

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 649 OF 2023**

**DISTRICT : PALGHAR**

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V/s.

1. The State of Maharashtra )  
 Through the Secretary, )  
 School Education and Sports Department, )  
 Mantralaya, Mumbai 400032 )
2. Rajesh Shinde )
3. Jyoti Shinde )  
 Through the Secretary, )  
 School Education and Sports Department )  
 Mantralaya, Mumbai 400032 )...Respondent

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

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondent No. 1

Shri D.B Khaire, learned counsel for Respondents No. 2 & 3

**CORAM : Justice Mridula Bhatkar (Chairperson)**  
**Shri Debashish Chakarbarty (Member) (A)**

**RESERVED ON : 29.08.2023**

**PRONOUNCED ON: 20.10.2023**

**PER : Justice Mridula Bhatkar (Chairperson)**

**J U D G M E N T**

1. The applicants, who belong to cadre of regular Education Officers working in the School Education and Sports Department, challenge Rule 8 of the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022. All the Applicants aspire to be promoted in the near future to the post of Deputy Director of Education and claim that they fulfill the Eligibility Criteria mentioned in Rule 3 of the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch), Recruitment Rules, 2018, published by Notification dated 18.1.2018. The private Respondents No 2 & 3, who are from separate cadre of Administrative Officers, but also working in School Education & Sports Department. However, due to the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022, the cadre of Administrative Officer has been merged with the cadre of regular Education Officers. These new rules will henceforth regulate recruitment to all the posts of Education Officers in Single Cadre. The 'Administrative Officers' upon merger have acquired seniority over the regular 'Education Officers'. Therefore, the Applicants are going to lose their chance to be promoted in near future to the post of Deputy Director of Education.

2. Learned Counsel for the Applicants has submitted that for both the posts of Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018 published by Notification dated 18.1.2018 and the amended rules called the Education Officer in the Maharashtra Education Service, Group-A (Administrative Branch) (Recruitment) Rules, 2022, published by Notification dated

28.12.2022 are framed under Article 309 of the Constitution of India. The above Rule 3 regulating recruitment to the posts of Deputy Director of Education, has given the definition of the term 'Education Officer' which is a feeder cadre for promotion to all the posts of Deputy Director of Education.

3. Learned counsel for the Applicant emphasized on Rule 3 of the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018 published by Notification dated 18.1.2018, which specifically mentions that those in the Education Officer in the Maharashtra Education Service (Administrative Branch) Group-A, having not less than Five Years of Regular Service on that post will be eligible for appointment on promotion to the posts of Deputy Director of Education.

4. Learned Counsel for the Applicant has submitted that on account of merger of the cadre of 'Administrative Officers' with the cadre of 'Education Officer', into Single Cadre although the 'Administrative Officers' have not put in Five Years of Regular Service as per the Rule 3 of the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018 published by Notification dated 18.1.2018, they are going to be considered as eligible for promotion to the post of Deputy Director of Education and that will be injustice to the Applicants who are regular Education Officers.

5. Learned Counsel for the Applicant has further submitted that the Service Conditions of recruitment of the post 'Deputy Education Officer' and 'Education Officer' cannot be changed. Learned Counsel for the Applicant has further argued that there is a specific provision in Rule 3 of Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative

Branch) Recruitment Rules, 2018, in respect of the Service Conditions and Eligibility Criteria for promotion to the post of Deputy Director of Education. They are required to be maintained and cannot be altered. In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in the case of **A.B KRISHNA & ORS Vs. THE STATE OF KARNATAKA & ORS (1998) 3 SCC 495.**

6. Learned Counsel for the Applicants submitted that the present 'Fixation of Seniority' after merger of the cadre of 'Administrative Officers' in the cadre of 'Education Officer' into Single Cadre is unjust and unequitable as the Applicants have been shown senior earlier and now, they are going to lose their seniority. Their long standing seniority which is required to be maintained. In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in the case of **A. JANARDHANA Vs. UNION OF INDIA Vs. UNION OF INDIA & ORS, (1983) 3 SCC 601.**

7. Learned Counsel for the Respondent Nos. 2 and 3 relied on the judgment of this Tribunal **in O.A. No.576/2014 & 872/2013, dated 17.11.2015** in which Applicants therein had challenged the legal validity of the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Recruitment) Rules, 2013 which were notified on 29<sup>th</sup> June, 2013. The recruitment to the post of Deputy Education Officer, Group-B was earlier governed by the Maharashtra Education Service, Class-II (Administrative Branch) Recruitment Rules, 1978. Learned Counsel for the Respondents No 2 & 3 further submitted that the contention raised by the Applicants is already discussed at length before this Tribunal in O.A.576/2014 and O.A 872/2013 and the Tribunal in its Judgment dated 17.11.2015 has categorically

accepted the fact that the B. Ed qualification is not at all necessary for the post of Deputy Education Officer, Group-B. As per judgment dated 17.11.2015 given by the Tribunal, in O.A.No.576/2014 and O.A 872/2013 the School Education and Sports Department has notified fresh **Recruitment Rules dated 05.07.2016 (page .....)** for recruitment to the post of Deputy Education Officer, Group-B. As per Rule 7 of Maharashtra Education Service, Group-A (Administrative Branch) (Recruitment) Rules 2022 published by Notification dated 28.12.2022 requires a person appointed to the post by Nomination shall be required to complete the probation training as per the Maharashtra Civil Services (to fix seniority of the candidates under Combined Probationary Training Program (CPTP) recruited directly by selection on the post of Group A and Group B (Gazetted) through State Civil Services Examination conducted by M.P.S.C., Rules, 2015, and rules issued from time to time by the State Government. The seniority amongst the persons appointed by Nomination shall be fixed by the said rules. The Rule 7 of Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022, reads as under:-

*“7. A person appointed to the post by nomination shall be required to complete the probation training as per the Maharashtra Civil Services [to fix seniority of the candidates under Combined Probationary Training Programme (CPTP) recruited directly by selection on the post of Group-A and Group-B (Gazetted) through State Civil Services Examination conducted by the Maharashtra Public Service Commission Rules, 2015 and the rules issued by the Government from time to time. The seniority amongst the persons appointed by nomination shall be fixed by the said rules.”*



8. Learned Counsel for the Respondents No 2 & 3 has submitted that the Maharashtra Education Service, Group-B (Administrative Branch) (Recruitment) Rules, 2013 Notified on 29<sup>th</sup> June, 2013, did not make any distinction between posts to be occupied by 'Teaching Staff' and 'Non-Teaching Staff' and thus the recruitment rules could not be sustained. Learned Counsel for Respondents No 2 & 3 further pointed out that the State Government has already done away with B. Ed and D. Ed as a qualification for appointment to the post of regular Education Officer. He pointed out that there are staff branches of School Education & Sports Department, are categorized as 'Teaching Staff' and 'Non-Teaching Staff'. The hierarchy in the 'Teaching Staff' is different viz., Assistant Lecturer, Lecturer, Assistant Professor, Professor etc., while the hierarchy in the 'Non-Teaching Staff' is Deputy Education Officer, Education Officer and Deputy Director of Education.

9. Learned counsel for the Respondents No 2 and 3 further referred to G.R. of School Education & Sports Department dated 20.11.2019. The G.R. dated 20.11.2019, mentions the Policy Decision of School Education and Sports Department to merge the two cadres of regular Education Officer and Administrative Officer into a Single Cadre and carry out amendments to the Maharashtra Education Service (Administrative Service) Group-A. Learned Counsel for Respondents No 2 & 3 then pointed out to the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022 and then drew attention that G.R. dated 20.11.2019 of School Education and Sports Department was challenged before the Nagpur Bench of the Tribunal in O.A.No.276/2020. Learned Counsel for Respondent Nos. 2 and 3 also pointed out to the reply filed by Shri Tikaram Waman Karpate, Deputy Secretary in the

office of Principal Secretary, School Education, Mantralaya, Mumbai and also the Affidavit in Reply on behalf of Respondent No.1 in **O.A.267/2020 (Siddheshwar Laluse & Ors. V/s State of Maharashtra & Ors.)** stating that amalgamation of cadres does not make any adverse effect on the service conditions of the Applicants who are regular 'Education Officers'. Learned Counsel for Respondent Nos. 2 and 3 referred to the decision of the Hon'ble Supreme Court in the case of **Joginder Nath & Others V/s Union of India & Ors (1979) 3 SCC 459.**

10. Learned Counsel for Respondents No 2 & 3 submitted that the none of the Applicants has right to challenge the Rule 8 of the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022, published by Notification dated 28.12.2022 as in the past transfers have been effected from the post of regular 'Education Officer' to 'Administrative Officers' and even Vice Versa. He said that there are several earlier instances of such 'Inter Cadre Mobility'. He also produced copy of a Transfer Order dated 23.6.2023. Learned Counsel for Respondents Nos 2 & 3 submitted that some Superintendents in the immediate lower rank officer to the Administrative Officer were also appointed in the past to the post of Deputy Education Officer, the immediate lower rank officer to regular Education Officer.

11. Learned counsel for Respondents No 2 & 3 has further submitted that the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022, the cadre of 'Administrative Officer' now stands merged into the cadre of regular 'Education Officers' and it is now 'Single Cadre'. The recruitment rules for the post of Administrative Officer which were framed in 1988 with the creation of only 6 posts of Administrative Officers to be filled up in the ratio

of 50% by nomination and 50% by promotion. Today, out of 6 posts, 3 posts have been filled in. Out of the 3 posts which are presently filled in, one Administrative Officer is scheduled to retire by the end of September, 2023. Thus, effectively at present it will be only 2 posts of 'Administrative Officers' on which Respondents No 2 & 3 are serving which actually be included in the Single Cadre of 'Education Officers'. Learned Counsel for Respondents No. 2 & 3 in conclusion submitted that integration of these two cadres of regular 'Education Officers' and 'Administrative Officers' into a 'Single Cadre' by the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022, is legal and therefore the Original Application be dismissed.

12. Learned C.P.O relied on the 'Affidavit in Reply' dated 4.7.2023, filed by Shri Tikaram Waman Karpate, Deputy Secretary School Education and Sports Department. At the outset, she submitted that the State Government intends to amend 'Schedule-B' of the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018 published by Notification dated 18.1.2018, and bring it in the line with the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022, published by Notification dated 28.12.2022. Learned C.P.O. further stated that post of 'Administrative Officer', is exclusively entrusted with Administrative Work. The post of regular 'Education Officer' is also not categorized by the School Education & Sports Department as 'Teaching Staff', but they also deal with various types of Administrative Work. She concluded her arguments by stating that validity of the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022, published by Notification dated 28.12.2022 be upheld as it has been framed in

exercise of powers conferred under Article 309 of the Constitution of India and in supersession of all existing rules, orders or instruments made in this behalf by the School Education and Sports Department. Learned C.P.O relied on the following judgments of the Hon'ble Supreme Court:-

- (i) **B.K Mohapatra Vs. State of Orissa, 1988 AIR SC 24.**
- (ii) **Inder Singh & Ors Vs. Vyas Muni Mishra & Ors, 1987 (Supp) SCC 257.**
- (iii) **Hydro Electric Employees' Union, U.P and Ors Vs. Sudhir Kumar Sharma & Ors, (1998) 6 SCC 706.**

**Assessment:**

13. **In the judgment of this Tribunal dated 17.11.2015 in O.A.Nos.576/2014 & 872/2013**, it was observed in para 4 as under:-

"4. *Learned Special Counsel for the Respondents argued that the Recruitment Rules for the post of Dy. Education Officer, Group 'B' notified in 2013 have been framed after careful consideration of nature of duties of the post on which these officers are posted. Most of the posts in the cadre of Dy. Education Officer are mainly administrative posts and it was not found necessary to prescribe qualification of B. Ed (or M. Ed) for the said post. The work of Dy. Education officer is mainly to starting the Schools and retaining the students and it is not necessary that a person be a teacher to perform these duties. Similarly other duties like inspection of Schools, supervisions, release of grants, Court Assembly and Lok Ayukta work, Planning, administrative control, approval of staffing pattern, collection of statistical data etc. are administrative in nature. The candidates selected as Deputy Education Officers will be imparted necessary training. As the State Government, on the direction of Central Government,*

*has started District Institution of Education and Training (DIET) in each district, the job of training and supervising teachers is entrusted to them. The Government has, therefore, taken a conscious decision to omit the qualification of B. Ed for the post of Dy. Education Officer. Learned Special Counsel argued that the Bachelor of Education cannot be equated with Bachelor of Agriculture, Bachelor of Veterinary Science or Bachelor of Engineering. All teachers will have the degree of B. Ed (or D. Ed). However, it is not necessary for the Dy. Education Officer to have degree of B. Ed. Teacher will however, continued to have opportunity to be promoted as Dy. Education Officer, as 37.5% posts are to be filled by promotion from District Technical Services, Class-III and 12.5% posts are to be filled by promotion from the Maharashtra Education Service, Group 'C' Learned Special Counsel argued that the Rules of 2013 are reasonable and based on a well thought out policy of the Government. The Applicants, who are working as teachers in Zilla Parishad and other schools will be eligible to be promoted against the promotion quota, which is 50% of the cadre strength."*

14. In the case of **Joginder Nath & Others (supra)** the Hon'ble Supreme Court observed as under:-

*"6. The petitioners case further runs thus : Petitioner no. 1 was promoted to the post of Additional District Judge with effect from 24.1.1972 and the petitioners 2 to 4 were so promoted with effect from 25.3.1972. Respondents 3 to 5 were not considered to have qualified themselves for being promoted as Addl. District Judges. One, of the reasons for not promoting them to the higher judicial service was that they had not received requisite training in I the Civil Law. Accordingly, they were by-passed and in the mean time they*

*were given powers of the Subordinate Judges to enable them to get requisite training in Civil Law. Respondent no. 6 was posted as Sub-Judge, First Class and demoted from the post of a Senior Sub-Judge on account of inefficiency. He was not enjoying the selection grade of Haryana Civil Service (Judicial Branch) at the time of his appointment to Delhi Judicial Service while the petitioners were in such grade in their parent service. Respondents 3 to 5 were later promoted as Additional District Judges on 2.6.1972 and respondent no. 6 was promoted in June, 1973. Thus, all of them were promoted to the higher Judicial Service after the Petitioners. Yet they were made to ranks senior to petitioners 1 to 4 under Rule 8 of the Delhi Higher Judicial Service Rules. Respondent no. 6 in spite of his appointment as an Additional District Judge later than petitioners 2 to 4 was allowed to rank senior to them on the basis of Rule 8 aforesaid.*

15. *Rule 11 of the Delhi Judicial Service Rules reads as follows*

*"11. The Selection Committee shall arrange the seniority of the candidates recommended by it in accordance with the length of service rendered by them in the cadre, to which they belong at the time of their initial recruitment to the service.*

*Provided that the inter-se seniority as already fixed in such cadre shall not be altered."*

*The question for determination is, was there any infirmity in rule 11? Did it-put unequals with equals and violated Art.14 of the Constitution? Was the rule arbitrary and discriminatory? Once the Selection Committee found persons belonging to clause (a) of Rule 9 suitable for appointment to the service it was under a duty and obligation to arrange the*

*list of suitable persons by placing them in proper places in the matter of seniority. They were all being initially appointed to the Delhi Judicial Service wherein there was no separate gradation of posts. The assignment of duties was to follow on the basis of seniority list. Arranging the seniority of the candidates recommended by the Selection Committee in accordance with the length of service rendered by them in the judicial cadre to which they belonged at the time of their initial recruitment to the service was perfectly good. The petitioners could not have any grievance in that regard. On their initial recruitment to the Delhi Judicial Service they retained their original seniority inter-se as was assigned to them in their parent cadre. Was it possible to have a different yardstick, some other date or shorter period for fixation of the seniority of the law graduates judicial magistrates on their initial recruitment to the service from which date their seniority ought to have been reckoned? Was it possible to treat them as the first and the new recruits to the Delhi Judicial Service. Even so what would have been the basis of determining their seniority inter-se? The questions posed are suggestive of the answers. Taking the length of service rendered by the candidates in their respective cadres for the purpose of fixation of seniority under rule 11 of the Delhi Judicial Service Rules was justified, legal and valid. Had it been otherwise-it would have been discriminatory. It was not equating unequals with equals. It was merely placing two classes at par for the purpose of seniority when it became a single class in the integrated judicial service of Delhi. For the purpose of fixation of seniority, it would have been highly unjust and unreasonable to take the date of their initial recruitment to the service as their first appointment. Nor was it possible to take any other date in between the period of their service in their*

*parent cadre. It would have been wholly arbitrary. In our judgment, therefore, there was no escape from the position that the entire length of service of the two classes of officers had got to be counted for. the purpose of determination of their seniority on their initial recruitment to the Delhi Judicial service. It was not possible or practical measure their respective merits for the purpose of seniority with mathematical precision by a barometer. Some formula doing largest good to the largest number had to be evolved. The only reason-able and workable formula which could be evolved was the one engrafted in rule 11 of the Delhi Judicial Service Rules.*

15. The submissions of learned Counsel for the Applicants on the point of 'Doctrine of Occupied Field' is absurd in view of the ratio laid down in the case of **A.B Krishna (supra)**. The basic difference in the facts of the case of **A.B Krishna (supra)** and the present case is that all the recruitment rules of the School Education and Sports Department of the 2013, 2018 and 2022 were framed by Notification under Article 309 of the Constitution of India and not by an Act passed by the State Legislature. However, in the case of **A.B Krishna (supra)**, there was an Act namely, 'Mysore Fire Force Act of 1964' and then the cadre recruitment rules were framed by the Mysore Fire Force Rules of 1971. In the rules, the conditions of Qualifying Examination was done away which was mentioned in the said Act and therefore, the Hon'ble Supreme Court in the case of **A.B Krishna (supra)** held as follows:-

*"9. It is no doubt true that the Rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, Governor, under Article 309 and Govt. under Section 39), but the two*



*jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, Rules can be made under the Law so made by the legislature and not under [Article 309](#). It has also to be noticed that Rules made in exercise of the rule-making power given under an Act constitute Delegated or Sub-ordinate legislation, but the Rules under [Article 309](#) cannot be treated to fall in that category and, therefore, on the principle of "occupied field", the Rules under [Article 309](#) cannot supersede the Rules made by the legislature.*

*10. So far as the question of implied supersession of the Rules made under Section 39 of the Act by the General Recruitment Rules, as amended in 1977, is concerned, it may be pointed out that the basic principle, as set out in Maxwell's Interpretation of Statutes (11th edn., page 168), is that:-*

*"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, 'where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."*

16. The 'Doctrine of Occupied Field' is thus not applicable in the present case. Thus, the question is whether the School Education and Sports Department can frame recruitment rules in future in supersession of the earlier recruitment rules which were made under Article 309 of the Constitution of India. The answer is obviously yes. The definition of 'Education Officer' as per Rule 2(c) of the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018 published by Notification dated 18.1.2018, now stands extended to include the 'Administrative Officers' who were already working in the School Education & Sports Department. In fact, the inclusion of the 'Administrative Officers' in the definition of 'Education Officer' cannot be said to be illegal only on the ground that the promotional chances of the Applicants who are regular Education Officers to the post of Deputy Director of Education are going to be affected adversely. It was argued before us that the functions of the 'Administrative Officers' and regular 'Education Officers' essentially pertain only to Administrative Work' and responsibility of 'Teaching Staff' like Assistant Lecturer, Lecturer, Assistant Professor and Professor etc. has never been assigned to the regular 'Education Officers'. The recruitment to the post of Deputy Education Officer, Group-B were governed by the Maharashtra Education Service, Class-II (Administrative Branch) Recruitment Rules, 1978. Earlier, as per these rules notified in 1978 holding degree of B. Ed or D. Ed was necessary condition of eligibility to become an 'Education Officer'. However, it was removed subsequently by the School Education and Sports Department. The Educational Qualification for the posts of the 'Education Officer' and 'Administrative Officer' are the same and so also nature of duties which are performed by both relate to 'Administrative Work'. 'Scales of Pay' for both are same and so also is their 'Grade Pay'. Therefore, the School Education and

Sports Department has taken Policy Decision to merge the cadre of 'Administrative Officers' with the cadre of regular 'Education Officers'.

17. Thus, we cannot say that this 'Policy Decision' of the School Education and Sports Department as stated in G.R. dated 20.11.2019 is violative of any 'Fundamental Rights' of the Applicants under Articles 14 & 16 of the Constitution of India. So there is otherwise no illegality as the rules are framed under Article 309 of the Constitution of India. The second challenge on illegality advanced is on Rule 8 of the Education Officer, in the Maharashtra Education Services, Group-A (Administrative Branch) (Recruitment) Rules, 2022, which is mentioned in prayer clause 10(a) of the Original Application. The said Rule 8 is reproduced below:-

*“8. Seniority of the person working on the post of Administrative Officer, Maharashtra Education Service, Group-A, shall be fixed in the cadre of Education Officer and its equivalent posts as per their date of appointment by nomination or regular promotion on the post of Administrative Officer, on the date of publication of these Rules.”*

The Rule 8 specifically pertains to adjusting the Administrative Officers on the basis of their seniority in the 'Single Cadre' of 'Education Officers'. It was submitted by the learned Counsel for the Applicant that this Rule 8 cannot be made applicable retrospectively and thus no 'Administrative Officers' can be treated as regular 'Education Officers' retrospectively and therefore, they cannot be considered as senior to all the Applicants. The other aspect of grievance is also unfolded before us while pointing out the 'Eligibility Criteria' of the Education Officers for the promotional post of Deputy Director of Education.

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

*“3. Appointment to the post of Deputy 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 Education Officer in the Maharashtra Education Service, Group-A (Administrative Branch) having not less than five years of regular service in that post.”*

Thus, the regular ‘Education Officers’ who are having not less than Five Years of Regular Service in the post are only eligible for promotion to the post of Deputy Director of Education. However, the Administrative Officers who are going to join the Single Cadre after 28<sup>th</sup> December, 2022, the date of Notification of the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022, will not be required to put in 5 years on the post of regular ‘Education Officer’ as their seniority is to be counted as per the seniority on their Date of Appointment of Administrative Officer. On this point, we rely on Section 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1981, which reads as under:-

*“4. General principles of seniority:- (1) Subject to the other provisions of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein.”*

The said Rule 4 states that seniority is to be counted on the basis of ‘Continuous Service’ in any post, cadre or service from the ‘Date of Appointment’. Thus, an ‘Administrative Officers’, who has

put in suppose 4 years of Continuous Service, he will carry this earlier seniority of 4 years and will be placed appropriate as per his 'Date of Appointment' in the Seniority List of all 'Education Officers' in the 'Single Cadre'. Then, he will be required to work for a period of 1 year more before he becomes eligible to be considered for promotion to the post of Deputy Director of Education. However, if he has already put in 6 years of his Continuous Service on the post of 'Administrative Officer', then he will be placed in the Seniority List as per his seniority on the basis of 'Date of Appointment' as per provisions of said Rule 4 and will be considered as an 'Education Officer' from the 'Single Cadre' eligible for promotion to the post of Deputy Director of Education. Thus, when the posts are otherwise equivalent with respect to 'Scales of Pay' and 'Grade Pay' as also 'Nature of Job' which is essentially of 'Administration Work' under the School Education and Sports Department, then seniority of Administrative Officers should be counted from the 'Date of Appointment' on the basis of 'Continuous Service' once they have been included in 'Single Cadre' of 'Education Officer'.

18. In the case of **Inder Singh & Ors (supra)**, the learned C.P.O, submitted that merger of cadre is an executive function and the Hon'ble Supreme Court observed as under:-

*“Merger or bifurcation of a cadre is an executive act and normally the Court does not deal with it. It is for the State to consider whether two groups of persons working under two distinct posts perform the same kind of duties or not and whether in implementing the directive principle, as contained in Article 39(d) of the Constitution, it is necessary to merge these two posts into one cadre or post. If the State Government is of the view that it is necessary that there should be a merger of the two posts into one post, the State*

*Government has to take steps in that regard by framing proper rules with regard to seniority, promotions, etc. But, when two groups of persons are in the same or similar posts performing same kind of work, either in the same or in the different Government departments, the Court may in suitable cases direct equal pay by way of removing unreasonable discrimination and treating the two groups, similarly situated, equally.”*

19. In the case of **Hydro-Electric Employees’ Union (supra)** on the point of merger, the Hon’ble Supreme Court observed as under:-

*“In fact they have been discharging similar functions. In this view of the matter, it is difficult for us to hold that the Board had grouped dissimilar posts into a unified cadre. We are in fact not examining the other categories of posts which have been brought under the Regulation into one cadre since no factual matrix has been brought on record in fact no contest has been made on that score.”*

20. In **A. Janardhana’s case (supra)**, the Hon’ble Supreme Court has discussed about the retrospective operation of the revised rules in the case of Military Services, and fixing the Inter-se Seniority of the Assistant Executive Engineers between promotes and the direct recruits on the basis of quota. We are informed that the posts of ‘Administrative Officers’ has not been abolished and is now included from Sr. Nos. 11 to 15 in ‘Schedule A’ of the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022. As per G.R dated 20.11.2019, School Education and Sports Department, those at present working as ‘Superintendent’ will be directly appointed as ‘Education Officers’. Thus, alls the

posts of 'Administrative Officers' now by way of designation will continue to exist in 'Schedule-A' of Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 and can be filled by any 'Education Officer'. Thus, it is not an abolition of the post of 'Administrative Officers by including those posts in the cadre of 'Education Officer'. The post of 'Administrative Officer' now stand equivalent to all posts of 'Education Officer' in 'Schedule-A' distinguished only by way of 'Designations' which begin with the words 'Administrative Officer' in 'Schedule-A' of the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 published by Notification dated 28.12.2022. The 'Administrative Officers' cadre had only 6 posts as compared to the 152 posts of regular 'Education Officers' and therefore their inclusion into the 'Single Cadre' of 'Education Officers' will not adversely affect their chances of promotion to the posts of Deputy Director of Education which are made under Deputy Director of Education in Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018, Notified on 18.1.2018 and includes various posts shown therein under 'Schedule-A'. The prospects of promotion to the post of Deputy Director of Education of all officers categorized as regular 'Education Officers' can be adequately secured of, if present ratio of posts of Deputy Director of Education to regular post of 'Education Officers' after inclusion of 6 posts of 'Administrative Officer' is maintained at an identical level; so that the chances of promotion of regular 'Education Officers' are not adversely affected in the long term while providing new opportunity to 'Administrative Officers' for promotion to post of 'Deputy Director of Education' based on Combined Seniority List. The 'Single Cadre' will also formalize the 'Inter-Mobility' between 'Administrative Officers' and 'Education Officers' which has evidently occurred even in the past, albeit few and far between; will henceforth wider provide

opportunities to the regular 'Education Officers' to gain wider experience of working on the 6 posts of Administrative Officers which incidentally are all in State Level offices of the School Education and Sports Department. The submissions of the learned Counsel for the Applicants that the earlier recruitment rules of Administrative Officers and Education Officers are not repealed but they are amended do not carry much force, as the Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 Notified on 28.12.2022 are framed under Article 309 of the Constitution of India. As the learned C.P.O. has submitted the Deputy Director of Education in the Maharashtra Education Service, Group-A (Administrative Branch) Recruitment Rules, 2018 Notified on 18.01.2018 are also proposed to be appropriately amended for equitable promotional prospects for 'Administrative Officers' and the regular 'Education Officers' to the posts of 'Deputy Director of Education'. We agree with the new rules published as Maharashtra Education Service Group-A (Administrative Branch) (Recruitment) Rules, 2022 by Notification dated 28.12.2022.

21. Under such circumstances, we do not find any merit in the Original Application and the same is accordingly dismissed.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 20.10.2023**  
**Dictation taken by : A.K. Nair.**