

(2016) 07 BOM CK 0176

In the Bombay High Court

Case No : Writ Petition No. 2280 of 1997

Sunil s/o Gopalrao Pande

APPELLANT

Vs

Amravati Zilla Parishad

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) 5 AIRBomR 229 : (2016) LIC 4133 : (2016) 6 MhLJ 576

Hon'ble Judges : B.P. Dharmadhikari and Kum. Indira Jain, JJ.

Bench : Division Bench

Advocate : Mr. A.M. Gordey, Senior Advocate with Mrs. R.D. Raskar, Mr. B.G. Kulkarni & Mrs. U.A. Patil, Advocates, for the Petitioner; Ms. A.R. Kulkarni, Asstt. Govt. Pleader, for the Resopondent/State Government; Mr. Gopal Mishra, Mr. M.M. Sudame, Mr. N.W. Almelkar

Final Decision : Disposed Off

Judgement

B.P. Dharmadhikari, J.—Prayer of 6 petitioners who are employees of Zilla Parishad, Amravati in Writ Petition No.2280/1997, is to quash and set aside their reversion from the post of centre incharge to the post of primary teacher by order dated 10.07.1999 and to continue them on promotional post with all consequential benefits.

Petitioner in Writ Petition No. 2356/1997 challenges very same order of same Zilla Parishad and a later order dated 22.07.1997. He has prayed for similar reliefs.

In Writ Petition No. 4035/2010, petitioner - Ramdas is employee of Zilla Parishad, Chandrapur. He seeks setting aside of seniority list prepared by that Zilla Parishad on 26.08.2008 and 24.09.2009, with further direction to said Zilla Parishad to prepare the seniority list as per directions of this Court and to prepare seniority list by accepting date of joining B.Ed. qualification as relevant date.

Petitioners in Writ Petition No. 2349/2011, are employees of Zilla Parishad, Buldhana and they seek a writ commanding Zilla Parishad to prepare seniority list of graduate teachers on the basis of date of obtaining B.Ed. qualification and to quash and set aside order of promotion dated 14.02.2011 issued by that Zilla Parishad, by preparing seniority list, ignoring that date.

Petitioners in Writ Petition No. 6244/2011 challenge seniority list prepared by Zilla Parishad, Yavatmal and its Education Officer as on 2011-12 and to restore earlier seniority list finalised on 05.08.2004.

Petitioners in Writ Petition No. 3081/2012 are employees of Zilla Parishad, Chandrapur and they challenge seniority list prepared by the Zilla Parishad in the cadre of Higher Grade Headmaster and Kendra Pramukh as on 01.01.2010, and Seniority list of assistant teachers dated 01.10.2010. They also seek a writ to direct Zilla Parishad to prepare that seniority list on the basis of date of obtaining B.Ed. qualification and date of entry thereafter in promotional cadre.

Writ Petition No. 4185/2012 is by 4 petitioners. It was earlier filed by an Association and one assistant teacher. However, thereafter, Association has been deleted. Prayer in Writ Petition is to direct Zilla Parishad, Yavatmal to prepare seniority list of teachers working in Standard I to VII i.e. primary schools, from the date of acquisition of B.Ed. qualification. They also seek preparation of separate seniority list of graduate teachers for considering them for grant of higher pay scale as per Government guidelines. Though there is also a prayer to direct Zilla Parishad, Yavatmal to prepare separate seniority list for middle school, high school and junior college teaches for Upper Division Grade and Higher Division Grade from the date of joining a particular cadre, neither petitioners nor respondents have advanced their arguments in this respect.

2. Since a common question about norm to be used for preparation of seniority list of primary teachers working in Zilla Parishad Schools is involved in all these matters, as requested by the parties, all these matters have been clubbed and heard together. To understand the challenge it is not necessary to go into the facts of each case at this stage. According to Shri. A.M. Gordey, learned Senior Counsel, Shri. B.G. Kulkarni, Mrs. U.A. Patil, learned Counsel who argued the cause of petitioners, seniority list needs to be prepared not from the date on which a concerned primary teacher joined the services, but, from the date on which he obtained training qualification i.e. B.Ed. Qualification. They point out that the seniority list is used for promoting teachers to the post of Kendra Pramukh (Center Incharge) or then the Extension Officer (Education), and for that post, graduate degree as also training qualification acquired thereafter is must.

According to them, as only trained graduate primary teachers qualify to become Kendra Pramukh [Centre Incharge] or Education Extension Officer, date of obtaining B.Ed. qualification assumes importance. They are relying upon certain judgments to which we will make reference little later in the body of this

judgment.

3. As against this, Shri. Gopal Mishra, Shri. M.M.Sudame, Shri. N.W. Almelkar, Shri. D.G. Patil and Shri. J.B. Kasat, learned Counsel appearing for respective Zilla Parishads (employer) state that the policy of the State Government in this respect is clear from its Resolution dated 14.11.1994, there is no creation of separate cadre for Kendra Pramukh or then for Trained Graduate Primary Teachers. For the promotional post of Extension Officer (Education), as per statutory rules, next below cadre is that of primary teachers and hence, date of joining only as primary teacher is relevant. Shri. N.R. Saboo, learned Counsel who appears for the intervenors in Writ Petition No.6244/2011, has invited our attention to the first policy decision as contained in Government Resolution dated 27.06.1980, as also the later policy decision dated 14.11.1994, to buttress his contention that boyh unequivocally accept date of joining as primary teacher, as the relevant norm. Respective Counsel therefore, also attempt to distinguish the judgments on which the petitioners have placed reliance.

4. Shri. D.G. Patil, learned Counsel has relied upon the judgment reported in 2010 (6) All MR 213 (Santosh Ekoba Sonavane and others v. State of Maharashtra and others), to urge that as there is no creation of a separate cadre, the challenge in the Writ Petitions is misconceived.

5. During hearing we found that in certain matters, petitioners before this Court have been given the post of a Kendra Pramukh as promotion and their attempted reversion as primary teacher has been stayed by this Court. In Writ Petition No. 2280/1997 and 2356/1997, this interim relief is operating since 14.08.1997. Similarly, in Writ Petition No.4035/2010, this Court has given stay of reversion. In Writ Petition No. 6244/2011, though there is no interim order, the petitioners claim that they are still working as Kendra Pramukh. Writ Petition No. 4185/2012 is by an Association of Primary Teachers. In Writ Petition No.3081/2011 there is no interim orders and petitioners have been reverted.

6. In the background of these facts, Shri. Gordey, learned Senior Counsel submitted in alternate that even if date of securing B.Ed. qualification is not accepted as relevant date for working out seniority by this Court, the petitioners are entitled to their due placement in the list of primary teachers prepared on the strength of date of their joining service. Even as per that placement, they would have been promoted by now. As such, petitioners who were continuing on superior post need not be reverted. Commenting upon the Government Resolutions and fluctuating stance therein, he contends that petitioners cannot be blamed for this situation. He therefore, submits that when petitioners in Writ Petition No.2280/1997, 2356/1997 and in other Writ Petitions, have continued to work on the post of Kendra Pramukh, or Extension Officer (Education) for last several years, no recovery from them can be allowed and permitted. Lastly, he points out that few of them have already superannuated, and as such rejection of these petitions cannot affect their salary or pension.

7. First communication on the norm for determination of seniority is issued on 27.06.1980. It appears to be a letter sent by the Deputy Secretary to Director of Education at Pune. It is on the subject of appointment of trained graduate headmasters on Central Primary School in Zilla Parishads, Municipal Councils and Board of Education. It stipulates that few schools imparting education upto 7th standard [Primary Education], have been designated as Central Primary Schools with a view to improve the standard of education. It was decided to appoint trained graduate teachers as Headmasters on 780 such schools, and therefore, 780 trained graduate teachers were thus to be appointed as headmaster. In paragraph no.6, after examining the Rules regulating appointment of primary teachers as prevailing in the year 1972, it has been clarified that while appointing trained graduate primary teachers in service as headmaster of such school, they shall be selected on the basis of their seniority in the cadre of primary teacher.

8. On 03.05.1991, the State Government has written to the Chief Executive Officer of Zilla Parishad, Jalgaon on subject of seniority list of trained graduate teachers for promotion as Education Extension Officer, District Technical Services Class-III, Grade-II. It appears that Zilla Parishad, Jalgaon had sent a query on 06.07.1990, and in response thereto the State Government has clarified that if a primary teacher was already B.Ed. at the time of his first appointment, date of his initial recruitment should be looked into for computing his seniority. It is further clarified that for those primary teachers who have secured B.Ed., after joining service, their seniority should be computed from the date of passing B.Ed. Examination. It is further mentioned that if more than one primary teacher has obtained B.Ed. Qualification on same date, then date of joining should be looked into.

9. On 14.11.1994 Education Department of State of Maharashtra has issued a Government Resolution on the subject of Establishment of Central Primary Schools. After mentioning previous history, the State Government mentions that it has decided to establish 4860 such Central Primary Schools and to create one post each of a trained graduate Centre incharge (Kendra Pramukh) for each such school. The deviation in it from earlier policy in the communication dated 27.06.1980 [supra], is therefore, apparent. There the question was of appointing trained graduate headmaster on such school, while this Government Resolution does not mention post of headmaster at all, but, speaks about the post of Kendra Pramukh. These posts are created in the payscale of Rs. 1400-2600 with special pay of Rs. 125/-. In clause 3 of this Government Resolution, an advisory committee has been formed. Centre Incharge is convener thereof, while two headmasters of primary schools within its area are its members. It is to be noted that 4860 posts of Centre incharge have been worked out by providing one such Centre Incharge for 10 Zilla Parishad Primary Schools. Centre incharge or Kendra Pramukh is to be selected as per procedure given in AppendixB. AppendixB stipulates that post of Kendra Pramukh is to be filled in through a cadre of trained graduate primary teachers on the basis of seniority and merit. This

appendix refers to letter dated 27.06.1980, and reiterates that trained graduate primary teachers are to be selected by looking at their seniority in the cadre of primary teachers.

10. Government Resolution dated 02.02.2010, issued by the State Government prescribes that 40% out of these 4860 posts are to be filled in by direct recruitment, 30% by promotion, while the remaining 30% through limited competitive examination. It has been also mentioned that this proportion should be kept in mind while filling in the vacancies becoming available in future. It has taken note of the fact that till then posts of Centre incharge were filled in 100% by promotion. Thus, for the first time a direct recruitment against 40% of these 4860 posts has been provided for.

11. One more Government Resolution to which our attention has been invited by the Zilla Parishad is dated 11.08.1999. It is on the subject of making available trained graduate teacher to standard 5th to 7th standard attached to primary schools. This Government Resolution takes note of the same syllabus prescribed for primary and middle schools, but, their staffing pattern was different. In standard 5th to 7th attached to middle schools, for every 3 trained primary teachers, one teacher trained graduate teacher was provided. Government thought that similar arrangement was needed in primary schools of zilla parishads to which standards 5th to 7th were attached. We need not comment more upon this policy decision because it has been looked into by the Division Bench of this Court reported at 2006 (2) Mh.L.J. 124 Vitthal Fakruji Madavi and others v. Zilla Parishad, Chandrapur and others.

12. On 13.08.1999, a Government Resolution has been issued and it deals with the appointment on the post of Kendra Pramukh. It mentions that seniority of such graduate teachers in primary schools is to be computed from the date of joining as primary teacher. This Government Resolution specifically states that post of Kendra Pramukh is to be filled in by promotion of such primary teachers who are graduates and also possess B.Ed. as training qualification.

13. On 21.05.2004, State Government has written to the Chief Executive Officer, Zilla Parishad, Nanded on the subject of promotion as Middle School Teacher, Centre Incharge [Kendra Pramukh], and Extension Officer [Education], Class-III, Grade-II. This communication mentions that as per Government letter dated 03.05.1999, while promoting trained graduate teachers as Extension Officer [Education], seniority list of teachers is to be prepared on the basis of date on which he obtained B.Ed. training. Another communication dated 03.06.2003, directed that if training qualification of trained graduate Centre incharge was same, his original seniority should be protected and as per it, he should be transferred/promoted as Extension Officer [Education]. Zilla Parishad, Nanded and Teachers Association pointed out inconsistencies in this directions and hence on 21.05.2004, clarification was issued. It is directed that for the purpose of promotion to the post of Extension Officer [Education], action should be taken as per letter dated 03.05.1991. As said post of Extension Officer [Education], Class-

III, Grade-II are to be filled in only through trained graduate primary teachers, common seniority list of such teachers and Centre Incharge should be prepared. It is reiterated that date of obtaining B.Ed. Qualification should be treated as relevant date. We have already taken note of a later contrary Government Resolution dated 14.11.1994 [supra]. On 12.08.2004, this letter dated 21.05.2004, came to be cancelled. It is reiterated that seniority list of trained graduate primary teachers must be prepared on the basis of date of their joining as primary teacher. On 18.03.2006, this letter dated 12.08.2004 was cancelled. It was clarified that the guidelines contained in letter dated 21.05.2004, would continue to apply.

14. On 08.02.2007, a circular has been issued by Rural Development and Water Conservation Department of State Government mentioning judgment delivered by the Aurangabad Bench in Writ Petition No.1948/2006. It appears that this communication dated 18.03.2006 was found inconsistent with Government Resolution dated 14.11.1994, hence, through this circular issued by and in the name of Governor of State, it has been ordered that the seniority list be drawn and promotions be made as per Government Resolution dated 14.11.1994.

15. It is in this background we have to decide the controversy. It can not be disputed that a communication contrary to Government resolution can not survive. Similarly, in case of conflict of either with the Statutory Rules, the Rules have to prevail.

16. Division Bench of this Court at Aurangabad has decided Writ Petition No. 3424/1997 on 02.07.2010. That judgment is reported at 2010 (6) All MR 213 Santosh Ekoba Sonavane and others v. State of Maharashtra and others. There challenge was to orders of promotion issued in favour of respondent nos. 5 to 14 therein as Extension Officer [Education]. Petitioners had challenged those order unsuccessfully in appeals before the Additional Commissioner, Aurangabad. On the basis of their seniority, they were promoted as Kendra Pramukh. Subsequent to their promotions, respondent nos. 5 to 14 came to be promoted as Extension Officer [Education], in District Technical Service, Class-III, Grade-II. Division Bench judgment in paragraph no.11 does not accept the contention of respondent nos. 5 to 14, that there is a separate cadre for Kendra Pramukhs. Division Bench has taken note of Section 248 of the Zilla Parishads and Panchayat Samities Act, 1961 and found that such matters are to be regulated by Rules to be framed by the State Government in accordance with Section 274 thereof. In paragraph no.12, it has found that it was necessary for the State Government to make necessary amendments to Rules after creation of post of Kendra Pramukh. Court has in paragraph no.10 of the judgment taken note of absurdity which would otherwise arise, and in paragraph no.13 found that existing Rules create an anomalous situation and permit a junior person to travel to a superior post and become senior and superior to a teacher who was earlier senior to him. We find it important to note that this Division Bench has found that there is no creation of a separate cadre for/as Kendra Pramukh, and this

finding has attained finality.

17. Division Bench at Nagpur has looked into the dispute about seniority of primary teachers and said judgment delivered in Writ Petition No. 4772/2004 and other connected matters on 21.10.2005 is reported at 2006 (2) Mh.L.J. 124 (Vitthal Fakruji Madavi and others v. The Zilla Parishad, Chandrapur and another). In said matter, Clause 3 and Clause 5 of the Government Resolution dated 11.08.1999 are looked into. Clause 5 of this Government Resolution envisages placement of a primary teacher on higher pay scale of Rs. 365-760 and the basis on which the same is to be done. Vide clause 5[1] trained primary teachers who have done graduation in Arts, Science having at least one subject taught in primary schools and also who holds B.Ed. Degree in Education, is to be appointed as trained graduate teacher. Vide sub-clause [2] the primary teachers who did not have graduation in concerned subject, were given time of 5 years after their appointment on the post of higher pay scale to acquire degree in such relevant subject. Vide sub-clause [3], similar teachers as in category [2], who have not acquired B.Ed. qualification are permitted to be placed in next higher pay scale on condition that they would obtain degree in relevant subject as also B.Ed. qualification. Thus, an entirely different scheme which contemplate even a primary teacher holding graduate degree in unconcerned subject and not possessing B.Ed., and allow him to aspire for higher pay scale, has been looked into in this judgment. In said Writ Petition No.4772/2004 and other connected matters, Secretary of school Education Department had filed an affidavit on 26.09.2005 mentioning in clear terms that Seniority cumobtaining of B.Ed. qualification is the criteria for grant of higher pay scale in view of the Government Resolution . It is clear that this judgment and the scheme looked into therein, is not decisive in present controversy.

18. Our attention was also invited to a Full Bench judgment reported at 2006 (6) Mh.L.J. 682 Vajinath Tatyrao Shinde v. Secretary, Marathwada Shikahsn Prasarak Mandal and others. However, this Full Bench judgment has been distinguished by the Hon''ble Supreme Court in paragraph nos.17 and 18 of its judgment reported at (2014) 13 SCC 219 Viman Vaman Awale v. Gangadhar Makhriya Charitable Trust and others.

19. In Viman Vaman Awale v. Gangadhar Makhriya Charitable Trust and others (supra), question of determination of seniority for the purpose of promotion to the post of headmaster and relevance of possessing higher qualification therefor, has been examined by the Hon''ble Supreme Court. Though the judgment considers the provisions of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and 1981 Rules framed therein, discussion therein is germane even for present matter. Appellant Viman had joined services of a private school as assistant teacher on 24.08.1979, while respondent no.4 therein joined on 01.09.1980. Appellant had not completed graduation when she joined, though she possessed requisite qualification for the post of assistant teacher. She completed B.A. in 1984 and thereafter also

obtained B.Ed. qualification with due permission of school authorities on 20.05.1986. She obtained M.A. (Post Graduate degree) in 1997. Respondent no.4 was already B.A. on 01.09.1980, and he also obtained B.Ed. on 01.11.1984. In seniority list appellant Viman was shown junior to said respondent no.4. Respondent no.4 was subsequently promoted as headmaster and statutory appeal filed by Viman before the School Tribunal came to be dismissed. High Court dismissed her writ petition. Appellant Viman then approached Hon''ble Supreme Court contending that she was senior to respondent no.4. Hon''ble Supreme Court in this background has taken note of relevant Rules prescribing qualification for appointment as a head and for qualification as teachers and Rule 12 dealing with preparation of seniority list. It has also looked into Schedule F prescribing guidelines for fixation of seniority of teachers in primary schools. Said guidelines stipulated that seniority of a primary school teacher in primary school is based on continuous officiation counted from the date of acquiring the education qualification as prescribed in Schedule-B appended to M.E.P.S. Rules, 1981. In paragraph no.14 after taking note of these qualifications, the Hon''ble Supreme Court has in paragraph no.15 found that the appellant Viman was fulfilling necessary qualifications when she first joined her employment. Thereafter it has proceeded to examine whether acquisition of B.Ed. Degree by respondent no.4 earlier than the appellant would allow him to steal a march over the appellant. It found that the reliance upon Full Bench judgment of the High Court in case of *Vaijnath Tatyrao Shinde v. Secretary, Marathwada Shikshan Prasarak Mandal and others* (supra), was erroneous. It found that in facts before the Full Bench of Bombay High Court, concerned teacher did not have prescribed qualification of the concerned post and therefore, he could not have been treated as a person duly qualified in terms of Rule 6 read with Schedule-B of the Rules on the date of joining. In paragraph no.19, the Hon''ble Supreme Court reiterated that the appellant Viman was fully qualified when she was appointed as a assistant teacher in primary school and hence, possessing higher qualification was not determinative for fixing seniority. It has also held that though such higher qualification may be essential for next higher post, it did not affect determination of the appellants' seniority as an assistant teacher in primary school. The Hon''ble Supreme Court therefore, accepted the contention of Viman and has set aside the promotion given to respondent no.4 by setting aside the judgment of High Court as also the School Tribunal.

20. Here, we find it appropriate to refer to the judgment of Hon''ble Apex Court reported at (1995) 5 Scale 459 *J.G. Prasada Rao and others v. The Secretary to Government and others*, relied upon by Shri. B.G. Kulkarni, learned Counsel. The question before the Hon''ble Supreme Court was Whether seniority was required to be reckoned from the date of passing of Divisional Account Test. The appellant contended that since some of the contesting respondents had passed that test later, after him, they were junior to him. The relevant norm/qualification is mentioned in paragraph no.4 of the judgment, where passing of Divisional Test is stipulated to be a condition. In paragraph no.11, the Hon''ble Supreme Court has

found that the State Accountants on probation, Divisional Accountants and clerks who passed SAS examination, constituted feeder posts for subordinate accounts service. For Divisional Accounts Officer, Grade I, Grade-II was the feeder post. Passing of Divisional Accounts Test was held to be a precondition for promotion to Grade I. Paragraph 320 of the Manual prescribed that date of passing Divisional Accounts Test was the criteria for determination of the interse seniority. Thus, the Hon'ble Supreme Court concluded that the interse seniority needed to be reckoned with reference to the date on which respective candidate passes accountants test. It therefore accepted stand of the appellant that as he has passed accounts test earlier he was declared senior to respondents. Thus express stipulation in manual was found decisive.

21. The communications relied upon by the parties to advance their contentions either way cannot be held to be decisive in the background of Government Resolution s. We find that the Government Resolution dated 14.11.1994 and Appendix B thereto is decisive in the matter. By that Resolution newly created post of Kendra Pramukh are directed to be filled in through promotion from amongst the trained graduate teachers. It is further mentioned that the seniority of such teachers be looked into as per their seniority in the cadre of primary teachers. It is not in dispute that obtaining or passing B.Ed. [training qualification] is not prerequisite for being appointed as assistant teacher in Zilla Parishad Primary School.

22. The last judgment delivered by this Court and reported in case of Santosh Ekoba Sonawane and others v. State of Maharashtra and others (supra), specifically holds that there is no creation of a separate cadre as Kendra Pramukh. That judgment also looks into the provisions of Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967. In these Rules the post of Extension Officer (Education) is included in District Technical Services (Class-III) (Educational) Grade-II. Along with it other posts forming part of that service and cadre are also mentioned. Thus, post of Extension Officer [Education], Assistant Education Officer and Senior Education Deputy Inspector form part of this cadre. Post of Kendra Pramukh is neither included there nor mentioned in these Rules. There is no independent cadre of trained graduate primary teachers. In pursuance of these observations and need of amending these Rules pointed out by the said Division Bench at Aurangabad on 02.07.2010, no steps have been taken till date. It is therefore, obvious that no separate cadre as " Kendra Pramukh" has ever been created and has not come into existence. Even otherwise, the petitioners have also not pointed out relevant pay scales, service conditions or a promotional hierarchy & there is no effort to demonstrate creation of any separate cadre as understood in service jurisprudence.

23. In (1996) 9 SCC 266 State of Maharashtra v. Purushottam & others, the Hon'ble Supreme Court has pointed out that in service jurisprudence, expression "cadre" means unit of strength of service or part of it, as determined by the employer. Section 248[a] of Zilla Parishad and Panchayat Samities Act, obliges

the State Government to make Rules to regulate the terms and conditions of service. Though the State Government has time and again issued communications contrary to each other and withdrawn the same, it did not discharge this obligation. It is therefore, obvious that an assistant teacher working in primary school of Zilla Parishad does not have post of Kendra Pramukh as next promotional post. Perusal of Appendix IV of Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 shows that the assistant teacher in primary school who has completed not less than 5 years of continuous service can be appointed by promotion as Extension Officer [Education] or then as Assistant Education Officer or then as Senior Assistant Deputy Education Inspector. Primary school teacher in District Services (Class-III) (Subordinate Education) who possesses at least 3 years of post B. Ed. teaching experience in primary or secondary school or junior college of Education can also be transferred to such post, temporarily. Similarly those who possess 5 years teaching experience after passing the S.S.C. Examination and acquiring teacher's training qualifications are also made eligible for consideration. It is therefore, obvious that B.Ed. cannot be treated as an essential qualification for joining service as Assistant Teacher in primary school. In fact that is not the case of any of the parties. B.Ed. has been made an essential qualification for the post of Kendra Pramukh, and as per the Government Resolution dated 14.11.1994, seniority of such primary teachers possessing B.Ed. training qualification needs to be worked out on the basis of their date of joining service initially as primary teacher. Contention of petitioners that said seniority must be computed from the date of acquiring B.Ed. qualification is, therefore, unsustainable. The law explained by the Hon'ble Apex Court in its judgment in case of Viman Vaman Awale v. Gangadhar Makhriya Charitable Trust and others (supra), is clearly attracted in present facts.

24. Hence, seniority list of primary teachers in Zilla Parishads needs to be prepared on the basis of their continuous officiation in the cadre of primary teachers i.e. as assistant teachers with respective Zilla Parishads. Thus, those who were fully qualified for joining as primary teachers will get date of their joining service for the purpose of seniority. While filling in the post of Kendra Pramukh, such of these primary teachers who hold B.Ed. qualification when that exercise is undertaken, shall only fall in the zone of consideration as per their joining date. Thus, on a given date for filling in such vacancy of a Kendra Pramukh, primary teachers who are trained and graduate, would only be eligible for consideration. A primary teacher who has joined first will rank senior most, though he may be last to secure the B.Ed. qualification.

25. In view of this discussion we find that contention of petitioners that the seniority list of primary teachers in Zilla Parishad must be drawn on the basis of date of obtaining the B.Ed. qualification is, erroneous and misconceived. The seniority list needs to be prepared on the basis of date of joining the service only. Those with B.Ed. therein shall be eligible for consideration when the post of Center Incharge or Kendra Pramukh is sought to be filled in.

26. This controversy regarding norm to be applied for preparation of seniority list has been engaging attention of the Court since 2004, and judgments have been delivered on more than two occasions by it. Similarly, the State Government itself has either acted inconsistently or then did not amend the Rules. Hence, we are not inclined to permit recovery from any of the Kendra Pramukh who may suffer displacement, as this court has stayed the same in some petitions and interim orders are operating since last several years. We do not permit the respondents to effect any recovery from any Center Incharge or Kendra Pramukh as they cannot be blamed for the situation. This situation is governed by the law as laid down by the Hon''ble Apex Court in (2015) 4 SCC 334 State of Punjab v. Rafiq Masih. But, then, those who are legally entitled to said post cannot be deprived of it. Hence, we direct the respondent Zilla Parishads to draw seniority list of primary teachers on the basis of their date of joining the service and then to proceed with the selection process as per AppendixB of Government Resolution dated 14.11.1994 & to place senior eligible trained graduate primary teachers as Kendra Pramukh. The exercise will be undertaken in stages depending upon the date on which the vacancies as Kendra Pramukh have been filled in. Senior primary teachers who were not eligible to be considered when such vacancies were first filled in, may have qualified for consideration lateron, if they have obtained B.Ed. qualification thereafter. In this exercise, if it becomes necessary to displace any of the parties before this Court and/or to give him the post of Kendra Pramukh from some later date, we permit the Zilla Parishads also to undertake that exercise.

However, no recovery from such displaced person shall be effected. If any of the petitioners or respondents or intervenors or other primary teachers becomes Kendra Pramukh, deemed date shall be given to them accordingly. However, consequential benefits shall be released only in favour of those who are either petitioner or the respondent or the intervenor before this Court in any of these matters. This exercise be completed within a period of 6 months from today.

27. Accordingly with these observations and directions, we dismiss all the Writ Petitions. Pending civil applications, if any, are also disposed of. Rule discharged. No cost.