

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NOS 634 OF 2017**

**DISTRICT :  
PUNE**

1. Shri Shrikant D. Sutar )
2. Shri Namdev K. Gaikwad )
3. Smt Rohini S. Gavhane )
4. Smt Sharmila D. Nandre )
5. Shri Rajram N. Chore )
6. Shri Dattatraya D. Gaddare )
7. Shri Balasaheb D. Aswale )
8. Shri Sandeep R. Gadhari )
9. Shri Daulat B. Koyande )
10. Shri Vasant D. Raskar )
11. Shri Ramdas T. Gend )  
C/o: Shri C.T Chandratre, )  
the learned advocate for Applicants. )...**Applicants**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
School Education & Sports Dept, )  
Mantralaya, Mumbai 400 032. )
2. Secretary, )  
Maharashtra Public Service )  
Commission, Mumbai 400 001. )
3. The Commissioner, )  
Education, M.S, Central Bldg, )  
Annie Besant Road, )  
Pune 411 001. )
4. Block Development Officer, )  
Panchayat Samiti, Kalyan, )  
Near Municipal Hospital, )  
Dist-Thane 421 301. )
5. Chief Executive Officer )  
Zilla Parishad, Station Road, )  
Thane [W] 400 601. )...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicants in O.A 634/2017.

Shri R. Kamlapur, learned advocate for Respondents no 4 & 5 in O.A 634/2017.

Shri R.S Apte, Senior Advocate, Special Counsel, Shri D.B Khaire, learned Special Counsel with Ms Swati Manchekar, learned Chief Presenting Officer, Ms Savita Suryavanshi, Shri N.K Rajpurohit, learned Presenting Officer for Respondents.

Shri A.G Ambetkar, learned advocate for the applicants in O.A 724, 725, 726, 727, 728, 729, 730, 731/2017, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231/2018 with O.A 46, 47, 124, 125 & 164/2018.

Shri R.B Dhore, learned Advocate for applicant in O.A 384/2018

Shri Misal, learned Advocate for Respondents no 5 & 6 in O.A 730/2017.

Shri R.A Shelke, learned Advocate for Respondent no. 5 in O.A 124/2018.

Shri S.S Deokar with Shri C.G Gavnekar, learned Advocate for Respondents 5 & 6 in O.A 726 & 727/2017.

Shri U.P Warunjikar with Shri P.S Pathak, learned Advocate for Respondent no. 5 in O.A 125/2018.

**CORAM** : **Shri Justice A.H Joshi (Chairman)**  
**Shri P.N Dixit (Member) (A)**

**RESERVED ON** : **07.09.2018**

**PRONOUNCED ON** : **04.10.2018**

**PER** : **Shri Justice A.H Joshi (Chairman)**

### **ORDER**

1. All O.As are heard on different dates and finally on 10.9.2018.
2. O.A 634/2017 is taken up as a lead case for writing judgment.

### Factual background

3. Most of the Applicants are employees of various Zilla Parishads and few applicants are serving in Government of Maharashtra with designation of Primary Teachers. The conditions of recruitment of applicants serving in Zilla Parishad are governed by Maharashtra Zilla Parishad (District Services) Recruitment Rules, 1967. (hereinafter as **M.Z.P (D.S) R. Rules, 1967** for brevity). Pay & Educational Qualification of Teachers of various classes in Zilla Parishad and those in Government are one and the same.

4. All Applicants who are serving as Primary Teachers are possessing educational qualification of Graduation and Degree of Bachelor of Education /or equivalent. Few amongst the applicants though serving as Primary Teachers, are granted the pay in the scale applicable to the pay which is equal to the pay of trained Teachers as applicable to Graduates possessing the degree of Bachelor of Education, who are serving as Secondary School Teachers/Assistant Teachers as described in Maharashtra Zilla Parishad (District Services) Recruitment Rules, 1967.

5. Admittedly, the applicants serving in Zilla Parishads fall in the category which is described as 'District Service (Class III) (Subordinate Educational), Primary School Teachers/Masters' (i) Primary School Teacher & (ii) Primary School Master as described in Appendix-IV, Part-II, Rule 5, Sr. no. 9, appended to M.Z.P (D. S) R. Rules, 1967.

6. Government of Maharashtra issued Notification dated 5.7.2016 (copy whereof is on record at page 31 of Original Application No.634 of 2017). By this Notification Recruitment Rules titled as 'The Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) (Recruitment), Rules, 2016' (herein

referred as **M.E.S, Recruitment Rules, 2016**), have been notified. These rules lay down the educational and other qualifications etc. for recruitment to the post of Deputy Education Officer, Group-B, (Administrative)'.

7. Rule 3 of M.E.S. Recruitment Rules, 2016 provides for the process of intake by different channels:-

(a) First:-

By promotion by selection from amongst employees serving in Maharashtra Education Service, Group-C on seniority-cum-fitness basis. [3(B)(1) of M.E.S Recruitment Rules, 2016].

(b) Second:-

By promotion by selection from the Zilla Parishad employees serving in District Technical Service, Group-C. [Rule 3A (2) of M.E.S Recruitment Rules, 2016]

(c) Third:-

Direct recruitment by competitive examination of candidates holding prescribed qualification. [Rule 3(B)(2) of M.E.S Recruitment Rules, 2016.]

8. The applicants are concerned with the channel prescribed in Rule 3 A(1) & 3(B)(1).

9. The term 'District Technical Services, Group-C' which is referred to in Rule 3 of Maharashtra Education Services, Group C, Recruitment Rules 2016, has been defined in clause (e) of Rule of Maharashtra Education Services, Group-B, , which reads as follows :-

"2(a) .....  
(b) ....."

(e) *'District Technical Service Group-C' means the District Technical Service, Group-C under the control of Zilla Parishad and it includes the posts mentioned in Part-II of Schedule B appended to these rules.'*

(Quoted from page 31 of O.A.634/2017)

10. During hearing the learned Advocate for the Applicant had fervently urged that the cadre with nomenclature "District Technical Service Group C" does not exist or is not described in the M.Z.P (District Service) Recruitment Rules, 1967, and this has created an anomaly. This Tribunal as well as learned C.P.O and Special Counsel have verified the factualness of objection raised by learned Advocate for the applicants and it is seen that no option is available than concurring with the objection.

11. Learned Special Counsel and learned C.P.O were called to throw light on the anomaly pointed out by learned Advocate for the Applicants after taking instructions.

12. Learned Special Counsel as well as learned C.P.O have taken instructions and have conceded to the position that:-

- (a) A class titled as District Technical Services, Grade 'C' does not exist with said nomenclature, by due reference to context in totality of M.Z.P (District Service) Rules, 1967, with said nomenclature.
- (b) The description "District Technical Service, Group 'C'" is mis-described and it essentially means District Technical Service, Class-III (Education) Assistant Secondary School Teacher, as is described in appendix IV, Part II entry no. 4 of M.Z.D.S. Recruitment Rules, 1967, with due reference to context from correct perspective.

13. Considering the clarification given by the State , it is considered necessary to refer to the text of Appendix IV, Part II entry no. 4 of D.T.S (Class-III) Educational, which reads as follow:-

*"APPENDIX IV  
Part-II  
See Rule 5*

*Rules laying down the qualifications of candidates for and methods of appointment to posts included in the District Technical Service (Class III) (Educational) and District Service (Class III) (Subordinate Educational).*

*Teaching Staff*

<i>Sr No.</i>	<i>Service and Cadre</i>	<i>Post</i>	<i>Qualifications for and methods of appointment</i>
.	<i>District Technical Service (Class III) (Educational)</i>	<b>Assistant Secondary School Teachers</b>	<p>1. Appointment shall be made either by:-</p> <p>(a) temporary transfer of suitable persons in the District Technical Service (Class III) (Educational), Grade II who are trained graduates;</p> <p>OR</p> <p>(b) nomination from amongst candidates who –</p> <p>(i) unless already in the service of the Zilla Parishad are not more than 28 years].</p> <p>(ii) possess a degree of a recognized University, and</p> <p>(iii) have knowledge of games and scouting.</p>

(Text is partly Quoted from page 110 of O.A)

14. It is thus evident that the term '*District Technical Service Group - C*' has to be read, understood and to be referred as '*District Technical Service (Class III) (Education)-Assistant Secondary School Teacher* , and none else.

Applicants' Grievance

15. The applicants' grievance is very simple, namely:-

- (a) Even according to Government and also according to M.P.S.C, Rule 2(e) of M.E.S Recruitment Rules, 2016 of the post of Maharashtra District Technical Service, (Class III) (Educational), does not include the category of 'Primary Teacher' of whatever category or nomenclature and drawing whatever scale, which is wrong and therefore applicants' application forms were erroneously rejected by M.P.S.C..
- (b) By virtue of qualification and pay of Primary Teachers (which is equal to that of Assistant Secondary School Teacher) as well as barely even upon being Primary Teachers (who are holding the qualification of Graduation with Bachelor of Education), they are, and ought to be, and

be deemed to be included in the class '*District Technical Service, (Class-III) (Educational)*' and they be deemed to be eligible to apply as candidate qualified as per Rule 3 A(2) and Rule 3 B(1) of M.E.S Recruitment Rules, 2016.

16. In order to substantiate the applicants' contention, applicants in O.A 634/2017 have amended the Original Application by incorporating various averments (as contained in amended part of O.A) and they have made consequential prayer.

17. Relevant prayer (as amended) contained in O.A 634/2017 which reads as follow:-

"The Hon. Tribunal be pleased to hold and declare that the exclusion of Primary Teachers and specially degree holder primary teachers like Applicants from the Section 3(B) (2) r/w Schedule-B Part-II of the Rules, namely Dy. Education Officer in Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) Recruitment Rules, 2016 is arbitrary and further be pleased to hold declare that the applicants are eligible for appearing to the Departmental Competitive Examination-2017 and for getting selection according to their merit."

(Quoted from page 12 of O.A no 634/2017)

18. Original Applications are opposed by the Respondents, State of Maharashtra as well as by M.P.S.C. The plea and arguments of the Respondents is long which is summarized as below:-

- (a) The Recruitment channels are three.
- (b) Channel applicable to Government servants is:-
  - (i) Promotion from M.E.S Group-C and District Technical Service, Group-C is on the basis of seniority-cum-fitness. Rule 3(A)(1) & (2).
  - (ii) On the basis of selection by Limited Departmental Examination from amongst employees serving in M.E.S Group-C and District Technical Services. (Rule 3(B)(1) & (2).

Employees of Zilla Parishads:-

- (c) Channel application for:-
- (i) The feeder cadres for promotion for limited examination are well defined and unambiguously described and spelt out in Rule 3 of the Group-B (Administrative Branch) Recruitment Rules of 2016.
  - (ii) Teacher and Primary Teacher wherever serving is an Independent cadre and in not a feeder cadre for the post of Assistant Secondary School Teacher.
  - (iii) By nomination considering that the class of Primary Teachers irrespective of their qualification is consciously excluded, for simple reason that the process of recruitment to Secondary School is laid down in M.Z.P (D.S) R.R 1967 and it does not provide a channel for cadre of Primary Teachers.
  - (iv) Hence there is no channel of promotion from Primary Teacher to Secondary School Teacher or Part-2 category of District Technical Service, Group-C.

19. All that the applicants want, is inclusion of a category in the channel of promotion which according to State, is unavailable for them by correct reading or if needed by reading down the Rules.

Arguments in support of Applicants' claim:-

20. Learned advocate for the applicants has urged that:-
- (a) The similarity of pay scales of Primary Teachers possessing graduation and degree in Education with the scale of pay of Assistant and Secondary School Teachers, is a strongest ground in their favour.
  - (b) This fact of equal pay proves that the post of Primary Teachers possessing requisite qualification and equal scale of pay renders the class of Primary Teachers equal to the class of "Secondary School Teacher/Assistant Teachers" for present direct recruitment.



- (c) Respondents are practicing hostile discrimination and they have arbitrarily rejected applicants' candidature and have denied equal and for opportunity of employment to the post of Dy. Education Officer (Admn) subject matter.

State Government and M.P.S.C's ground of objection:-

21. M.P.S.C and State Government have couched the plea which is common urging that Primary Teachers have not been included in the class eligible to apply, which is obvious from the Maharashtra Education Service, Recruitment Rules, 2016, and this non inclusion is a conscious omission.

22. In view of rival contentions, limited question which arises for consideration are as follows:-

- (i) Which is the class of employees serving under the State Government and under the Zilla Parishad who are falling within the compass of eligibility as contemplated by Rule 3 of Deputy Education Officer-I, Group-B (Administrative Branch) (Gazetted) Maharashtra Education Service, (Recruitment) Rules, 2016.
- (ii) Whether exclusion of Primary Teachers by failure to mention 'Primary Teachers having graduation and Bachelor's Degree in Education or equivalent' in education is a conscious omission.

DISCUSSION

23. The job left before this Tribunal is very simple, namely, to read the Recruitment Rules and apply the stipulation as those stand and examine effect and applicability thereof.

24. Admittedly, Primary Teachers with higher qualification (Graduation and Bachelor's degree in education or equivalent), are not ipso facto, and barely due to possession of said qualification, and even by virtue of fact of equal scale of pay to that of pay of Assistant Secondary School Teachers, are not transferable as Assistant Secondary School Teacher.

25. There does not exist any ambiguity that District Technical Service Grade 'C' as referred to in M.E.S, Dy.E (A) Recruitment Rules, 2016 mean by D.T.S (Class-III) (Educational) which is quoted in foregoing paragraph no.13, i.e. Assistant Secondary School Teacher.

26. Now this Tribunal has to examine the compass of the class of Zilla Parishad employees who fall within the eligibility clause, i.e. 2(e) of M.E.S, Recruitment Rules of 2016. Clause (e) of Rule 2 thereof which is already quoted in foregoing para no. 9 is once again and for ready reference quoted as follows:-

“2(a).....  
 (b).....  
 (e) 'District Technical Service Group-C' means the District Technical Service, Group-C under the control of Zilla Parishad and it includes the posts mentioned in Part-II of Schedule B appended to these rules.”

(Quoted from page 31 of O.A 634/2017)

27. As is evident from the text quoted in foregoing paragraph 13, Part-II of Appendix IV entry 5 relates to the services in education department titled as 'District Technical Service, (Class-III) which is Secondary School Assistant Teacher' and clause (e) of Rule 3 above quoted states that it would include the posts mentioned in Para II of Schedule 'B' thereof.

28. Now this Tribunal has to see as to which is/are the post described in Schedule 'B' of M.Z.P (D.S) R.R 1967, referable to in clause (e) of Rule 2 supra. It is seen that the District Technical Service, Class-

III Grade II as prescribed in M.Z.P (D.S) R. Rules 1967, (referred to in Rule 2(e) of M.E.S, Recruitment Rules, 2016) is reproduced below:-

“APPENDIX IV  
Part-I  
See Rule 5

Rules laying down the qualifications of candidates for and methods of appointment to posts included in the District Technical Service (Class III) (Educational) and District Service (Class III) (Subordinate Educational).

1 Sr No.	2 Service and Cadre	3 Post	4 Qualifications for and methods of appointment
2.	District Technical Service (Class III) (Educationa l) Grade-II	(i) Extension Officer (Education).  (ii) Assistant Education Officer.  (iii) Senior Assistant Deputy Educational Inspector.	1. Appointment shall be made by:-  (a) Promotion of persons in District Technical Service (Class III) (Education), Grade III who have completed not less than 5 years of continuous service in that grade  OR (b) temporary transfer of suitable persons from among Assistant Teachers in District Technical Service (Class III) (Educational) and from amongst <b>Primary</b> School Teachers and Masters in District Service (Class III) (Subordinate Educational) who :-
			(i) possess at least 3 years of post B. Ed. (or equi qualification) teaching experience in Prim Secondary Schools, or a Junior College of Educati Or (ii) possess at least 3 years of post B. qualification) experience of inspect Secondary Schools, or (ii) <u>possess 5 years teaching experience</u> <u>S.S.C examination and acquiring</u> <u>qualification</u>  OR (c) nomination from amongst candidates who :- (i) unless already in the service of the 2 not more than 35 years of age, (ii) are graduates of a recognized Univer (iii) (a) possess at least 3 years of equivalent qualification) teaching Primary or Secondary Schools, or Education; or  (b) possess at least 3 years of equivalent qualification) experience <b>Primary</b> or Secondary Schools, or (c) possess 5 years teaching experie of the S.S.C Examination and ac training qualification.]  Provided that the age limit may be relaxed in the case of candidate possessing good

			<p>qualifications and / or experience.</p> <p><i>[Provided further that nothing in these rules shall affect appointments already made by the Appointing Authority by way of transfer/temporary transfer of the Assistant Teachers in District Technical Service (Class III) (Educational) or the <b>Primary</b> School Teachers in District Service (Class III) (Subordinate Education) if such Assistant Teachers of the <b>Primary</b> School Teachers continued to hold the post of Extension Officer (Education), Grade II or Senior Assistant Deputy Educational Inspector for more than one year on the 1<sup>st</sup> January 1976]</i></p> <p>2. Not less than 75 per cent of the posts shall be filled in by nomination and transfer.</p> <p>3. Persons appointed to this post may be required to undergo training course for Social Education. Such of them who are selected to undergo this training shall execute an agreement bond in the Appended Form 'A'.</p>
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(Quoted from page 100 to 102 of O.A)

29. It is once again necessary to have a quick look at the procedure of recruitment to the post titled District Technical Service, Class-III, Education, Group-II, quoted herein before in foregoing para. It would be useful to refer to the quotation of said entry, which is quoted in foregoing paragraph no.27. Relevant entry is contained in column No. 4, entry (b).

30. Item no. 1, clause (a) of column no. 4 quoted in foregoing paragraph no.28 (and it is underlined in said column) reveals that Primary Teachers are included in the class of cadres which are transferable on completion of certain conditions which are incorporated in column (4) and these conditions are as regards age and experience.

31. It is evident and unambiguously mentioned in said prescription that Primary School Teachers and Masters in District Service, (Class-III) (Subordinate Education) who possess prescribed qualification and experience (or are already transferred to the post of Grade-II) are

eligible for being appointed by transfer in the cadre of District Service, Class-III (Educational) Grade-II.

32. It is thus conclusive that District Technical Service, Class-III, can be filled in by:- temporary transfer of suitable person in the District Technical Service (Class III) Educational, (Subordinate Education), i.e. Primary Teacher subject to fulfilling condition laid down in rules, apart from Teachers in Junior Colleges attached to Secondary Schools.

33. Thus, the post of Primary Teachers holding prescribed qualification, experience etc. is a feeder cadre for appointment by transfer to the post of District Technical Service, Class-III (Educational), Grade-II, and this post [TTS-Class III (Educational) Grade II] is a feeding cadre for appointment by temporary transfer to the post of District Technical Service, Class-III (Educational).

34. The aspect of feeder cadre and eligibility described in foregoing paras is totally lost sight by the State Government as well as by the M.P.S.C, and therefore stance of opposing even to consider applicant's candidature is totally erroneous being based on incomplete reading of Rules. Result thereof is denial of opportunity of being a candidate and hence violative of Constitutional guarantee of fairness and guarantee against arbitrariness. It results in denial of equal opportunity in the matter of employment. Impugned rejection of applicants' candidature deserves to be set aside.

35. Hence, Original Applications succeeds and following order is passed:-

(A) Impugned decision of M.P.S.C in rejecting applicants' candidature for recruitment furtherance to Advertisement No. 40/2017 is quashed and set aside.

- (B) Primary Teachers who are serving in employment of Government of Maharashtra and whose qualification and eligibility corresponds/concurs with Col. 4 of Appendix IV Part-I of M.Z.P (D.S) R. Rules, 1967 too are declared to be eligible to apply along with Primary Teachers for the post advertised through Advt. no. 40/2017.
- (C) Result of written test undergone by applicants be declared and its validity shall be subject to applicants' eligibility as is laid down by joint reading of M.Z.P (D.S) R. Rules 1967 and the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) (Recruitment) Rules, 2016.
- (D) M.P.S.C and State Government shall keep in mind M.Z.P (D.S) R. Rules 1967 referred to in foregoing para no 28, while scrutinizing and examining eligibility of applicants' candidature.
- (E) Those applicants who withstand eligibility shall be permitted to pursue their candidature for recruitment subject matter.
- (F) Parties are directed to bear own costs.

**Sd/-**  
**(P.N Dixit)**  
**Member (A)**

**Sd/-**  
**(A.H. Joshi, J.)**  
**Chairman**

**Place : Mumbai**  
**Date : 04.10.2018**  
**Dictation taken by : A.K. Nair.**