

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 327 & 344 OF 2022

DISTRICT : MUMBAI

O.A.NO.327/2022

1. Shrikisan Narayanrao Solanki,)
Occ : Service, Working as Asst. Teacher)
In Z.P. School, Residing at C-Wing, Shree)
Pushpam Society, Karjat Road, Badlapur)
(East) District Thane 421 503)
2. Suvarna Krishnanath Patil,)
Occ : Service, working as Asst. Teacher,)
In Z.P. School, Hanuman Nagar,)
Residing at Post : Chale, Tal : Pandharpur)
Dist. Solapur.)
3. Kailas Dattu Sadgir,)
Occ : Service, Working as Asst. Teacher,)
In Z.P. Primary School, Pimpaloshi,)
Dist. Satara, Residing at Post :)
Waranghushi, Tal : Akola,)
Dist. Ahmednagar)
4. Swapnil Bibhishan Dhas,)
Occ : Service, Working as Asst. Teacher,)
In Z.P. School, Ratnapuri, Dist. Pune)
Residing at Pimpalgaon, Dhas, Barshi,)
Dist. Solapur 413 401)
5. Prashant Radhakrishna Bire,)
Occ : Service, Working as Asst. Teacher,)
In Z.P. School, Tolevasti, Tal : Sinnar,)
Dist. Nashik, Residing at Post : Manegaon,)
Tal : Sinnar, Dist. Nasik 422 103)
6. Manoj Sadashiv Dalavi,)
Occ : Service, Working as Asst. Teacher,)
In Z.P. School, Deodaithan, Jamkhed,)
Dist. Nagar, Residing at Mundekar Wadi,)
Limpangaon, Ahmednagar 413 726)
7. Ajay Popat Jadhav,)
Occ : Service, Working as Asst. Teacher,)
Kakatwa, Ambernath, Residing at)

- Vadgaon, Savtal, Wankute Road,)
Dist Ahmednagar 414 113)
8. Ranjit Ravikiran Shende,)
Occ : Service, Working as Asst. Teacher,)
In Z.P. School, Residing at Post Chincoli,)
Tal. Madha, Dist. – Solapur 413 208)
9. Deepak Devidas Pagar,)
Occ : Service, Working as Asst. Teacher,)
In Z.P. School Kanadwadi Tal Igatpuri,)
Residing at Plot No.125, Vastalya Niwas,)
Nagre Mala Indira Nagar Nashik.)...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
School Education & Sports Department,)
Mantralaya, Mumbai 400 032)
2. The Secretary,)
Maharashtra Public Service Commission,)
5th to 7th floor, Kuprage Telephone,)
Nigam Building, Maharshi Karve Road,)
Mumbai 400 021)**RESPONDENTS**

O.A No. 344/2022

1. Aravind Keshav Gosavi,)
Working as Assistant Teacher in Z.P, Nasik)
R/o: 32, Bhakshi Road, Sharad Nagar,)
Satana, Tal-Baglan, Dist-Nasik.)
2. Suhas S. Patil,)
Working as Assistant Teacher in Z.P,)
Kolhapur.)
R/o: At Post-Aknur, Tal-Radhanagari,)
Dist-Kolhapur.)
3. Madhukar A. Kalel,)
Working as Grad. Teacher in Z.P, Kolhapur)
R/o: 6734, Unchamali, Samatanagar,)
At Post-Tal-Shirol,. Dist-Kolhapur 416103.)
4. Sheetal Uddhav Davare,)
Working as Asst. Teacher in Z.P, Solapur.)
R/o: Sanjivani Niwas, Near Grampanchayat)

- Samarth Nagar, Tal-Akalkot,)
Dist-Solapur 413 216.)
5. Amol Jagganath Shinde,)
Working as Asst. Teacher in Z.P, Solapur.)
R/o: Kalshetty Niwas, Shivpuri Road,)
Tal-Akalkot, Solapur 413 216.)
6. Sareeka S.Gonte,)
Working as Asst. Teacher in Z.P, Satara.)
R/o: Plot No. 35, Keshar, Radhikar Nagar,)
Satara 415 003.) **)..Applicants**

Vs.

1. The State of Maharashtra,)
Through Secretary,)
School Education & Sports Department,)
Mantralaya, Mumbai 400 032)
2. The Secretary,)
Maharashtra Public Service Commission,)
5th to 7th floor, Kuprage Telephone,)
Nigam Building, Maharshi Karve Road,)
Mumbai 400 021) **)RESPONDENTS**

Shri B.A Bandiwadekar, learned advocate for the Applicants in O.A 327/2022.

Shri C.T Chandratre, learned advocate for the applicants in O.A 344/2022.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 21.06.2023

J U D G M E N T

1. These two Original Applications are heard together and disposed of by a common order as the issues involved are similar.

2. The Government issued advertisement for 123 posts out of which 92 posts are available for District Technical Services (Group-B) and Primary Teachers. In the present Original Applications, the applicants are Primary Teachers working in Zilla Parishad and have appeared for the Limited Departmental Competitive Examination of 2017 for the post of Deputy Education Officer. It is submitted by the learned counsel for the applicants that though they have secured more than the cut-off marks, they are held not eligible and therefore, their names are not included in the said list. It is the grievance of the applicants that Government issued a letter dated 18.5.2017 prohibiting the Primary Teachers for applying to the post of Deputy Education Officer. The applicants have filed these Original Applications thereby seeking declaration that they are also eligible to be called for interview in the selection process of Limited Departmental Competitive Examination 2017 for the post of Deputy Education Officer, Group-B. We are informed that the interviews are going to be held on 26th & 27th June, 2023. Learned counsel for the applicants have relied on the Maharashtra Zilla Parishad (District Services) Recruitment Rules, 1967 and also Rule 2 (e) of the Maharashtra Education Services Recruitment Rules, 2016. Learned counsel for the applicants on this point has relied on the order dated 4.10.2018 in O.A 634/2017 filed by the Primary Teachers in Zilla Parishad. Shri B.A. Bandiwadekar, Ld. Advocate for the applicants has submitted that the authority should have communicated the refusal as per circular of the State that applicants are not eligible. So that applicants would have taken recourse to approach judicial authority earlier.

3. Indeed, in these matters the issue is not res-integra. As pointed out by the learned counsel for the applicants that there is no dispute that the applicants in the present case and the

applicants in O.A 634/2017 are the same and working in Zilla Parishad as Primary Teachers. In service matters, when the issue is decided, as per the ratio laid down in the case of STATE OF UTTAR PRADESH & ORS Vs. ARVIND KUMAR SRIVASTAVA & ORS, (2015) 1 SCC 347, the same benefits is required to be extended to other similarly situated employees. Thus, it is the duty of the Government to maintain parity and equality amongst all the employees. However, in that Original Application No. 634/2017, Review Application No. 21/2018 in O.A 634/2017 was filed by the Respondent-State and by way of review, amendment was sought that the judgment to be made applicable in persona. Thus, by modification as per the Review Petition, the Division Bench of the Tribunal made the judgment applicable only in persona. Thus, a large number of Primary Teachers working in Zilla Parishad are kept out of the benefits of the said judgment.

4. Learned C.P.O while opposing the Original Applications relied on the judgment of the Nagpur Bench of this Tribunal dated 25.7.2022 in O.A 391/2022 & Ors Vs. State of Maharashtra & Ors, wherein the Nagpur Bench has taken a view as under:-

“15. As observed earlier, while dismissing Review Application No.21/2018 the Principal Bench in para-2 of the Judgment observed that Review was sought of common Judgment and order in O.A. No. 634/2017 and others. All these circumstances lead us to conclude that Judgment dated 4/10/2018 was a common Judgment delivered in the batch of 25 O.As. and by virtue of modification effected to Clause B in operative part of the Judgment the benefit extended thereunder was 18 confined to the applicants before the Principal Bench making it a Judgment in personam.

16. Now, in view of ratio laid down in the case of “State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava (supra)” it will have to be seen whether the applicants before us were diligent in approaching this Bench without loss of time or whether they were guilty of laches. Along with the applicants before the Principal Bench the applicants before

us had also appeared for written test held pursuant to advertisement dated 17/5/2017. It appears that written test was scheduled and held on 13/8/2017. Because they were held to be ineligible by communication dated 19/05/2017 and thereafter their result was not declared, several aggrieved Primary Teachers approached various Benches of this Tribunal and by order dated 04/10/2018 they were declared to be eligible and M.P.S.C. was directed to declare their result subject to certain conditions. The applicants before us who are similarly placed could have, and should have, approached this Tribunal at that point of time. Now, an attempt is made by the applicants before us that cause of action to approach this Tribunal arose on 1/4/2022 when result was declared. This submission cannot be accepted. The cause of action had arisen for the applicants before us as well as the applicants who had approached various Benches of this Tribunal earlier in the year 2017 19 itself, at the same time. Thus, it is clear that the applicants before us are guilty of laches and hence, by applying principle of parity, benefit of what is held in the Judgment dated 4/10/2018 which is a Judgment in personam, cannot be extended to them. Therefore, all these O.As. will have to be dismissed, and the same are hereby dismissed, with no order as to costs. C.A. No. 169/2022 in O.A. 391/2022 is disposed of.”

5. In fact, we are of the view that issue decided in OA No.634/2017 & group matters on 4.10.2018 in favour of the eligibility of primary teachers working in ZP is correct one and no stay is granted by the Hon'ble High Court. So it holds the field. Though, we had a different interpretation of the order passed in R.A 21/2018 in O.A 634/2017, regarding relief in persona, we cannot go by our interpretation as the Division Bench of the M.A.T, Nagpur Bench has earlier decided this issue. However, in the judgment and order dated 25.7.2022 of the Nagpur Bench of this Tribunal in OA No.391 of 2022 & other group matters (Sandip B. Somwanshi & Ors. Vs. The State of Maharashtra & Ors.) again, same issue was dealt with and whether benefits of order in OA No.634/2017 are to be extended to the other applicants who are similarly placed in service is discussed. The DB of this Tribunal at Nagpur Bench has further considered the ratio laid down in the

judgment of Hon'ble Supreme Court in (2015) 1 SCC 347 State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors.

6. While passing the order the Nagpur Bench of the Tribunal has considered the point of laches also. It is also required to be mentioned that Ld. PO has pointed out from the averments in para 6.6 and 6.7 in OA No.327 of 2022 that applicants were aware of the decision of non-eligibility for this examination but they did not approach earlier because their applications were accepted.

7. Thus, on account of law or precedent, we are bound by the orders of the Nagpur Bench of this Tribunal and we are unable to extend the same benefit of OA No.634/2017 to the present applicants. We are informed that order of Nagpur Bench of this Tribunal in OA No.391/2022 (supra) is challenged before the Nagpur Bench of the Hon'ble High Court and it is pending.

8. In view of the above, we find no merit in the Original Applications and the same are dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.06.2023
Dictation taken by : A.K. Nair.