

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**O.A.No.405 of 2022 with O.A.No.448 of 2022 with
O.A.No.449 of 2022 with
O.A.No.455 of 2022 with O.A.No.456 of 2022**

O.A.No.405 of 2022

Mr. Chandrakant Mahadeo Jadhav)
Age : 46 years,)
Occ. Service as a Primary Teacher,)
Working at Primary School,)
Gothane, Taluka : Patan,)
District : Satara.)
R/at. At & Post : Urul,)
Taluka : Patan, Dist. Satara.)

....Applicant

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
School Education & Sports)
Department, Mantralaya,)
Mumbai 32)
 2. Maharashtra Public Service)
Commission, through its Secretary,)
Having their office at 5 1/2 , 7 & 8)
Floor, Cooperage Telephone Nigam)
Building, Maharshi Karve Marg,)
Cooperage, Mumbai 400 021)
 3. The Zilla Parishad Satara,)
Through its Primary Education)
Officer, Ajinkya Colony, Powai Naka)
District : Satara,)
Maharashtra 415 001)
-Respondents.**

WITH

O.A.No.448 of 2022

Mr. Namdev Kundlik Gaikwad)
 Age : 47 years,)
 Occ. Service as a Primary Teacher,)
 Working at Zilla Parishad,)
 Primary School Markel No.2,)
 Taluka Khed, Dist. Pune.)
 Residing at Flat No.2, Dnyanamrut)
 Housing Society, At Post Devachi Alandi)
 Taluka : Khed, District Pune.)

....Applicant**VERSUS**

1. The State of Maharashtra,)
 Through its Secretary,)
 School Education & Sports)
 Department, Mantralaya,)
 Mumbai 32)
2. Maharashtra Public Service)
 Commission, through its Secretary,)
 Having their office at 5 1/2 , 7 & 8)
 Floor, Cooperage Telephone Nigam)
 Building, Maharshi Karve Marg,)
 Cooperage, Mumbai 400 021)
3. The Zilla Parishad Pune,)
 Through its Primary Education)
 Officer, New Pune Zilla Parishad)
 Building, Wellesley Road, Camp,)
 Pune, District Pune)
 Maharashtra 411 001)

....Respondents.**WITH****O.A.No.449 of 2022**

Mr. Shrikant Dhondu Sutar,)
 Age : 48 years,)
 Occ : Service as a Primary Teacher,)
 Working at Raigad Zilla Parishad School,)
 Khargaon Khurd, Taluka : Mhasla,)
 Dist. Raigad & Residing at G-6, Manapa)
 Vasahat, Shahu Nagar, Jasmin Mill Road)
 Mahim (E), Mumbai 400 017)

....Applicant

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
School Education & Sports)
Department, Mantralaya,)
Mumbai 32)
 2. Maharashtra Public Service)
Commission, through its Secretary,)
Having their office at 5 1/2 , 7 & 8)
Floor, Cooperage Telephone Nigam)
Building, Maharshi Karve Marg,)
Cooperage, Mumbai 400 021)
 3. The Raigad Zilla Parishad,)
Through its Primary Education)
Officer, Alibaug, District. Raigad)
-Respondents**

WITH**O.A.No.455 of 2022**

- Mr. Sandeep Ramlal Gadhari,)
Age : 46 years,)
Occ. Service as a Primary Teacher,)
Residing at Matruchhaya Bunglow,)
2nd floor, Near Shiv Sena Office,)
Kolegaon, Dombivali (East),)
Thane 421 204)
-Applicant**

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
School Education & Sports)
Department, Mantralaya,)
Mumbai 32)
 2. Maharashtra Public Service)
Commission, through its Secretary,)
Having their office at 5 1/2 , 7 & 8)
Floor, Cooperage Telephone Nigam)
Building, Maharshi Karve Marg,)
Cooperage, Mumbai 400 021)
-Respondents**

WITH

O.A.No.456 of 2022

Mr. Prakash Vishvanathrao Shirbhate)
 Age : 51 years,)
 Occ. Service as a Primary Teacher,)
 Residing at C/o. Room No.9,)
 Sanjay Sadan Panchal Estate, Chawl No.7)
 Laxman Nagar, Kurar village, Malad (East))
 Mumbai 400 097)

....Applicant**VERSUS**

1. The State of Maharashtra,)
 Through its Secretary,)
 School Education & Sports)
 Department, Mantralaya,)
 Mumbai 32)
2. Maharashtra Public Service)
 Commission, through its Secretary,)
 Having their office at 5 1/2 , 7 & 8)
 Floor, Cooperage Telephone Nigam)
 Building, Maharshi Karve Marg,)
 Cooperage, Mumbai 400 021)

....Respondents

Ms. Savita Suryawanshi, learned Advocates for Applicants.

Ms. K.S. Gaikwad, learned Presenting Officer for Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

RESERVED ON : **14.10.2022**

PRONOUNCED ON : **18.10.2022**

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

J U D G M E N T

1. The Applicants, Primary Teachers challenge the procedure adopted by the Respondents for filling up the posts of Deputy Education Officer,

Group-B, (Administration) by holding the applicants not eligible for the Interview. In all the matters the issue involved is identical, hence, the matters are decided by the common judgment.

2. The Respondent No.2, Maharashtra Public Service Commission, (M.P.S.C.) has invited applications on 17.05.2017 for the posts of Deputy Education Officer. These posts are filled up by promotion and also by nomination from two channels. One is from Maharashtra Education Service (MES) Group-C, and another is from District Technical Service, (DTS), Group-C working under the Zilla Parishad. The Applicants applied for the same and appeared for the examination. The merit list along with cut-off marks was published on 01.04.2022. The Applicants are working as primary teachers and according to M.P.S.C. initially the primary teachers did not fall in either of the avenues i.e. Maharashtra Education Service or District Technical Service (hereinafter referred as M.E.S. and D.T.S.).

3. In the beginning it is necessary to mention that by order dated 04.10.2018 passed in O.A.No.634/2017, the primary teachers had approached this Tribunal with similar challenge that though they are possessing the educational qualification which is required for the post of Deputy Education Officer, Group-B (Administration), they are not allowed to appear for the examination either from D.T.S. or M.E.S. channel. By order dated 04.10.2018 this Tribunal allowed the O.A.No.634/2017 and the Applicants were held eligible as per joint reading Maharashtra Zilla Parishads District Services, (Recruitment) Rules, 1967 and the Maharashtra Education Service, Group-B (Administrative Branch),

Gazetted, (Recruitment) Rules, 2016 and the applicants thereafter appeared for the examination. The merit list of the examination was published on 01.04.2022. As per two avenues, two merit lists from M.E.S. cadre group and D.T.S. cadre group were published. The names of the applicants are not included in the merit list of either of the avenues and therefore the applicants challenge the procedure of fixing the cut-off marks, especially for D.T.S. avenue/group.

4. Learned Advocate Ms. Suryawanshi has submitted that for 92 posts as per the ratio of 1:3, 283 candidates were called for the interview. The cut-off marks fixed for D.T.S. is 150 marks. The applicants have no grievance about the procedure followed for selecting the candidates from D.T.S. group. However, she submitted that the procedure followed in respect of M.E.S. is illegal and faulty, and needs to be rectified by allowing the applicants to be considered for the interview. Learned Advocate submitted that the cut-off marks for M.E.S. is fixed as 74 marks which is wrong. As for M.E.S. the authority has called only 48 candidates for interview for 31 posts. It was necessary for the M.P.S.C, to maintain the ratio of 1:3 and it was possible by calling the applicants for the interview. Applicants have secured more than cut-off i.e 74 marks. All the 48 candidates from M.E.S. who had appeared for the examination were called for the interview without applying eligibility criterion of marks. The intention of the competitive examination is to get the suitable candidate for the post by recruitment. However, in the present case the Respondent, M.P.S.C. has left-out the applicants who have secured more marks. i.e.. more than 74 marks, than the candidates who were called for the interview.

5. Learned Advocate has submitted that the method adopted by the M.P.S.C. is arbitrary, illegal, frustrating, thereby defeating the object of the competitive examination. Learned Advocate has submitted written notes and further submitted that the applicants' eligibility are to be considered from M.E.S. cadre in view of the Recruitment Rules of 05.07.2016 issued by the School Education and Sports Department. She pointed out that the posts of Deputy Education Officers, feeder cadre is Primary Teachers in view of the designation mentioned in Schedule B, Part I of Maharashtra Education Service, Group-C non-gazetted. She pointed out that the post of Assistant Education Inspector and Administrative Officer, Municipal Corporation are mentioned as M.E.S. Group-C. While analysing the said Rules she further relied on Appendix IV, Part I and drew our attention to the posts mentioned in serial no.3 which is

- (i) Junior Extension Officer (Education)
- (ii) Assistant Deputy Educational Inspector and
- (iii) Assistant Educational Officer (Junior).

The Primary Teachers in view of the chart given in this Appendix IV can be appointed as Junior Extension Officer (Education) and so also Assistant Deputy Educational Inspector or Assistant Educational Officer (Junior). Learned Advocate, therefore, submitted that the posts of these persons are mentioned in schedule (B) of the Recruitment Rules of the Deputy Education Officer, Group-B and the posts of Assistant Education Inspector and Administrative Officer, Municipal Corporation are treated

as feeder cadre to the post of Deputy Education Officer. Thus, she submitted that denial of the applicants from M.E.S. channel is illegal.

6. Learned Presenting Officer for the Respondents opposes these Original Applications mainly on the ground that this issue is already decided in O.A.No.634 of 2017 by order dated 04.10.2018 and is not *res-integra*. Considering the prayers made in these Original Applications similar relief was argued for and the Tribunal allowed the O.A. wherein entry of the applicants, Primary Teachers was rejected and only through one channel i.e. from D.T.S. was allowed. It was necessary for those applicants, Primary Teachers to challenge the said O.A. for the remaining relief to allow them to appear and they are to be considered through M.E.S. channel. Learned P.O. has submitted that, however, it was not done because the applicants are aware that they can only be considered through D.T.S. and not from M.E.S. She submitted that from M.E.S. only 48 persons appeared for 31 posts for the interview and therefore all the 48 persons were called. Learned P.O. has submitted Rules of 2016 which do not allow the Primary Teachers to be considered through M.E.S. cadre. Hence it is to be rejected.

7. We are aware that the applicants in all these Original Applicants have secured following marks :-

Name of the Applicant		Marks secured
C.M. Jadhav	O.A.No.405/2022	134 marks
N.K. Gaikwad	O.A.No.448/2022	148 marks.
S.D. Sutar	O.A.No.449/2022	148 marks
S.R. Gadhari	O.A.No.455/2022	92 marks
P.V. Shirbhate	O.A.No.456/2022	74 marks

Thus, the last candidate who has secured 74 marks is fixed as cut-off for M.E.S. Thus, though, the applicants have secured more marks and which appeared to be impressive, prima facie, the candidature of the applicants cannot be considered through M.E.S. cadre and but can be considered only through D.T.S. cadre.

8. We further rely on Rule 3 of the School, Education and Sports Department dated 05.07.2016 which reads as below :

“3. Appointment to the post of Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) shall be made either, -

(A)(1) by promotion of a suitable person on the basis of seniority, subject to the fitness, from amongst the persons holding the post of Maharashtra Education Service, Group-C, having not less than five years of regular service in that post;

and

(2) by promotion of a suitable person on the basis of seniority, subject to the fitness, from amongst the persons holding the post of District Technical Service, Group-C, having not less than five years of regular service in that post;

or

(B)(1) by selection of a suitable persons on the basis of merit list prepared on the basis of Limited Departmental Competitive Examination to be held by the Commission from amongst the persons holding the post of Maharashtra Education Service, Group-C, having not less than five years of regular service in that post;

and

(2) by selection of a suitable person on the basis of merit list prepared on the basis of Limited Departmental Competitive Examination to be held by the Commission, from amongst the persons holding the post of District Technical Service, Group-C, having not less than five years of regular service in that post;

9. The main prayer of all the applicants is that they are to be allowed to appear for the interview for the post of Deputy Education Officer, Group-B. At the time of hearing the matter for interim relief this Tribunal by relying on the order dated 04.10.2018 passed in O.A.No.634 of 2017 has held that the applicants, Primary Teachers who are working in the

Zilla Parishad can be considered only through D.T.S. cadre and they cannot be considered through M.E.S. cadre. However, at that stage learned P.O. requested for time to file affidavit-in-reply and so also applicants wanted to make the elaborate arguments on the interpretation of the Rules and has submitted that some provisions in the Recruitment Rules of 2016 were not brought before the earlier Bench and hence were not considered. Hence, we did not dispose of the matters, so also the date of interview was not fixed. In the earlier judgment this Tribunal has already taken specific view allowing the Primary Teachers through D.T.S. channel. So before us the compass has narrowed down to only M.E.S. and, that too, restricted the interpretation of Rules of 05.07.2016 as argued by the learned Advocate. We have perused the Appendix IV which is in vernacular marathi language. It states that the Junior Extension Officer (Education), Assistant Education Deputy Inspector and Assistant Education Officer (Junior), these three posts are to be filled up from Primary Teachers who have put-in minimum 7 years service. However, learned Advocate has lost sight that the Appendix IV in Column No.2 states about the cadre and Column No.3 states about the posts. Thus, in Column No.3 these three posts are mentioned and in Column No.2 the service and cadre is mentioned as D.T.S., Group-C (Education) II.

10. We are unable to appreciate the submissions of learned Advocate that the Primary Teachers are to be allowed to appear from M.E.S. cadre for the post of Deputy Education Officer, Group-B. It is to be noted that some of the Primary Teachers who were allowed to appear for the examination on the basis of earlier order in O.A.No.634/2017, have secured more marks than the cut-off marks of 150 and therefore they

were considered and selected from D.T.S. cadre. Applicants could not succeed to secure better and higher marks i.e. 150 marks and therefore they have approached the Tribunal with a grievance that they are to be considered from M.E.S. cadre. Submissions made by learned P.O. that the similar request was made in O.A.No.634/2017 and this Bench has made only one avenue of D.T.S. open for the Primary Teachers and the said order was not challenged by earlier or present applicants. Thus, as on today the said order holds field.

11. Moreover, in M.E.S. for 31 posts, 48 candidates have appeared and therefore all available candidates were allowed to appear for the interview. All the candidates were allowed to have choice in selection.

12. In view of the above, we find no merit in the Original Applications and they are dismissed.

Sd/-
(Medha Gadgil)
Member(A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

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