row of Category C of Schedule F, which segregates the requirement of B.T./ B.Ed. or its equivalent from the first part of the requirement of B.A. B.Sc./B.Com. Thus while jumping the ladder and consequently the categories, the requirement of the categories, which include educational as well as teaching/professional qualification, both have to be satisfied. Thus on facts Sahakar Vidya Prasarak Mandal (supra) is distinguishable and of no assistance to the arguments advanced by the learned Counsel for the petitioners.

25. Anjali Khati (supra) relied upon by Mr. Gode, learned Counsel for the petitioners, in fact, supports the respondent nos.4 and 5. That was a case in which all the petitioners, on the date of their initial appointment had the professional qualification of B.Ed. as a result of which all of them were placed in Category C and the question was about their inter se seniority in the same category, which came to be decided on the basis of the date of their initial appointment and continuous service in that Cadre. In Anjali Khati (supra) there was no issue of absence of change of category, due to enhancement or acquiring of qualification after being placed in a particular category earlier. In fact in para 11, the Court has categorically held that :-

"11. Date of continuous appointment is not the only criteria for fixation of seniority. Seniority has to be Fixed according to Rules laid down in Schedule "F" to the Maharashtra Employees of Private Schools Rules. The present petitioners fall in Category 'C' since all of them as on the date of fixation of seniority in 1992 were trained teachers. However, while fixing the seniority the date of acquisition of B. Ed. Qualification would also become material. Unless one acquires or possesses such qualification as B. Ed. or professional qualification one cannot go up in the ladder. If a teacher is a graduate but does not hold training or professional qualification he cannot fall in Category 'C'. He may enter 'C' category the day he acquires training or professional qualification. The ladder is in descending order. Here it must be borne in mind that a trained teacher would be put above untrained teacher though length of service wise the untrained teacher may be senior. Education Officer seems to have not followed the instructions contained in Schedule 'F'. The seniority is to be fixed mainly on three criterias i.e. length of continuous service, the acquisition of professional qualification and the age, if two or more candidates or teachers are appointed on the same day."

26. Though the view taken in Chagan (supra) which is based upon Viman Awale

(supra) after considering Bhawana (supra) too, supports the plea as advanced by Mr. Gode, learned Counsel for the petitioner, however, the operation of the judgment in Chagan (supra) has been stayed by the Apex Court vide order dated 26/4/2019, in S.L.P. No.9611 of 2019, which is still in operation.

27. Satish Kamdi (supra) is based solely on Viman Awale (supra) which already stands clarified in Gaur Pratibha (supra) and therefore is not of much assistance to Mr. Gode, learned Counsel for the petitioners.

28. The position, even otherwise, is clear and categoric, in as much as, in so far as inter se seniority between teachers in secondary schools is concerned, and admittedly the petitioners herein are teachers in secondary school, the same has to be considered on the basis of the date on which a teacher has entered a particular category, as defined in the Guidelines-II of Schedule F, under Rule 12 of the MEPS Rules, 1981 and the length of stay in that category determining his seniority in respect of that category with those already present in a particular category, being obviously senior to the one making an entry later on, on account of acquiring the necessary qualifications, as prescribed in that particular category.

29. Mr. Mohgaonkar, learned Counsel for the respondent nos.3 to 5, has placed reliance upon Yeshwant Vs. Director of Education, Government of Maharashtra, Pune and others, 1987 LAB. I.C. 1611, which considering the position of lecturers appointed under the old Higher Secondary pattern in non-government secondary schools in Vidarbha on or before 31/12/1965 in light of rule 12 and Schedule F of MEPS Rules, 1981 holds that seniority depended upon length of service after acquiring qualification and no untrained teacher could be promoted merely on the basis of seniority in the so called higher category. There cannot be any two views on the issue that possession of the requisite qualification for any purpose, either of being placed in any category or for ascending from one category to another is a must, which applies equally to teachers to whom Schedule F of the MEPS Rules, 1981 applies. The same proposition is laid down in Madhav Govindrao Budhe Vs. Education Officer, Zilla Parishad, Nagpur and others, 1994 (1) Mh.L.J. 42, (para 17, considering similar categories in the guidelines of the Secondary Schools Code) Baliram Maharaj Shikshan Sanstha, Mardi and another Vs. Education Officer (Secondary), Zilla Paishad, Amravati and another, 2001 (4) Mh.L.J. 394 (paras 14 to 18) and Vasant Babanrao Palkandwar Vs. Vishuddha Vidyalaya, Yavatmal and others, 2010 (5) Mh. L.J. 405 (para 11), relied upon by Mr. Mohgaonkar, learned counsel for the respondent nos.4 and 5.

30. In the instant case, in so far as Writ Petition No.4238/2017 is concerned, the respondent no.4 (B.Sc. B.Ed.) and respondent no.5 (M.Com. B.Ed.), though appointed later in point of time as Assistant Teachers in secondary school, i.e. on 16/7/1988 and 10/7/1989 respectively, already had the requisite qualifications, which entitled them to be placed in Category C, on the date of their appointment itself. As against this, the petitioner (H.S.S.C - 78, B.A.-83), who was appointed on 26/9/1985, and on account of his qualifications, was placed in Category E, acquired the qualification of B.Ed. in 1993, which made him entitled to be

included in Category C in the year 1993. Thus, the inclusion of the petitioner in Category C was clearly much later than that of the respondent nos.4 and 5, who already stood ensconced, in Category C much prior thereto, due to which, the petitioner cannot claim to be senior to the respondent nos.4 and 5. The claim of the petitioner, therefore, even otherwise on merits also, on this ground clearly cannot be entertained, apart from what we have held as regards the claim of the petitioner about applicability of Viman Awale.

31. In so far as Writ Petition No.4239/2017 is concerned, the petitioner therein, had the qualifications of H.S.S.C.-1982, D.Ed.-1984, B.A.-1985 and was appointed as an Assistant Teacher in secondary/middle school on 10/9/1985 and therefore was placed in Category E. The petitioner acquired additional qualification of B.Ed. in the year 1993, on which he was placed in Category C, which obviously made him junior to the respondent nos.4 and 5, who had already entered Category C on 16/7/1988 and 10/7/1989 respectively. The claim in Writ Petition No.4239/2017 also does not have any merit.

32. As regards Writ Petition No.4240/2017, the petitioner therein, had the qualifications of H.S.S.C.-1986, D.Ed.-1986, B.A.-1987 and was appointed as an Assistant Teacher in secondary/middle school on 25/7/1987 and therefore was placed in Category E. The petitioner acquired additional qualification of B.Ed. in the year 1996, on which he was placed in Category C, which obviously made him junior to the respondent nos.4 and 5, who had already entered Category C on 16/7/1988 and 10/7/1989 respectively. The claim in Writ Petition No.4240/2017 also does not have any merit.

33. For the reasons stated above, the claim of the petitioners that their case is covered by the judgment in Viman Awale (supra), has absolutely no merit altogether. The claim is therefore rejected and the writ petitions are dismissed on merits also.

Rule is discharged. In the circumstances, there shall be no order as to costs.