
(2020) 05 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 2956 Of 2019

Yogesh Popatrao Maid

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Maharashtra Employees Of Private Schools (Condition Of Services) Regulation Act, 2009 — 2, 23, 23(1)
Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Rules, 1981 — Rule 2(1)(j), 2(16), 6
Maharashtra Employees Of Private Schools (Condition Of Service) Regulation Act, 1977 — Section 2, 3, 16, 16(1), 16(2)
Constitution Of India, 1950 — Article 162

Citation : (2020) 05 BOM CK 0005

Hon'ble Judges : S. V. Gangapurwala , J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : Satyajit S. Bora, S. B. Yawalkar

Judgement

S. V. Gangapurwala, J

1. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.
2. The petitioner assails the note provided under Schedule A of the Government Resolution dated 07.02.2019 thereby making it compulsory to complete bridge course of six months for appointment as teacher to Class I to V for the candidates possessing B. Ed. qualification. According to the petitioner the same is contrary to the notification dated 28.06.2018 issued by National Council for Teacher Education.
3. The substratum of the matter in dispute is that, the NCTE has prescribed the minimum qualification under notification dated 23rd August, 2010 exercising its power under Sub section (1) of Sec. 23 of the Act 2009 and notification dated 28.06.2018 issued by the Department of School Education and Literacy, Ministry

of Human Resource Development, Government of India providing that a person possessing qualification of B. Ed. is entitled to seek appointment as an assistant teacher for Class I to V standards with a rider that he should undergo a six months bridge course in elementary education recommended by NCTE within two years of such appointment as a primary teacher, whereas the impugned Government Resolution mandates that a person possessing B. Ed. qualification would be considered for appointment for Class I to V standards only, if he has undergone six months bridge course.

4. Mr. Bora, the learned advocate for the petitioner further submits that, NCTE is the competent authority under the Act 2009 enacted by the Parliament to provide the qualification for a person to be eligible for appointment as a teacher for Class I to V standards. Said powers are exercised by the NCTE under sub Section (1) of Section 23 of the Act 2009 and provided the qualification as per notification dated 28.06.2018. The State Government does not possess the authority to override the notification issued by the NCTE and prescribe a qualification different than the one prescribed by the NCTE.

5. The learned counsel further submits that, the bridge course is provided by national institute of open schooling. The eligibility for undergoing said course is that the teacher should be in service elementary teacher teaching Class I to V standards. According to the learned counsel, as per notification of the State Government a person possessing B. Ed. qualification cannot be appointed to teach Class I to V standards, unless he has undergone bridge course and bridge course as referred to in the notification dated 28.06.2018 prescribes that the teacher should be in service elementary teacher teaching Class I to V standards and possess B. Ed. qualification. Such condition is onerous and impossible of performance. The learned counsel further submits that, even if the arguments of the respondents are accepted that the education finds place in the concurrent list of Schedule - VII of the Constitution, however, the qualification prescribed by the authority under the statute passed by the Parliament cannot be deviated by the State. The learned counsel relies on the judgment of the Apex Court in a case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others reported in (2006) 9 SCC 01 and another judgment of the Apex Court in a case of Tamil Nadu Medical Officers Association and others Vs. Union of India and others reported in AIR 2018 SC 2127.

6. Mr. Yawalkar, the learned Additional Government Pleader for respondents/ State submits that, the D. Ed. course is specifically designed for primary education. The curriculum of D. Ed. course includes all aspects of primary education. It can be compared with the curriculum of the bridge course of six months, whereas B. Ed. course is framed to prepare teachers to teach secondary children (elder children). Hence bridge course at the time of appointment as a primary teacher for I to V standards is more desirable. The learned Addl. G. P. further submits that, the intention of the Government while filling the posts of teachers for Grade I to V is to give preference to large number of D. Ed.

candidates in the state. The provision of holding a qualification of six months bridge course by the candidate passing B. Ed. qualification was made by considering availability of D. Ed. candidates.

7. The learned Addl. G. P. further submits that, the provision of employing a B. Ed. candidate who has to complete the bridge course within 2 years as mentioned by NCTE is rectified at the state level and is not completely violated. There are in all around 2081 candidates available in the state who are serving at various non grant, permanent non grant and self finance institutes have completed the bridge course in the year 2018-2019 through NIOS. So the contention of the petitioner that without being in government service, it is not possible to complete the bridge course is baseless. The learned Addl. G. P. further submits that, the rectification in above NCTE provision done at state level to incorporate the bridge course completed B. Ed. candidates to be considered eligible for grade I to V is for the reason that, the shikshan sevak once selected as primary teacher will have to be considered as permanent teacher as per the provisions after tenure of three years inspite of non completion of bridge course. There are nearly 32226 D. Ed. candidates in the state who have qualified the TET from year 2013 to 2018. The B. Ed. candidates are having opportunity to be employed from grade VI to XII compared to the D. Ed. candidates eligible to be employed for grade I to V. If a large number of D. Ed. candidates are available in the state to be employed as primary teacher, the state government need not engage the untrained B. Ed. candidates.

8. The education is a subject matter of concurrent list. The State has right to modify any provision of the Act and Rules based on the native conditions. Accordingly the State Government has modified the provisions prescribed by the NCTE. The Government is not deviating from the qualification prescribed. The learned Addl. G. P. further submits that, there are number of teachers employed who do not possess Teacher's Eligibility Test (TET). As per the NCTE rules, no teacher should be appointed without possessing TET from the year 2010, but the exemptions are given by issuing Government Resolutions. If it is mandatory to follow NCTE norms as it is, then the State Government would be required to replace earlier condition for a candidate to possess TET for appointment and continuation. The learned Addl. G. P. further submits that, bridge course can be done by B. Ed. candidate in service of primary Class I to IV teachers as they can be admitted in non grant schools and can complete the bridge course.

9. Upon considering submissions of the parties, the moot issue for adjudication is whether the State Government under its executive authority could have prescribed a different qualification/eligibility criteria than the one prescribed by the NCTE for appointment of an assistant teacher to teach Class I to V standards.

10. Under the notification dated 23rd August, 2010 and the notification dated 20th June, 2018, the NCTE has provided the minimum qualification for a person to be eligible for appointment as a teacher for Class I to VIII in a school referred to in Clause N of Section 2 of the Act 2009. Under notification dated 20th June,

2018 sub para A was substituted to para 3 of the notification dated 23rd August, 2010. Para 3 of the notification dated 23rd August, 2010 reads thus :

3. Training to be undergone : - A person

(a) with BA/B.Sc. With at least 50% marks and B. Ed. qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 6-months special programme in Elementary Education.

(b) with D. Ed. (Special Education) or B. Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-months special programme in Elementary Education.

11. The notification dated 28th June, 2018 added following sub para (a) in para 3.

"(a) who has acquired the qualification of Bachelor of Education from any NCTE recognized institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognized by the NCTE, within two years of such appointment as primary teacher."

12. It would thus appear that a person who has B. Ed. qualification from any NCTE recognized institute is eligible for appointment as a teacher to teach Class I to V provided the person so appointed as a teacher has to undergo six months bridge course in elementary education recommended by NCTE within two years of such appointment as a primary teacher. The State Government under its resolution dated 07th February, 2019 made a departure from eligibility criteria as prescribed by NCTE for appointment of a primary teacher. Under G. R. dated 07th February, 2019, the person having qualification of B. Ed. applying for the post of primary teacher to teach Classes I to V standards is ineligible unless he has undergone the six months bridge course before appointment.

13. The mark difference between the qualification prescribed by the NCTE and the State Government under impugned Government Resolution is that, under NCTE a person possession qualification of B. Ed. is eligible for appointment as an assistant teacher and after appointment within two years has to undergo six months bridge course. Whereas, under the State Government Resolution dated 07th February, 2019 a person possessing B. Ed. qualification would be eligible for appointment as a primary teacher to teach Class I to V standards only if he has already undergone six months bridge course.

14. The judgment in a case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others (supra) may not be directly relevant to the issue. The said matter was concerning grant of permission to start new B. Ed. college. In the said case the NCTE granted permission to the authority, however, the State Government had refused to grant no objection certificate to any institution for starting new B. Ed. college, in that context, it was observed that, the State could not interfere with the decision of the NCTE.

15. The judgment of the Apex Court in a case of Tamil Nadu Medical Officers Association and others Vs. Union of India and others (supra) was on altogether different premise. In the said judgment the Apex Court has observed that, under Section 23(1) of the Act of 2009, the minimum qualification can be provided by the academic authority authorized by the Central Government by notification. In such a scenario, the State Government would be well within its power to prescribe a higher qualification, but it cannot lay down the conditions directly in conflict with the qualification provided by the authority exercising powers under the statute passed by the Parliament.

16. Education is a subject matter of concurrent list. NCTE is an academic authority authorized by the Central Government pursuant to the powers under sub section (1) of section 23 of the Act 2009. The NCTE has exercised the statutory authority providing the minimum qualification. The Government under the impugned executive instructions prescribed that a person possessing B. Ed. qualification would not be eligible to be appointed as a primary teacher to teach Class I to V standards, unless he has undergone six months bridge course.

17. The State has come forward with the case that, considering the availability of the large number of D. Ed. candidates, the said condition has been imposed. The condition of a candidate possessing B. Ed. qualification having undergone six months bridge course as a precondition for appointment is onerous. A person is not entitled to undergo six months bridge course, unless and until he is an in service elementary teacher teaching Class I to V standards. The very eligibility criteria makes a person possessing B. Ed. ineligible to undergo six months bridge course, unless he is an in service elementary teacher. Prescribing a qualification of B. Ed. with bridge course for appointment would be an onerous condition, which in practice is impossible to be complied with.

18. The Maharashtra Employees of Private Schools (Condition of Services) Regulation Act (for short "MEPS Act"), nor any other statute provides for different qualification of a teacher discharging his duties in a grant in aid or non-grant in aid or self finance school. The statute provides for qualification. The qualification of teacher to be appointed in an elementary school irrespective of it being on grant or non grant in aid is same. It would be no gain saying that a person possessing qualification of B. Ed. may get himself appointed in non grant in aid elementary school and complete bridge course. Such a contention raised by the State is improper and not complemented by any statutory provision or rule.

19. Rule 6 read with Schedule B of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short "Rules 1981") provides for qualification to be possessed by a teacher. Rule 6 underwent amendment in the year 2017 after NCTE was constituted under Sec. 23 of the Act 2009. Rule 6 entry(1) and Schedule B is substituted. Same reads thus :

The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981

1.

2.

6. Qualifications of teachers and non-teaching staff.--(1) 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'.

(2) The Government or the agency authorized by the Government shall conduct the Eligibility Test and Aptitude Test for the appointments of the teachers or shikshan sevaks for standard I to VIII and Aptitude Test for the appointments of the teachers or shikshan sevaks for standard IX to XII in the private aided schools, partially aided schools and schools eligible for grant-in-aid, from time to time.

(3) For the appointment of the teachers for standard I to VIII, the candidate who has passed the Eligibility Test shall be eligible to appear for Aptitude Test.

(4) The candidate can appear five times for the Aptitude Test for betterment of marks within the age limit prescribed for the post.

(5) The marks obtained in the Aptitude Test shall be valid up to the age limit prescribed for the post including relaxation in age limit for the candidates belonging to the Specific Category.

(6) The Government shall specify the syllabus and provide the procedure to be followed for conducting the Eligibility Test and Aptitude Test, from time to time.

Schedule 'B' [See rules 2(1)(j) and 6]

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, 2009 (35 of 2009), from time to time.

Note. - A person holding a Diploma in Education (pre-primary of two years' duration) shall be qualified to teach standards I to IV only notwithstanding anything contained in the foregoing provisions -

(a) Candidates who were recruited before the coming into force of these rules in accordance with the recruitment rules then in force and who were thereafter discharged for want of vacancies shall be eligible for reappointment.

(b) Other things being equal, preference may be given to -

(i) candidates who have passed the S.S.C. or other equivalent examination with English Mathematics and Science or any two of them and

(ii) eligible women candidates obtaining the qualifications mentioned at item (i)

through condensed courses.

20. The State legislature thought it expedient to regulate the recruitment and conditions of service of employees in private schools in the State. So also lay down the duties and functions of the employees, enacted the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (for short "Act 1977"). Private school is defined under Section 2(20) of the MEPS Act. Private school means a recognized school established or administered by a management other than the Government or the local authority. Section 3 of MEPS Act specifies that the provisions of the said Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not. Section 16 of the MEPS Act authorises the State Government to make rules for the purposes of the Act by notification in the official Gazette. Under Rule 2(16) of the Rules 1981, the State Government may make rules providing minimum qualification for recruitment of employees in the private schools (including its procedure).

21. The State Government exercising its power of delegated legislation under Section 16(1) and (2) of MEPS Act enacted the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short Rules 1981). Rule 6 of the Rules 1981 is concerned with the qualification of teachers. Rule 6 underwent amendment in the year 2017. Rule 6 provides that the minimum qualification for the post 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. Correspondingly, in the year 2017, Schedule - B was amended and part I of Schedule B specifies that the minimum qualification of primary teachers i. e. I to VIII standards shall be as per the qualification laid down by the NCTE under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) from time to time. Schedule - B and Rule 6 of the Rules 1981 do not prescribe for a different qualification than the one provided by the NCTE.

22. The rules unequivocally prescribe that the qualification prescribed by the NCTE would be the qualification for the teachers to be appointed for standard I to VIII. The rules are explicit. The state under the powers of delegated legislation has not provided for a different qualification than the one provided by the NCTE. The state could not under its executive powers travelled beyond the qualification prescribed by the NCTE.

23. The State by executive decision may evolve a policy not covered by statute. If a particular aspect is dealt by a statute or rules, executive instruction cannot override the statute or rules framed exercising powers of the delegated legislation.

24. Article 162 of the Constitution provides for extent of executive power of the State to the matters with respect to which the state has power to enact laws. Such power should flow from the relevant Act itself. The executive power in absence of legislation may be exercised, but it cannot be so exercised as to

contravene any law relating to the matter. Proviso to Article 162 of the Constitution relates to concurrent subject matter where the Union or State legislatures have concurrent legislative power. The proviso lays down that though the Parliament has made the law relating to the matters governed by concurrent legislative list, the State is not denuded of the executive power relating to that matter except that the executive power of State relating to that matter shall be subject to and limited by the executive power confined by the Constitution or any law made by the Parliament or authorities thereof.

25. The impugned Government Resolution requiring a candidate aspiring for a post of assistant teacher for Class I to V and possessing B. Ed. qualification also should have undergone six months bridge course cannot be sustained on two counts. (i) The same is beyond the executive powers of the State Government in as much as the same is against the notification issued by the authorities constituted under the central legislation, so also against the Rule 6 read with Schedule B of the Rules 1981 whereof it prescribes the qualification of teachers to teach Class I to V standards as prescribed by the NCTE. (ii) The condition of possessing training of bridge course prior to appointment is condition impossible of performance. The person aspiring to undergo bridge course has to be a in service candidate. The Rules 1981 nor any statute prescribe for any different qualification of a teacher in a grant-in-aid or non-grant in aid school.

26. The statute enacted by the State does not make any distinction vis-a-vis qualification of a teacher to be appointed in grant in aid or non grant in aid school. The State under its executive power could not have made such an artificial distinction. The State under its executive power can lay down a policy, it can provide for the qualification, but the same has to be in conformity with the statute. The executive instructions overriding the statutory mandate cannot withstand and given effect to.

27. For the aforesaid reasons the impugned notification to the extent requiring a person possessing qualification of B. Ed. to have undergone six months bridge course in elementary education prior to his appointment is quashed and set aside.

Rule is made absolute in above terms. No costs.