

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 951/2021 (D.B.)**

Prashant Chindhuji Hud,  
Aged 39 years, Occ. Service,  
R/o 38, Mahatma Gandhi Nagar,  
Hudkeshwar Road, District: Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Education,  
Mantralaya, Mumbai-32.
- 2) Commissioner of Education,  
Maharashtra State, Pune-01.
- 3) Director of Education,  
(Secondary & Higher Secondary),  
Maharashtra State, Pune-01.
- 4) Deputy Director of Education,  
Nagpur Division, Nagpur.
- 5) Zilla Parishad, Wardha,  
Through its Chief Executive Officer.

**Respondents**

**WITH**

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**ORIGINAL APPLICATION NO. 952/2021 (D.B.)**

Manohar Bhimrao Chavan,  
Aged 41 years, Occ. Service,  
R/o 61, Near Narayan Chuna Factory,  
Ravinagar, Masala,  
District: Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Education,  
Mantralaya, Mumbai-32.

- 2) Commissioner of Education,  
Maharashtra State, Pune-01.
- 3) Director of Education,  
(Secondary & Higher Secondary),  
Maharashtra State, Pune-01.
- 4) Deputy Director of Education,  
Nagpur Division, Nagpur.
- 5) Zilla Parishad, Wardha,  
Through its Chief Executive Officer.

**Respondents**

**WITH**

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**ORIGINAL APPLICATION NO. 953/2021 (D.B.)**

Dr. Sangita Nilesh Meshram,  
Aged 46 years, Occ. Service,  
R/o 145, Jai Vighnaharta Colony,  
Katol Road, District: Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Education,  
Mantralaya, Mumbai-32.
- 2) Commissioner of Education,  
Maharashtra State, Pune-01.
- 3) Director of Education,  
(Secondary & Higher Secondary),  
Maharashtra State, Pune-01.
- 4) Deputy Director of Education,  
Nagpur Division, Nagpur.
- 5) Zilla Parishad, Nagpur,  
Through its Chief Executive Officer.

**Respondents**

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**Shri P.N.Shende, Id. Advocate for the applicants.**

**Shri M.I.Khan, Id. P.O. for the respondents.**

**None for the R-5.**

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**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &  
Hon'ble Shri M.A.Lovekar, Member (J).**

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**JUDGMENT**

**Judgment is reserved on 18<sup>th</sup> Nov., 2022.**

**Judgment is pronounced on 08<sup>th</sup> Dec., 2022.**

**(Per:-Member (J))**

Heard Shri P.N.Shende, learned counsel for the applicants and Shri M.I.Khan, learned P.O. for the Respondents. None for the R-5.

2. The issues involved in these three connected O.As. are the same. Hence, these O.As. were heard together and are being decided by this common judgment.

3. The applicants were appointed to the post of Assistant Teacher (Lower Division) against clear and permanent vacancies created on the establishment of respondent no. 4. They satisfactorily completed probation period. On being deputed by their employer they acquired additional qualification. They applied to respondent no. 4, after acquiring higher qualification of B.Ed., to consider them for promotion to the post

of Assistant Teacher (Higher Division Teacher) in Group-C in view of notification dated 20.02.1989 (A-2).

4. Correspondence dated 17.03.2012 and 15.06.2012 shows that giving such promotions as sought by the applicants was under consideration.

5. G.R. dated 15.09.2020 was issued closing down all the practice schools in the State of Maharashtra. The G.R., however, specifically stated

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“३. सदर सराव पाठशाळामधील शिक्षकांचे व शिक्षकेत्तर कर्मचा-यांचे समायोजन समकक्ष रिक्त पदावर करण्याबाबत आयुक्त (शिक्षण) यांना प्राधिकृत करण्यात येत आहे.”

However, by the impugned order dated 08.10.2021 the applicants were directed to be absorbed in the establishments run by respondent no. 5. According to the applicants, such absorption is contrary to G.R. dated 15.09.2020 and hence the impugned orders are liable to be quashed and set aside.

6. Respondents 1 & 4 have supported the impugned orders.

7. The applicants have relied on the judgment dated 23.03.2022 delivered by the Principal Bench of this Tribunal in O.A. No. 900/2021. In this case it is observed:-

*“Pertinently, G.R. dated 15.09.2020 does not state that the surplus Teachers shall be absorbed in ZP Schools. This is*

*crucial aspect of the matter. Suffice to say, the Applicant was required to be absorbed on equivalent post meaning thereby service conditions should remain the same.*

*8. However, the Respondent No.1 – Commissioner of Education, Pune by letter dated 08.10.2021 directed Respondent No.2 – Deputy Director of Education, Pune to absorb the Applicant in ZP School. Therefore, the question arises whether the Applicant could be absorbed in ZP school in teeth of Section 242 of 'Act 1961' which is as under:-*

***“242. Power of State Government to allot Government servants to Zilla Parishads finally - Where on the transfer or entrustment, from time to time, of powers and functions of the State Government to Zilla Parishads or Panchayat Samitis by or under this Act, all posts in a cadre of Class III or Class IV service of the State Government have been rendered surplus to the requirements of the State Government and are, therefore, required to be abolished, the State Government or any Head of Department of the State Government duly authorised by it in that behalf (hereinafter in this Chapter referred to as the “authorized officer”) may, subject to the provisions of this Chapter, by general or special***

*order, finally allot such persons who hold posts in that cadre (and who have no lien on any permanent post outside that cadre under the State Government), to the District Technical Service (Class III), the District Service (Class III) or, as the case may be, the District Service (Class IV). The allotment shall take effect from such date as may be specified in the order [to be made at least six months in advance] (hereinafter referred to as the "allotment date") on the terms and conditions as may be prescribed by the State Government in this behalf, which terms and conditions shall not, as far as may be, less advantageous than those applicable to them immediately before such allotment. On allotment, the persons so allotted shall be taken over by the Zilla Parishads:*

*Provided that, no persons shall be allotted after the expiry of [twelve years] commencing from the appointed day:*

*Provided further that, the terms and conditions of service applicable on such allotment of any person to any of the District Services aforesaid, shall not be varied to his disadvantage, except with the previous approval of the State Government:*

*Provided also that, any service rendered by any person under the State Government shall be deemed to be service under the Zilla Parishad.”*

*9. It is thus explicit from the 1st proviso that allotment of Government servants to ZP service was permissible up to 12 years from the appointed day. Admittedly, the appointed day means 1st of May, 1962 on which the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 came into force. As such, there is a specific embargo and clear bar for allotment of a Government servants to ZP after expiry of 12 years from 01.05.1962 i.e. appointed day. In other words, the allotments of Government servants to ZP school were permissible up to 30.04.1974.*

*10. Interpretation advanced by learned P.O. that 12 years period had come to an end in 1974 and there is no bar for further allotment to ZP school is totally misconceived. The allotment of Government servants to ZP schools was permissible only up to the period of 12 years commencing from the appointed day and the Applicant's date of appointment is not relevant. There is no ambiguity about interpretation of proviso which clearly stipulates that there shall not be*

*allotment of Government servant to ZP school after expiry of 12 years from the appointed day. Material to note that initially the stipulated period was 3 years. Later, it was extended up to 10 years and then by amendment of 1971, it is extended up to 12 years.*

*11. Indeed, the issue of bar of allotment after statutory period mentioned in proviso of Section 242 of 'Act 1961' is no more res integra in view of the decision in **AIR 1967 Bombay 482 (P.V. Naik & Ors. V/s State of Maharashtra & Another)** as referred by learned Counsel for the Applicant. The said decision was delivered while deciding numerous petitions filed by the Government servants challenging their allotment to ZP service after expiration of statutory period of the then 3 years as per proviso to Section 242 of 'Act 1961'. In detailed judgment, the Hon'ble High Court accepted the contentions of the Applicants that allotment of a Government servant to ZP after 3 years (which was then) is invalid and have no effect. The Hon'ble High Court held that restriction on powers of allotment as regard time under Section 242-A (the then provision which is later mandated as Section 242) would be illusory and negative, if it is held that the Government is*



*empowered to make allotment after statutory period given in law. In para no.24, the Hon'ble High Court held as under:-*

*"24. It is well established that when specific provision in a statute is applicable to a particular set of facts, any other general provisions in respect of the same matter in the same statute cannot be held to be applicable to those facts. The matter must be held to be governed by the specific provision. Having regard to the above finding and the fact that the petitioners were ascertained surplus staff to be allotted after the appointed day, we have no doubt that the only power enabling the Government to allot the petitioners to Zilla Parishads was contained in section 242-A of the Act. The Government was under that section entitled to allot the surplus staff to Zilla Parishads within a period of three years from the appointed day i.e. on or before May 1, 1965. The purported exercise of the powers contained in this section for allotting the petitioners and other persons similarly situated to Zilla Parishads as on and from August 16, 1966, is not in consonance with the provisions in the section. The Government had therefore,*

*no power to allot the petitioners and persons similarly situated to Zilla Parishad on and after May 1, 1965.”*

*12. In view of the aforesaid judicial precedent inevitable conclusion would be that allotment of Applicant to ZP school is invalid in law.*

*13. Apart admittedly, the Applicant was holding substantive post in Government service and the certificate of permanency was issued. Now, his services are allotted to ZP under impugned orders which would obviously be to his disadvantage since the service conditions of ZP differ from service conditions of Government service. It is precisely for this reason, the Government by G.R. dated 15.09.2020 directed the Respondents for absorption of the Applicant on equivalent post meaning thereby the service conditions of the Applicant were to be protected. As stated above, there is no reference of absorption of surplus Teachers in ZP services in G.R. dated 15.09.2020 This being the ultimate position, the allotment of the Applicant to ZP service under impugned order is clearly unsustainable in law and liable to be quashed.*

*14. The Respondents are at liberty to take remedial measures for absorption of the Applicant on equivalent post in terms of G.R. dated 15.09.2020."*

In view of what is held in O.A. No. 900/2021 the impugned orders dated 08.10.2021 and 26.10.2021 in all three O.As. cannot be sustained.

8. On 04.05.2022 the Government of Maharashtra has issued a corrigendum to para 3 of G.R. dated 15.09.2020. It reads as under:-

“३. शालेय शिक्षण व क्रीडा विभाग, शासन निर्णय दिनांक १५.०९.२०२० मधील परिच्छेद क्रमांक ३ पुढीलप्रमाणे सुधारित करून वाचण्यात यावा.

३. सदर सराव पाठशाळांमधील शिक्षकांचे व शिक्षकेतर कर्मचा-यांचे समायोजन समकक्ष रिक्त पदावर करण्याबाबत आयुक्त (शिक्षण) यांना प्राधिकृत करण्यात येत आहे.

त्याऐवजी

३. सद्यस्थितीत राज्यात शासकीय प्राथमिक शाळा उपलब्ध नसल्यामुळे व सदर सरावपाठशाळांमधील शिक्षक/शिक्षकेतर कर्मचा-यांच्या सेवेस संरक्षण देणेकरिता प्रचलित सर्व कायदे व नियम यांचे पालन करून स्थानिक स्वराज्य संस्थामधील रिक्त समकक्ष पदी त्यांचे समायोजन करण्याबाबत मा. आयुक्त (शिक्षण) यांना प्राधिकृत करण्यात येत आहे.”

9. The applicants are also seeking a direction to respondents 1 to 4 to promote them to Group-C posts on the basis of their improved qualification as per the policy framed vide G.R. dated 20.02.1989. It is

their contention that notification dated 27.05.2005 applies only to direct recruitment to Group-D posts. In reply to this contention the contesting respondents have averred as follows:-

*“The Govt. Notification dt. 20.02.1989 contains the recruitment rules for the post of Assistant Master (Upper Division) Class-III, in the Maharashtra Educational Service. There was a provision of promotion of 50% on the post of Assistant Master (Upper Division) amongst the cadre of Assistant Master Lower Division, Hindi Teacher, Craft Teacher, Music Teacher, Drawing Teacher, Primary Teacher. There is no post called Assistant Master (Upper Division) in existence.*

*The notification dt.27.5.2005 is about the recruitment rules for the posts in Maharashtra Education Service (Group-C) posts. All the posts mentioned in the recruitment rules dt.27.5.2005 shall be either filled by nominations or by deputations or by transfer from the persons working in the cadre, which is mentioned in Rule-2(a) of the Rules. There are total 14 posts mentioned in the definition of cadre i.e. Administrative Officer (Municipal Council Education Board), Assistant Dy. Education Inspector, Assistant Project Officer, Assistant Teacher (Govt.) D.Ed. College, Coordinator, Counsellor,*

*Extension Officer (State Council of Education Research and Training), Lecturer in (Govt.) Junior College, Programme Assistant, Science Supervisor, District Science Supervisor, Subject Assistant, Subject Expert and Technical Assistant.*

*The Applicants are working as Primary Teacher in Primary Schools (Sarav Pathshala) attached with the Govt. D.Ed. College. As per provision in notification dt.20.2.1989, the Assistant Teacher (Higher Division) post can be filled amongst the Assistant Master (Lower Division), Hindi Teacher, Craft Teacher, Music Teacher, Drawing Teacher, Primary Teacher. But, there is no such post called Assistant Teacher (Higher Division) or Assistant Teacher (Lower Division) in the School Education Department. Therefore, though the Applicants have acquired higher qualification, they cannot claim on that basis that they may be promoted on the post which is not in existence.”*

10. The contesting respondents have further averred that the file containing correspondence dated 17.03.2012 and 15.06.2012 sought to be relied upon by the applicants has been closed on 09.09.2015 as the Recruitment Rules dated 27.05.2005 are in force.

11. It is further submitted by the Id. P.O. for the contesting respondents that recruitment rules dated 27.05.2005 which hold the field do not provide for absorption of Primary Teacher (Lower Division) to the post of Assistant Teacher (Higher Division) under Group-C by way of promotion. Correctness of this submission is borne out by the Rules dated 27.05.2005.

12. For the reasons discussed hereinabove we pass the following orders:-

### **ORDER**

O.A. Nos. 951, 952 and 953 of 2021 are partly allowed. The impugned orders dated 08.10.2021 and 26.10.2021 in all three O.As. are quashed and set aside. The respondents are directed to take necessary steps for absorption of the applicants on equivalent posts in terms of corrigendum dated 04.05.2022 to G.R. dated 15.09.2020, within 30 days from today, with no order as to costs.

**(M.A.Lovekar)**  
**Member(J)**

aps

Dated - 08/12/2022

**(Shree Bhagwan)**  
**Vice Chairman**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman  
& Hon'ble Member (J).

Judgment signed : 08/12/2022.  
on and pronounced on

Uploaded on : 09/12/2022.