

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 545 OF 2023

DISTRICT : PUNE

1. Shri Mahesh M. Palkar)
Occ-Service,)
R/at: A-503, Silver Oak Apartment,)
Katraj-Kondhwa Road,)
Katraj-Pune 411 046.)
2. Krishnakumar B. Patil,)
Occ-Service,)
R/at: Malhar CHS, Pimple Gurav,)
Pune-61.)
3. Sharad S. Gosavi,)
Occ-Service,)
R/at: Baner, Pune 411 045.)...**Applicants**

Versus

1. The State of Maharashtra)
Through the Secretary,)
School Education and Sports Dept,)
Mantralaya, Mumbai 400 032.)
2. The Secretary, (Desk-12),)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
3. Shri S.D Suryavanshi,)
Joint Secretary,)
General Administration Department,))

4. Shri Nandkumar C. Bedse,)
Additional District Collector)
[Selection] Grade.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicants.

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

CORAM : Justice Mridula Bhatkar (Chairperson)

DATE : 10.05.2023

J U D G M E N T

1. The applicants pray that the Tribunal be pleased to quash and set aside the impugned appointment/posting order dated 4.5.2023 thereby posting Respondents no 3 and 4 to the post of Director, Education since the impugned appointment orders are contrary to the Recruitment Rules dated 18.1.2018 as well as G.R dated 17.12.2016 and further direct Respondent no. 1 to continue the present applicants to hold the additional charge of the post of Director of Education, on the basis of seniority.

2. Learned counsel for the applicants has submitted that the applicants are working in the cadre of Director of Education from the date of their promotion, i.e., by order dated 21.12.2021. Learned counsel for the applicants has submitted that applicant no. 1 has been given additional charge to the post of Chairman, Maharashtra State Council of Examination, Pune w.e.f 24.11.2022 and the applicant no. 2 has been given additional charge to the post of Director of Education (Secondary and Higher Secondary) Maharashtra State, Pune w.e.f 28.10.2022 and applicant no. 3 has been given additional charge to the post of Director of Education

(Primary), Pune w.e.f 27.10.2022. Learned counsel for the applicants has submitted that the applicants have been promoted to the post of Director in the pay band S-29, with pay scale Rs. 131100-216600 on the basis of Recruitment Rules dated 18.1.2018. Learned counsel for the applicants has submitted that for appointment by deputation to the post of Director, Education, as per letter dated 27.1.2022 issued by Respondent no. 1, the required pay scale for appointment to the post of Director of Education in the pay band S-29, with pay scale Rs. 131100-216600. Learned counsel for the applicants has submitted that as per this letter, the Officers who are in the pay band S-29 with pay scale Rs. 131100-216600 are to be appointed by way of deputation to the post of Director, Education. Learned counsel has submitted that by order dated 4.5.2023, which is under challenge is issued by the same authority by which two persons, namely, Shri S.D Suryavanshi, Respondent no. 3 and Shri N.C Bedse, Respondent no. 4, are appointed by way of deputation on the post of Director, Education in place of applicants no. 1 & 2. Learned counsel has submitted that Shri N.C Bedse, Respondent no. 3 has joined. Learned counsel has further submitted that the Respondents have appointed Shri Suryavanshi and Shri Bedse, Respondents no 3 & 4 even though they do not fall in the pay band S-29 in the pay scale Rs. 131100-216600 as they are presently in the pay band S-27 in the pay scale of Rs. 118500-214100. Learned counsel for the applicants further points out to the Notification dated 30.1.2019. By this Notification, the Government has fixed the pay structure including pay band, grade pay and revised pay matrix of every cadre in the Department. The Respondents no 3 & 4 fall in the pay band S-27 in the pay scale of Rs. 118500-214100/-, whereas the post of Director, Education falls in the pay band S-29 in the pay scale of Rs. 131100-216600/-.

3. Learned counsel for the applicants has relied on G.R dated 17.12.2016 and specifically to Clause 5, which reads as under:-

"५. शासकीय अधिकारी / कर्मचाऱ्यांना शासकीय कार्यालयात प्रतिनियुक्तीने नियुक्ती करण्यासाठी खालील अटी व शर्ती राहतील :-

(अ) खालील परिस्थितीमध्ये शासकीय अधिकारी / कर्मचारी यांना प्रतिनियुक्तीवर जाता येईल:-

(१) संबंधितास ज्या संवर्गातील पदावर जायचे आहे त्या संवर्ग पदाच्या सेवाप्रवेश नियमात प्रतिनियुक्ती बाबत विविष्ट / स्पष्ट तरतूद असेल तरच या मार्गाने नियुक्ती द्यावी. संबंधित पदाच्या सेवाप्रवेश नियमात विभागाच्या आवश्यकतेनुसार किती प्रमाणात पदे प्रतिनियुक्तीने भरता येतील याबाबत विनिर्दिष्टपणे प्रमाण निश्चित करण्यात यावे. हे प्रमाण मूळ मंजूर संवर्ग संख्येच्या कमाल १५ टक्क्याच्या मर्यादेपेक्षा अधिक असू नये. त्यानुसार सर्व शासकीय कार्यालयांनी प्रतिनियुक्तीने पदे भरण्यासंदर्भात त्यांच्या सेवा प्रवेश नियमात तरतूद करणे आवश्यक राहिल. मात्र ज्या शासकीय सेवेतील पदांच्या सेवाप्रवेश नियमात या अगोदरच मंजूर संवर्ग संख्येच्या १५ टक्क्या पेक्षा जास्त पदे प्रतिनियुक्तीने भरण्याची तरतूद केली असेल अशा सेवाप्रवेश नियमात १५ टक्केच्या मर्यादेत प्रतिनियुक्तीने पदे भरण्याबाबतची सुधारणा करण्यात यावी. प्रतिनियुक्तीच्या प्रमाणाच्या कमाल मर्यादेची ही अट मंडळे, महामंडळे व स्वायत्त संस्था यांना लागू असणार नाही.

(२) (i) सेवाप्रवेश नियमातील तरतूदीनुसार नामनिर्देशनाव्दारे नियुक्तीसाठी यथास्थिती लोकसेवा आयोग पुरस्कृत अथवा जिल्हा / प्रादेशिक निवड समितीकडून निवड झालेले उमेदवार उपलब्ध होण्यास, किंवा (ii) पदोन्नतीने पद भरण्यासाठी योग्य व पात्र उमेदवार उपलब्ध नसल्यास आणि असे उमेदवार उपलब्ध होण्यास, एक वर्षापेक्षा अधिक कालावधी लागणार आहे अशा अपवादात्मक परिस्थितीत प्रथमतः १ वर्षाकरिता सरळसेवेव्दारे अथवा पदोन्नतीने उमेदवार उपलब्ध होईपर्यंत या मार्गाने नियुक्ती करता येईल, किंवा (iii) ज्या कार्यालयाच्या आस्थापनेवरील पदे केवळ प्रतिनियुक्तीने भरण्याची तरतूद आहे अशा परिस्थितीत या मार्गाने नियुक्ती करता येईल. "

As per this clause the following points emerge:-

1) No appointment by way of deputation can be made unless there is a specific provision in the Recruitment Rules.

- 2) Such appointments by way of deputation should not exceed more than 15% of the total cadre strength.

Learned counsel for the applicants has pointed out that there are total 7 posts in the cadre of Director of Education. Out of 7 posts, 2 are filled in. Learned counsel for the applicants further relied on the Notification dated 18.1.2018 for the post of Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch), Recruitment Rules, 2018.

4. Learned C.P.O submits that both the applicants are working as Director holding the additional charge of the post, to which the Respondents by order dated 4.5.2023 appointed Respondents no 3 & 4 by way of deputation and filled in the said post. Learned C.P.O submits that appointment to the post of Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) are to be made exclusively by promotion on the basis of merit-cum-seniority from the feeder cadre of Joint Director of Education and Officers from that cadre who have put in minimum 3 years of regular service in that post. Learned C.P.O submitted that today persons holding such qualification and experience are not available. Learned C.P.O further has submitted that in all there are 17 posts of Joint Director of Education, which is the feeder cadre for promotion to the post of Director of Education. Out of 17 posts, one post of Joint Director is filled in and remaining posts are vacant. Learned C.P.O further submitted that as per sub-clause 2 & 4 of Clause 5 of G.R dated 17.12.2016, where the posts are vacant, the appointment to the post of Director of Joint Director by way of deputation can be made and therefore the Respondents have rightly considered to fill up the two posts of Director on deputation, because those posts are very important and cannot be kept vacant.

5. Rule 3 of the Recruitment Rules to the post of Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch), Recruitment Rules, 2018, reads as under:-

“Rule 3. Appointment to the post of Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) shall be made by promotion of a suitable person on the basis of merit cum seniority from amongst the persons holding the post of Joint Director of Education in the Maharashtra Education Service, Group-A, (Administrative Branch) having not less than three years of regular service in that post.”

6. Considered the submissions of both the sides. Perused the Recruitment Rules dated 18.1.2018. The post of Director of Education is to be filled in exclusively by way of promotion from the feeder cadre of Joint Director of Education and the persons eligible from that cadre who has put in minimum 3 years of regular service in that post. Perused sub-clause 1 to 10 of Clause 5 of G.R dated 17.12.2016. Sub-clause 1 & 2 of Clause 5 are important. It is made clear that in the Recruitment Rules there is no provision to fill up the post of Director of Education by way of deputation. However as per sub-clause 2 of Clause 5 in exceptional circumstances the post can be filled up by way of deputation. As per sub-clause 2, in case of filling up the post of Director of Education by promotion, if eligible and suitable candidate is not available for a period of more than one year, then under such exceptional circumstances, on deputation for a period of one year in the beginning or till the candidate is available by way of promotion, such posts can be filled in by way of deputation. As per submissions of learned C.P.O, thus two posts, i.e., one post of the Chairman, Maharashtra State Examination Council, Pune fell vacant on 1.5.2022 and the second post of Director, Secondary and Higher Secondary fell vacant on 3.11.2022. Today, it is

necessary to note the factual position. There are total 7 posts of Director of Education. These posts can be filled up from the feeder cadre from the post of Joint Director of Education. Today, out of 7 posts of Director of Education, 3 posts are filled in and 4 posts are vacant. Thus, these posts are required to be filled in as per the Recruitment Rules of 2018 by way of promotion from the feeder cadre of Joint Director. However, the persons who are working as Joint Director and who have completed minimum 3 years in that post is eligible and can be considered for promotion to the post of Director of Education. Today out of 17 posts of Joint Director, only one post is filled in and that person is retiring on 31.5.2023. Thus, in all 16 posts of Joint Director are vacant and it is informed at the Bar that the persons who are eligible for appointment to the post of Joint Director from the cadre of Deputy Directors have filed O.A Nos 543 & 546/2023 before this Tribunal and who will be completing their requisite period of minimum 3 years in December, 2023. Thus, those Joint Directors will be eligible for promotion to the post of Director after 3 years. It is shocking but undoubtedly true that it is an extraordinary exceptional circumstance. Under such circumstance, the posts are required to be filled in. However, while filling up the posts the Government cannot go against the Recruitment Rules of 2018 and their own policy of G.R dated 17.12.2016, which is a matter of concern.

7. I restrain myself from analyzing further the Recruitment Rules and the G.R as I am of the view that both the applicants are at present appointed and working as Director of Education, hence due to appointment of Respondents no 3 & 4, no legal right of the applicants is going to be violated. The submissions of learned counsel for the applicants that applicants no 1 & 2 will have to hand over the charge to Respondents no 3 &* 4 who are not competent and having experience and they are not eligible as per

the Recruitment Rules dated 18.1.2018 and G.R dated 17.12.2016, cannot be appreciated when the applicants have no locus standi to pray that the order dated 4.5.2023 passed by the Respondents is illegal. However, it is necessary to state in order to avoid further legal complication and multiplicity of litigation that the State is required to reconsider the advertisement issued on 30.1.2022.

8. In view of the above, Original Application stands disposed of.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 10.05.2023
Dictation taken by : A.K. Nair.