

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 10565 OF 2015

Ashok S/o Udhav Kothawale
age 34 years occupation service (Teacher)
(at present terminated)
R/o Pimpalgaon (Ko.) Taluka Washi Dist. Osmanabad
...Petitioner

VERSUS

1. The State of Maharashtra
Through : The Secretary,
Secondary Education,
Mantralaya, Mumbai – 32
2. The Director of Education,
Secondary and Higher Secondary,
Maharashtra State, Pune.
3. The Education Officer (Secondary),
Zilla Parishad, Osmanabad
Taluka & Dist. Osmanabad
4. Marathwada Gramin Shikshan Prasarak Mandal,
Pimpalgaon (Ko) Tal. Washi Dist. Osmanabad
Through its President
5. The Head Master,
Vasant Vidyalaya, Pimpalgaon (Ko)
Tal. Washi Dist. Osmanabad

...Respondents

Mr. B.A. Dhengle, Adv. with Mr. S.A. Dhengle, Adv. for petitioner.
Mr. R.D. Sanap, Asstt. Govt. Pleader, for Respts. No. 1 to 3
Mr. S.S. Pawar, Advocate for respondent No.4
Mr. S.A. Nagargoje, Adv. for respondent No.5

CORAM : N.J. JAMADAR, J.

Closed for orders on : **4th March 2021**

Pronounced on : **1st April, 2021**

J U D G M E N T :

Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties, heard finally at the stage of admission.

2. The challenge in this petition is to the judgment and order dated 29th of April 2015 passed by the learned Presiding Officer, School Tribunal, Solapur, in Appeal No. 80 of 2014, whereby the appeal, preferred by the appellant-petitioner against termination of his service by respondent No.4-management, came to be dismissed.

3. The background facts, leading to this petition, can be stated, in brief, as under:

(i) The respondent No.4 runs a school, namely, Vasant Vidyalaya, at Pimpalgaon (Ko) Taluka Washi Dist. Osmanabad. Pursuant to approval granted by the respondent No.3 - the Education Officer (Secondary) Zilla Parishad, Osmanabad, the respondent No.4 had published an advertisement inviting applications for the post of *Shikshan Sevaks*, on 24th of December

2011. The petitioner, being duly qualified, had applied for the post of *Shikshan Sevak* from the Open Category. After appraisal of the qualification and credentials as well as performance in the interview, the petitioner came to be appointed as a *Shikshan Sevak*, by order dated 30th of December 2011. On the very day, the petitioner joined the said post.

(ii) The respondent No.4 sent the proposal of the petitioner and another candidate Mr. Prashant Wanole, who was selected in the same process for the post reserved for Scheduled Tribes, for approval to respondent No.3. Approval to the appointment of Mr. Prashant Wanole was granted on 16th of October 2012. However, the Education Officer-respondent No.3 declined to grant approval to the appointment of the petitioner on the premise that the Director of Education had issued a directive not to grant approval to the appointment of new Teacher and non-teaching staff. Since the petitioner was appointed against a clear vacancy, after following regular selection process, the refusal to grant approval was wholly unjustified. Hence the petitioner invoked the writ jurisdiction of this Court by filing Writ Petition No. 3625 of 2013.

(iii) While this Court was seized of the said writ petition, the respondent No.3 rejected the proposal for approval of the petitioner on the premise that the petitioner did not possess the necessary

qualification as he had not completed graduation with Marathi; to teach which the petitioner was appointed as a *Shikshan Sevak*. Thus, the petitioner withdrew Writ petition No. 3625 of 2013 with liberty to file independent proceeding consequent to rejection of proposal for approval.

(iv) The second petition, being Writ Petition No. 6515 of 2013, preferred by the petitioner, challenging the said order of rejection of approval passed by respondent No.3 was disposed of by a Division Bench of this Court by order dated 18th of March 2014. This Court noted that the petitioner has completed B.Sc. and, thereafter, acquired M.A. in Marathi, in addition to B.Ed. Since the petitioner possessed post graduate degree in Marathi, this Court observed that, *prima-facie*, the petitioner possessed the requisite qualification for appointment as Teacher to teach Marathi. However, since during the pendency of the said petition, the respondent No.4-management had, in turn, terminated the petitioner by order dated 12th of October 2013, it was held that it would be appropriate for the petitioner to challenge the order of termination passed by respondent No.4 before the School Tribunal.

(v) Armed with the liberty as aforesaid, the petitioner filed appeal before the School Tribunal assailing the legality, propriety and correctness of the termination order dated 12th of October 2013. The

appeal was resisted by respondent No.5-Head master of the School by filing an affidavit-in-reply. It was contended that the petitioner had completed his graduation in Science. He did not possess the essential qualification of being a trained graduate in Marathi. However, the petitioner, being the son of the then Secretary of respondent No.4, came to be appointed despite availability of other candidates having requisite and better qualification.

(vi) Respondent No.4-management, however, supported the claim of the petitioner. It was asserted that the respondent No.3 had unjustifiably declined to accord approval to the appointment of the petitioner though the petitioner possessed requisite qualification and credentials for being appointed as a *Shikshan Sevak*.

(vii) The learned Presiding Officer after appraisal of the material on record and submissions canvassed across the bar, was persuaded to dismiss the appeal holding that the petitioner did not satisfy the criteria of minimum qualification prescribed under the Schedule-B of the Maharashtra Employees of private Schools (Conditions of Service) Rules, 1981 (for short "Rules 1981"). Neither there was material to indicate that the petitioner had completed his graduation in Marathi nor to show that B.Ed. degree was acquired with Marathi as the major subject. Thus, the appointment of the petitioner was found to be not in conformity with

Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short "Act 1977"). Resultantly, the termination was found to be in order.

(viii) Being aggrieved by and dissatisfied with the impugned judgment and order, the petitioner has invoked the writ jurisdiction of this Court.

4. An affidavit-in-reply is filed on behalf of respondent No.3 - Education Officer. The rejection of proposal for approval to the appointment of the petitioner is sought to be justified on the count that the petitioner having passed B.Sc. with Physics, Chemistry and Mathematics, as major subjects, and also having completed the B.Ed. with Maths and Science as subjects of methodology of school subjects, cannot be said to be a trained graduate to teach Marathi; to fill-in the vacancy for which the selection process was held. Thus, the order of termination passed upon rejection of the proposal for approval to the appointment of the petitioner is stated to be legal and valid.

5. Sanjeev Raghunath Ugale, the Head Master of the school - respondent No.5, professed to lend support to the stand of the Education Officer, and contended that the petitioner did not possess the requisite qualification. It is interesting to note that initially the

affidavit-in-reply was filed on behalf of respondent No.4 in support of the petitioner. Later on, apparently on account of change at the helm of affairs of respondent No.4-management, an affidavit-in-reply has been filed contesting the claim of eligibility of the petitioner.

6. In the wake of aforesaid pleadings, I have heard Mr. Dhengle, the learned Counsel for the petitioner, Mr. R.D. Sanap, Asstt. Govt. Pleader, for respondents No. 1 to 3, Mr. S.S. Pawar, the learned Counsel for respondent No.4 and Mr. S.A. Nagargoje, the learned Counsel for respondent No.5, at some length. With the assistance of the learned Counsels for the parties, I have also perused the material on record.

7. Mr. Dhengle, the learned Counsel for the petitioner, urged that the learned Presiding Officer, School Tribunal committed a grave error in dismissing the appeal on the premise that the petitioner did not possess the requisite qualification. The impugned order is in complete derogation of the provisions of the Act, 1977 and the Rules 1981. The School Tribunal fell in error in a reading into provisions of the Act and the Rules a requirement which is non-existent.

8. Mr. Dhengle urged with a degree of vehemence that the School Tribunal could not have recorded such a finding in the face of an incontestable fact that the petitioner had acquired post graduation in Marathi and it would be preposterous to hold that despite having post graduation in Marathi the petitioner was not a trained graduate. Moreover, in view of the clear and explicit observations of this Court in the order dated 18th March 2014, in Writ Petition No. 6515 of 2013 that the petitioner possessed requisite qualification, it was not open to the School Tribunal to record a contrary view, canvassed Mr. Dhengle. The School Tribunal, according to Mr. Dhengle, ought to have seen through the machination of the respondents as initially the approval was declined on the count of alleged directive of the Director of Education not to accord approval to the new appointments and, thereafter, when the petitioner pointed out the discriminatory practices resorted to by the respondent No.3 in granting approval to similarly circumstanced teacher, the approval was declined on the ground that the petitioner did not possess the requisite qualification. Thus, the impugned judgment and order is legally unsustainable, urged Mr. Dhengle.

9. In opposition to this, Mr. Sanap, the learned Assistant Government Pleader, supported the impugned judgment and order.

Placing reliance on the advertisement, whereby, the applications were invited to fill-in the posts of *Shikshan Sevak* with a specific mention that for the purpose of *Shikshan Sevak* from open category, requirement of educational qualification was B.A./M.A, B.Ed (Marathi), it was submitted that being a graduate in Science, the petitioner was plainly ineligible for being appointed. Thus, no fault can be found with the impugned judgment and order, submitted Mr. Sanap.

10. Mr. Nagargoje, the learned Counsel for respondent No.5 would urge that the appointment order came to be issued in favour of the petitioner, though the petitioner did not fulfill eligibility criteria, as the petitioner's father was the then Secretary of the respondent No.4. Thus, the authorities were justified in ensuring that a non-qualified candidate is not appointed to man the post of *Shikshan Sevak*. In fact, it is the responsibility of the Education Officer to ensure that the appointments are made in conformity with the provisions of the Act 1977 and the Rules 1981. To lend support to the aforesaid submission, Mr. Nagargoje placed a strong reliance on the following observations of a learned Single Judge of this Court in the case of ***Ku. Jaimala Bhaurao Ramteke Vs. Presiding Officer, School Tribunal & Ors., 2009(5) Mah.L.J. 333:***

"31. It is also necessary to observe that the Education Officer need to take appropriate actions at the appropriate stage when the appointments of teachers are made in the private schools receiving 'grant-in-aid' and approvals are sought for such appointments. They are legally bound to consider whether such appointments have been made by following due procedure of law. If any breaches are noticed, it is for the Education Officer to take appropriate action, at that very moment against the management and the school, as may be permissible at law. Otherwise they need to be held liable as it gives rise to unwarranted litigation & cause harassment to the concerned employees at times injustice. To ensure such actions, a copy of this judgment may be forwarded to the Secretary, Education Department, Mantralaya, Mumbai for issuing appropriate directions."

11. Before advertent to deal with the aforesaid rival submissions, it may be advantageous to note few uncontroverted facts. Indisputably, Vasant Vidyalaya, Pimpalgaon (Ko) Tal. Washi, is a recognized School. There is not much controversy over the fact that vide advertisement dated 24th of December 2011 applications were invited for two posts of *Shikshan Sevak*. One reserved for Scheduled Tribes. The other, from open category candidates having

B.A./M.A., B.Ed. (Marathi). After the selection process, the petitioner came to be appointed, vide appointment order dated 30th of December 2011, as a *Shikshan Sevak* for the period of three years i.e. from 30th of December 2011 to 29th of December 2014. The fact that the respondent No.4-management had sent a proposal for approval to the appointment of the petitioner to the respondent No.3-Education Officer, is rather indisputable. Likewise, the fact that the proposal came to be rejected vide communication dated 23rd July 2013, is also incontestable.

12. From the bare perusal of the said letter dated 23rd July 2013, it becomes evident that the Education Officer declined to accord approval on the score that the petitioner did not possess the requisite qualification for two reasons. One, the petitioner had completed his graduation in Science with Physics, Chemistry and Mathematics, as the major subjects. Two, for the B.Ed. Course the subjects for method of school were again Maths and Science.

13. It would be contextually relevant to note that there is not much controversy over the fact that the petitioner completed graduation with Science i.e. Chemistry, Physics and Mathematics in the year 2001. The petitioner completed B.Ed. in the year 2003 with Maths and Science as the subjects of method of school. The

petitioner, thereafter, completed M.A. in Marathi in November 2007. Indubitably, when the petitioner appeared for interview, pursuant to the advertisement dated 24th of December 2011, the petitioner's qualification was B.Sc., M.A. (Marathi) and B.Ed.

14. In the light of the aforesaid undisputed facts, the legality, propriety and correctness of the impugned order passed by the Presiding Officer, School Tribunal and the order of termination dated 12th October 2013, which in turn, was based on the rejection of the proposal for approval to appointment of the petitioner dated 23rd July 2013, are required to be tested.

15. Since a strenuous submission was advanced on the basis of the observations of this Court in Writ Petition No. 6515/2013, qua the eligibility of the petitioner, it may be apposite to extract the relevant observations in the said order; which read as under:

" 2.....
It is not disputed that the petitioner possesses post-graduate qualification in Marathi and as such is qualified to teach Marathi subject. There is nothing in Schedule B Clause (ii) which prescribes educational qualifications for trained teacher in secondary school debarring the petitioner from consideration for appointment as a teacher in Marathi subject.

3. *Prima-facie, we are satisfied that the petitioner possesses requisite qualification for being appointed as a Marathi teacher. "....."*

16. The learned Counsel for the respondents joined the issue by stoutly submitting that the aforesaid observations were made for the purpose of disposing of the said petition. The aforesaid observations did not preclude the Presiding Officer, School Tribunal from examining the material on record and arriving at an independent conclusion on the question of qualification, which is essentially rooted in facts. What has to be seen is, whether the petitioner possessed the requisite qualification in terms of the Act 1977 and the Rules 1981 and not the tentative observations made by this Court, urged the learned Counsel for Respts. No.1 to 3 & 5.

17. Evidently, the matter lies in a narrow compass. Whether the petitioner possessed the requisite qualification for being appointed to the post of *Shikshan Sevak* to teach Marathi subject ? For an answer, a brief reference to the provisions of the Act 1977 and the Rules 1981 becomes indispensable.

18. The Act 1977 is a statutory framework governing recruitment and conditions of service of employees of private schools. Section 2(20) defines "private school" to mean a

recognised school established or administered by a management, other than the Government or a local authority. Clause (24) of Section 2 incorporates a comprehensive definition of "school" to mean a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level. Section 3 of the Act declares 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 4(1) empowers the State Government to make rules providing for the minimum qualifications for recruitment, duties, pay, allowances, etc. and other conditions of service of employees of private schools and also for reservation of number of posts for members of the backward classes. Section 5(1) of the Act, with which we are primarily concerned, casts a duty on the management to fill-in, as soon as possible, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy.

19. Section 16 of the Act empowers the State Government to make rules for carrying out the purposes of the said Act including the minimum qualifications for recruitment of employees of private schools {Section 16(2)(a)}. It would be contextually relevant to note that in exercise of the powers conferred by Section 4(1) and Section 16(2)(a), the State Government has framed the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

20. Thus, to ascertain as to who is a person duly qualified, recourse is required to be made to the Rules. Rule 6(1) of the Rules 1981 declares that the minimum qualifications for the post of teachers and 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'. Part I of the Schedule 'B' prescribes qualifications for Primary Teachers. Part II prescribes qualifications for trained Teachers in Secondary Schools and Junior Colleges of Education. Part II is further divided in two parts. Different qualifications are prescribed for (1) Graduate Teachers and (2) Undergraduate Teachers.

21. For our purpose, clause (1)(i) of the Part II (i.e. for Graduate Teachers) is material. It reads as under:

“(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 ”

22. Part III provides qualifications for Teachers in Junior Colleges. Sub-clause (a) of first entry (1) may be relevant for determination of the question in controversy, which is extracted below:

“III. Qualifications for Teachers in Junior Colleges:

(1) Full-time Teachers:

(a) Master’s Degree of a statutory University in second class in the respective subjects plus B.Ed., or a Diploma or Certificate in Teaching, approved by the Department. ”

23. A bare perusal of the aforesaid provisions in the Schedule, especially part II - “Qualifications for trained Teachers in Secondary Schools,” it becomes abundantly clear that for Graduate Teachers, the candidate must have Bachelor’s degree in teaching or education of any statutory University or a qualification recognised by the Government as equivalent thereto. To put it differently, the candidate must be a graduate. Secondly, he must either have a Bachelor’s degree in teaching or education of any statutory

University or, in the alternative, a qualification recognised by the Government as equivalent to such Bachelor's degree in teaching or education. No other qualification is discernible from the aforesaid prescription.

24. The Education Officer, respondent No.3, has proceeded on the premise that the candidate must have a graduation in the subject for which the vacancy is notified and, eventually, appointment is made. Since the petitioner pursued graduation in Science and the advertisement was issued inviting applications for the candidates having the qualifications of "B.A./M.A., B.Ed. (Marathi)" the petitioner did not fulfill the requisite criteria of educational qualification. In the view of the Education Officer, it did not matter that the petitioner had post graduation in Marathi (M.A.). Whether this approach of the Education Officer, which found favour with the Presiding Officer, School Tribunal, is legally sustainable ?

25. Indisputably, the petitioner had acquired post graduation in Marathi before he applied for appointment to the post of *Shikshan Sevak*. On a plain reading of the part II of the Schedule 'B', extracted above, it is rather difficult to read in the said provision the requirement of being graduate in a particular subject. Undoubtedly, a person, who is appointed to teach a particular subject, ought to

have a proper grounding in that subject. It would be naive to expect a person, who is totally uninitiated into a particular discipline, to impart training in that discipline merely because he happens to be a graduate. However, this principle cannot be stretched to such an extreme that the authorities decline to take into account the fact that the candidate possesses higher qualification of post graduation in that discipline. Post graduation in a particular subject involves a higher degree of learning and application and intensive study. On first principles, it would be impermissible to brush aside the post graduate qualification in a particular subject on the premise that the candidate did not acquire graduation in that subject.

26. The situation which, thus, obtains is that on a plain reading of the qualification criteria prescribed by Schedule 'B' for trained Teachers in Secondary Schools, the requirement of graduation in particular discipline cannot be said to be indispensable. A useful reference in this context can be made to a judgment of this Court in the case of *Anjuman Khairul Islam Vs. Mrs. Zulekha Mazhar Hussain and others, 2001(2) Mh.L.J. 245*, wherein the services of a teacher were terminated on the ground that the respondent-teacher therein, who was appointed as Instructor in Junior College of Education, had obtained her graduation with Psychology and

Sociology and the B.Ed. Degree was obtained from Annamalai University, recognition of which was withdrawn. Repelling the submission that the respondent did not possess the qualification as she had obtained the bachelor's degree in Psychology and Sociology, this Court held as under:

" 22. Similarly, the ground that the first respondent had not completed her B.Ed. degree in a subject other than compulsory English which was taught at the school level is once again erroneous. Part II of Schedule B to the Rules of 1981 specifies that the qualification required for graduate teachers in Junior Colleges of Education is, inter alia, a Bachelor's degree in teaching or education of any statutory University or a qualification recognised for Government as equivalent thereto. In contrast with this, if a comparison is made with Part III of Schedule "B" which describes the qualifications for teachers in Junior Colleges, one of the requirements for a full time teacher is a Master degree of a statutory University in the respective subjects and in addition a B.Ed or a Diploma or Certificate in Teaching. Thus, in so far as Junior Colleges are concerned, the qualifications required include a Master degree in the respective subjects as well as a degree in education or certificate in teaching. The requirement that a candidate should have done a degree in the respective subjects is thus

not a part of the qualifications prescribed in the Rules for graduate teachers in colleges of education. In the case of a teacher seeking employment in a college of education, it is sufficient to hold a Bachelor's degree in teaching or education of a statutory University. "

(Emphasis supplied)

27. The aforesaid pronouncement applies with equal force to the case of a graduate Teacher in Secondary School. Moreover, in the case at hand, the petitioner possessed a post graduate qualification in the subject to teach which he came to be appointed. The Presiding Officer, School Tribunal, in my considered view, had fallen into an error in reading a requirement of graduation in a particular discipline for fulfilling the criteria of qualification for appointment as a trained Teacher in Secondary School. It would be unreasonable to hold that despite having a post graduation in Marathi, the petitioner did not possess the requisite knowledge of the said subject.

28. Reading such a requirement becomes unsustainable if the provisions of Part III of Schedule 'B' prescribing qualifications for Teachers in Junior Colleges, extracted above, are considered. It specifically provides that the Teachers in Junior Colleges should have Master's degree in second class in the respective subjects plus

B.Ed. or a Diploma or Certificate in teaching, approved by the Department. The Rule making authority was, thus, alive to the requirement of pursuing a Master's programme in the particular subject as the basic qualification for appointment as a Full-time Teacher in Junior Colleges. It implies that the requirement of having a degree in the particular subject, taught in the school, was not considered to be an absolutely essential requirement. Thus, the petitioner could not have been held to be not qualified under the provisions of Schedule 'B' for not possessing the degree in Marathi though he had a post graduation in Marathi.

29. The second ground of disqualification attributed to the petitioner for having not completed B.Ed. with Marathi as the subject of methodology of school-subject also stands on a weak foundation. Again, the relevant clause of Schedule 'B', extracted above, does not warrant that the candidate must have passed B.Ed. with the particular subject as the methodology of school-subject to teach that subject. In a Bachelor of Education Course, the emphasis is on teaching methodology, pedagogy and equipping the students to impart education. The fact that a candidate had opted for particular subject in the said course for the purpose of methodology of school-subject, may not be of decisive significance. This aspect was also

considered in the case of *Anjuman Khairul Islam* (supra).

30. A converse situation arose in the case of *Harlal Harchand Pardeshi Vs. State of Maharashtra and others, 2001(1) Mh.L.J. 859.*

In the said case, the petitioners, who were possessing B.Com., B.Ed. qualification, had challenged the circular dated 5th February 1998 issued by the Director of Education, Maharashtra State at Pune, directing all the Education Officers (Secondary) of Zilla Parishads in the State not to grant approval to the appointments of Assistant Teachers, who possess the B.Com., B.Ed. Degree, unless there is availability of work load in the respective subjects which they have studied up to the graduation level or in economics. The petitioners asserted that they had opted Marathi and History for methodology of two school subjects, in the said course, and, thus, they be held to have the necessary qualification to teach Marathi and History at the Secondary School level.

31. The Division Bench was not persuaded to agree with the aforesaid submission. The observations of the Court in paragraphs 9 & 10 are material, even for determining controversy at hand. They read as under:

9.It is nobody's case that the course contents of B.Ed. courses in methodology paper consisting of

two subjects can be a substitute for the course contents of such subjects at the basic degree level. For example, if the methodology paper in two subjects like Marathi and History, has prescribed certain course contents at the B.Ed. level, they cannot be similar to the course contents in these subjects at the basic degree level if one has to examine the fluency that is required to be attained by a trained graduate teacher to teach these subjects with the standards as are prescribed for the secondary school teachers. Being aware in the methodology does not by itself enrich the graduate teacher in such subjects which he studied only as part of the methodology paper at the B.Ed. level and particular standard of in depth knowledge of the subject which one is required to teach at Higher Secondary/Junior College level. The B.Ed. degree level course content may enrich the graduate teacher with additional skills in teaching or psychology in teaching or methodology in teaching but the basic subject enrichment can be achieved at the graduation or post graduation level in these subjects.

10. Though the scheme of the MEPS Rules postulates and recognises B.Com. B.Ed. as one of the qualifications for appointment to the post of Assistant Teacher in secondary schools the

Education Officer or the Deputy Director of Education has a statutory duty while granting approval to such appointments, to examine the qualifications at the basic degree level as well as post graduation level and not at the B.Ed. level so as to grant approval to these appointments. If the work load available in a particular school in the subjects which the concerned teacher has studied at the graduation level does not warrant his full term appointment or if there is no workload at all in such subjects, the Education Officer would not be at fault while declining approval to such teachers irrespective of their post degree level qualifications like B.Ed. or B.P.Ed. or even M.Ed. for that matter. Unless there is sufficient work load available in the respective subjects which the teacher has studied up to the graduation level, the authorities concerned would be justified in declining approval for his appointment and such an action, in no way, amounts to changing the provisions of the MEPS Rules or the Schedules thereunder."

32. Ultimately, the challenge to the circular impugned before the Court was held to be devoid of merits and the petition came to be dismissed with the following observations.

" 14. In the result, we hold that though the B.Com., B.Ed. is one of the qualifications

prescribed for appointment of Assistant Teachers in secondary schools, the Education Officer or the Deputy Director of Education, as the case may be, has the powers to deny approval for the appointment of said teachers if there is no work load or inadequate work load in the subjects which they have studied at B.Com. level and the course contents at B.Ed. level are irrelevant to decide their eligibility for approval to teach subjects which they have not studied at the B.Com. degree level. The challenge to the impugned circular is, therefore, devoid of merits and the petitions are hereby dismissed. Rule discharged with no order as to costs. ”

33. In the light of aforesaid enunciation, the contention on behalf of respondent No.3 that since the petitioner had opted subjects of Science and Maths while studying the methodology of school subjects in B.Ed. Course, the petitioner did not fulfill the requisite qualification, cannot be acceded to. The said fact does not detract materially from the fact that the petitioner had the necessary post graduation in Marathi. Nor does it erode the value of Bachelor's Degree in Education, which the petitioner acquired. Had the petitioner not acquired post graduation in Marathi, or for that matter obtained a degree of M.Sc., and then opted Marathi as the subject for methodology of school-subject while pursuing B.Ed., the later

position would not have been of any assistance to the petitioner for he would not have the basic knowledge of the primary subject at graduation or post graduation level. In the case at hand, with a post graduation in Marathi, the petitioner could not have been disqualified on the count that he had not opted for Marathi as the subject of methodology of school-subject while pursuing B.Ed.

34. The conspectus of aforesaid consideration is that termination of the petitioner is legally unsustainable. Consequently, the order of termination dated 12th of October 2013, the communication dated 23rd of July 2013, whereby the proposal for approval to the appointment of the petitioner came to be rejected, and the impugned judgment and order passed by the School Tribunal, are liable to be quashed and set aside.

35. The petitioner deserves to be reinstated in service. Having regard to the time lag and the attendant circumstances, a direction for payment of 40% (forty per cent) of the back-wages would meet the ends of justice. Hence the following order.

O R D E R

- (I) The petition stands partly allowed.
- (II) The impugned judgment and order in Appeal No. 80 of

2014 dated 29th April 2015 passed by the Presiding Officer, School Tribunal, Solapur, stands set aside.

(III) The order of termination dated 12th of October 2013 and the communication dated 23rd of July 2013, whereby the proposal for approval to the appointment of the petitioner came to be rejected, stand quashed and set aside.

(IV) The petitioner stands reinstated in service as a *Shikshan Sevak* with effect from 12th of October 2013 with all the consequential benefits and 40% (forty per cent) back-wages from the date of termination till the date of reinstatement.

Rule made absolute in aforesaid terms.

No costs.

(N.J. JAMADAR)
JUDGE

Madkar