

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.438/2016.

- 1) Harshalata Vasantryo Burade,
Aged about 42 yrs.,
Occ-Service, O/o Distt. Education & Training Institute,
Maltekdi, Amravati.
- 2) Milind Ambada Kubde,
Aged about 47 yrs.,
Occ-Service, O/o Distt. Education & Training Institute,
Maltekdi, Amravati.
- 3) Vikas Ramchandra Gawande,
Aged about 41 yrs.,
Occ-Service, O/o Distt. Education & Training Institute,
Maltekdi, Amravati.
- 4) Balaji Shelke,
Aged about 41 yrs.,
Occ-Service, O/o Distt. Education & Training Institute,
Yavatmal.

Applicants

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of School Education & Sports,
Mantralaya, Mumbai-440 032.
- 2) The State of Maharashtra,
Through its Commissioner,
Department of School Education,
Balbharti, Senapati Bapat Marg, Pune.
- 3) The Director.
Secondary & Higher Secondary Education,
Govt. of Maharashtra Shikshak Bhavan,
Pune.

Respondents

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Shri K.S. Malokar, Ld. Counsel for the applicants.
Shri S.A. Sainis, learned P.O. for the respondents.

Coram:- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)

and

Hon'ble Shri J.D. Kulkarni, Vice-Chairman (J).

Dated: - 25th April 2017.

Order

Per: Vice-Chairman (J).

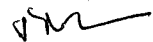
Heard Shri K.S. Malokar, the learned counsel for the applicants and Shri S.A. Sainis, the learned P.O. for the respondents.

2. All the applicants are post graduates with Diploma in Education having sufficient experience of teaching. They have been duly appointed as Senior Lecturer in various colleges of the Government, subject to certain conditions. The main condition incorporated in their appointment order is that, they would be required to appear for departmental examination prescribed by the Recruitment Rules. Such examination will have to be cleared within a period of two years of probation. It is submitted that the Recruitment Rules are mandatory and passing of departmental examination by candidates was also mandatory. The applicants have completed probation period satisfactorily and their performance was also good. They were never asked or directed to appear for any departmental examination.



3. The G.R. dated 29.11.1996 provided that the employees belonging to Maharashtra Education Service, Class-I and Class-II holding teaching post in Government organization are exempted from passing departmental examination prescribed for them. The G.R. dated 31.7.2008 also shows that regulation for conducting departmental examination was not finalized. Thus there are no rules prescribed for conduction of requisite examination.

4. Similarly situated employees approached the Tribunal at Aurangabad Bench by filing O.A.No.774/2009 and in the said O.A., on 6.7.2010, this Tribunal has cleared the probation period and also granted increments to the said employees. According to the applicants, they are not liable to clear any examination since no rules are framed. The Government of Maharashtra, however, wants the applicant to clear the examination as per G.R. dated 31.7.2008. The applicants are claiming that the said G.R. of 31.7.2008 prescribing the departmental examination for employees like the applicants is not applicable to the applicants and they are also claiming that they should be declared that they have successfully completed the probation and are confirmed on substantive posts and further directed the respondents to release all benefits including increments which are withheld by the respondents.



5. Respondent No.2 has filed affidavit in reply and submitted that the appointment order of the applicants reveals that there appointments were subject to the clearance of the departmental examination prescribed by Recruitment Rules and till today the applicants have not passed the departmental examination which was to be cleared within two years of probation and it was mandatory. It is further stated that notification has been issued on 5.1.1999 whereby exemption granted vide G.R. dated 29.11.2016 has become nullified and now passing of the departmental examination is mandatory for teaching as well as administrative branch. It is further stated that rules of examination for teaching and training posts are yet to be finalized and it may take more time and, therefore, in order to avoid inconvenience, the Government has taken a decision to hold departmental examination on the basis of rules prescribed for administrative branch on 20.2.1980 and a G.R. has been issued to that effect on 31.7.2008. It is stated that in O.A. No. 774/2009, the order was passed for granting increments and ancillary benefits as an interim adjustment.

6. We have perused the order of appointment of the applicants and there is no dispute that the applicants were to clear departmental examination as per Recruitment Rules. Admittedly till



today, the Government has not notified the Recruitment Rules for conduction of departmental examination as required to be cleared by the applicants. Perusal of affidavit in reply shows that since no specific rules are notified for conduction of departmental examination, the Govt. has decided to adopt conduction of examination as per the Recruitment Rules on administrative side as per G.R. dated 30.7.2008. Admittedly, the applicants belong to teaching category and not to the administrative category. The question, therefore, is as to whether directing the applicants to clear departmental examination which is required to be cleared by the employees on administrative side, will be in the interest of justice or not.

7. The aforesaid issue has been considered by this Tribunal in O.A. No. 774/2009. In the said case, the applicants were appointed on probation for two years through MPSC to the Maharashtra Education Service, Class-I and Class-II (Education and Training Branch) and they were forced to clear the departmental examination, which was for employees of administrative side. In the said judgment, this Tribunal has observed as under:

“9. The main issue to be decided here is whether it is right that an examination based on the syllabus for the administrative wing should be made applicable, even provisionally to the education and training wing,



only because it has not been possible for the respondents to prescribe rules appropriate to the applicants for the last seven years. Normally, one would expect that such rules should have been ready before they started recruitment in the year 2003 or at least soon thereafter, before the first batch was due to take the examination, or complete their probation period of two years. Surprisingly, we find that inspite of lapse of seven long years, respondent shave not been able to complete the process of framing appropriate examination rules and taking the approval of the Government. No satisfactory explanation is forthcoming for such inordinate delay.

10. We are unable to appreciate the logic of prescribing a predominantly administrative syllabus for the education and training branch, even though it is said to be on a provisional basis. The fact of the matter is that the applicants' expertise lies in the education and training side and it is not fair to expect them to pass the examination on the administrative side, failing which they stand to lose their jobs or their increments. They have also been deprived, without satisfactory reason, from completion of probation period, grant of annual increments and their seniority. We note with regret that such an attitude on the part of the respondents is nothing short of callous. We hope that now the respondents will take steps on priority to frame appropriate rules

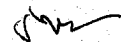


for the examination as early as possible, and in any case, on or before 31.10.2010.

11. In the meanwhile, we are left with no choice, but to allow the O.A. and as requested in prayer clause (B), direct that the G.R. dated 31.7.2008 should not be made applicable to the education and training side. The probation period of the applicants and those similarly situated should be provisionally closed after an assessment of their service record, subject to their passing the departmental examination, to be prescribed, within chances and period, that may be stipulated in the rules”.

8. It is material to note that while deciding the O.A.No.774/2009, this Tribunal has observed that the State will take steps to give priority to frame appropriate rules for the examination as early as possible and in any case on or before 31.10.2010. In spite of such observations, even till today rules are not framed. This proves the negligence, apathy and carelessness on the part of the respondent authorities.

9. Considering the aforesaid circumstances, we find that no purpose will be served if the applicants are forced to clear the departmental examination on administrative side, as admittedly; the applicants are appointed as Teachers. In view thereof, we pass the following order:-



(i) The O.A. is allowed.

(ii) It is hereby declared that the G.R. dated 31.7.2008 prescribing the departmental examination, is not applicable to the category of employees like the applicants.

(iii) The respondents are directed to declare that the applicants have successfully completed their probation period, if they are otherwise fit except for clearing the departmental examination and to grant all consequential benefits to them as claimed.

(iv) The respondents shall release the benefit of increments etc. to the applicants.

(v) No order as to costs.

sd/-

(J.D. Kulkarni)
Vice-Chairman (J)

sd/-

(Rajiv Agarwal)
Vice-Chairman (A)