

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.523/2023

DISTRICT:- AURANGABAD

Dnyaneshwar s/o. Mohan Pansare,
Age : 39 years, Occ. Service as Assistant
Deputy Education Inspector, Deputy Director
of Education Aurangabad Division,
Aurangabad, Dist. Aurangabad.

...APPLICANT

V E R S U S

1. Maharashtra Public Service Commission,
Through its Secretary,
Trishul Gold Field, Plot No.34,
Opp. Sarowar Vihar, Sector 11,
C.B.D. Belapur, Navi Mumbai-400614.

2. The State of Maharashtra,
Through Secretary,
Department of School Education,
Mantralaya, Mumbai-32.

...RESPONDENTS

APPEARANCE : Shri Sachin S. Deshmukh, Advocate
for the Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Reserved on : 19-10-2023

Pronounced on : 06-11-2023

**O R D E R
(PER: JUSTICE SHRI P. R. BORA, V.C.)**

1. Heard Shri Sachin S. Deshmukh learned
Counsel for the Applicant and Shri V.R.Bhumkar learned
Presenting Officer for the respondents.

2. Present O.A. has been filed seeking following reliefs:

“(A) Original Application may kindly be allowed.

(B) Hold and declare that the applicant is an eligible candidate for interview for the post of Deputy Education Officer (Administrative Branch) Group ‘B’ in response to the Advertisement No.40/2017 dated 17/05/2017 by quashing and setting aside the impugned communication dtd.27/6/2023 issued by the respondent no.1 Commission; and for that purpose issue necessary directions.

(C) The respondent be directed to hold the interview of the applicant for the post of Deputy Education Officer (Administrative Branch) Group ‘B’ in response to the Advertisement No.40/2017 dated 17/1/2017.

(D) Any other relief as the Tribunal deems fit may kindly be granted in the interest of justice;”

3. The matter pertains to appointment on the post of Deputy Education Officer in Maharashtra Education Service, Group-B (Administrative Branch). The State Government had issued an advertisement on 17-05-2017 thereby inviting applications from the candidates willing for appointment on the said post. 31 posts were to be filled in from amongst the candidates falling in Group-C of the Maharashtra Education Service and 92 posts were to be filled in from amongst the candidates working in the District Technical Service, Group-C.

4. Applicant applied for the aforesaid post and passed the written examination held in that regard. After successfully clearing the written examination the applicant and all successful candidates were asked to submit requisite documents and accordingly the relevant necessary documents were submitted by the applicant. Vide communication dated 24-06-2023 MPSC declared the list of 45 eligible candidates and the schedule for interview of the said candidates. The name of the applicant appeared in the said list at Sr.No.29. On 27-06-2023 the applicant appeared before the MPSC for the purpose of interview. Respondents, however, vide order dated 27-06-2023 declared the applicant ineligible on the ground of not having the experience of 5 years as on 01-01-2017 i.e. the date on which the advertisement was published. It is the grievance of the applicant that he has been held ineligible for wrong reasons.

5. It is assertive contention of the applicant that he possesses experience of 5 years as on 01-01-2017 of having worked on the post of District Technical Service Group-C. The applicant submitted the representation to respondents for considering him for grant of promotion, however,

respondents did not respond to the said representation. The applicant has in the circumstances approached this Tribunal seeking the reliefs as are reproduced by us hereinbefore.

6. Respondent no.1 i.e. MPSC has not filed its affidavit in reply. Respondent no.2 has filed affidavit in reply contending therein that the applicant is not holding the required experience and that is the reason that his candidature cannot be considered for the post of Deputy Education Officer.

7. Shri Sachin Deshmukh, learned Counsel appearing for the applicant argued that the scrutiny of the application form presented by the applicant was made before issuance of the admit card for the written examination and only after finding the applicant eligible, admit card was issued in his favour. Learned Counsel further submitted that inclusion of the name of applicant in the list of qualified candidates for the post of Maharashtra Education Service, Group-B (Administrative Branch) at Sr.No.25 amongst 48 candidates leads to an only inference that the applicant was held eligible for his selection to the post of Deputy Education Officer. Learned Counsel further

submitted that the Deputy Director (Education), Aurangabad Region, Aurangabad vide his order dated 18-10-2019 has accepted the request of the applicant for clubbing services rendered by him as Secondary Teacher in Zilla Parishad School, Akola, which is the post of District Technical Service, Group-C with his service being rendered in Maharashtra Education Service, Group-C for all service purposes, and as such, the experience of the applicant is of the period more than 8 years. Learned Counsel further submitted that the MPSC has wrongly declared the applicant ineligible on the count of lack of requisite experience.

8. Learned Counsel referred to the judgment of the Tribunal at the Principal Seat at Mumbai in O.A.No.634/2017 delivered on 04-10-2018. Learned Counsel submitted that Primary Teachers who are serving in the employment of Government of Maharashtra and whose qualification and eligibility corresponds with column 4 of Appendix IV of Part I of the Maharashtra Zilla Parishad (District Services) Recruitment Rules, 1967, are declared eligible to apply to the post of Deputy Education Officer. According to the learned Counsel having regard to the aforesaid judgment, the services rendered by the applicant

on the post of Secondary Teacher deserve to be clubbed with the services the applicant is presently rendering falling in the category of District Technical Service, Group-C.

9. In support of his contentions, learned Counsel has relied upon the following three judgments:

“(1) Renu Mullick (Smt) V/s. Union of India and Another reported in [1994 (1) SCC 373]

(2) Union of India and Another V/s. V.N.Bhat reported in [2003 (8) SCC 714]

(3) State of Maharashtra and Others V/s. Uttam Vishnu Pawar reported in [2008 (2) SCC 646]”

Shri Bhumkar, the learned P.O. supported the impugned order stating that it is in tune with the Recruitment Rules of 2016.

10. We have carefully considered the submissions made on behalf of the applicant as well as the respondents. We have also gone through the documents produced on record by the parties. Applicant has been held ineligible on the ground that he does not possess prescribed experience of 5 years as provided under Clause 3.2 of the advertisement/Government Circular dated 17.5.2017. According to the applicant, on wrong interpretation of the

relevant provisions he has been declared ineligible. It is the contention of the applicant that the Deputy Director of Education has already issued an order to consider the period rendered by the applicant as Secondary School Teacher as the period of service under the State Government for all purposes and to club it with the present services. As has come on record the applicant has worked as Secondary School Teacher for the period of 3 years 7 months and 12 days, as the Assistant Education Inspector for the period of 1 year 6 months and 15 days and as District Science Supervisor for the period of 3 years and 16 days. The total period of service is thus claimed as 8 years, 2 months and 13 days. The post of Assistant Education Inspector and the District Science Supervisor fall in the category of Maharashtra Education Service Group-C, whereas the post of Secondary School Teacher falls in the category of District Technical Service Group-C.

11. The contentions as are raised by the applicant require to be considered in light of the provisions under the relevant rules.

12. Government of Maharashtra issued notification dated 05-07-2016. By this notification Rules titled as

“Deputy Education Officer in Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) Recruitment Rules, 2016 [“Recruitment Rules of 2016” for short] have been notified. As per the provisions under the aforesaid Rules appointment on the post of Deputy Education Officer can be made by promotion, selection through Limited Departmental Competitive Examination (“LDCE” for short) and nomination in the ratio of 30:20:50, respectively. Clause 3.2 of the said Rules stipulates that the appointment to the post of Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) [for brevity hereinafter referred to as “Deputy Education Officer”] shall be made by selection of suitable person on the basis of merit list prepared on the basis of LDCE to be held by the Commission from amongst the persons holding the post of Maharashtra Education Service, Group-C and District Technical Service Group-C having not less than 5 years of regular service in that post.

13. In the present matter posts are to be filled in through LDCE. Clause 3 of the advertisement dated 17-05-2017 deals with the eligibility criteria. Clause 3.1 provides that the persons holding the posts of Maharashtra

Education Service, Group-C and persons holding posts of District Technical Service Group-C are eligible for the promotion to the post of Deputy Education Officer. Clause 3.2 further provides that eligible person must have rendered not less than 5 years of regular service in the said post. Clause 3.3 provides that period of regular service shall be counted from the date of appointment in respect of persons who have been appointed by nomination and for the promoted person from the date of his regular promotion. Rule 4 of the said Rules of 2016 provides that the appointment to the post shall be made by promotion, selection through LDCE and Nomination in the ratio of 30:20:50, respectively. Rule 3(2)(B)(1) and Rule 3(2)(B)(2) of the said Rules of 2016 are relevant in this regard which read thus (paper book page 49 of O.A.) :-

“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)

and

(2)

or

(B)(1) 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 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;”

14. Rule 4 is also relevant in this regard which reads thus:-

“4. Appointment to the post shall be made by promotion, selection through limited departmental competitive examination and nomination in the ratio of 30:20:50 respectively:

Provided that, appointment by promotion from the Maharashtra Education Service, Group-C and District Technical Service, Group-C shall be made in the ratio of 7.5 : 22.5 respectively :

Provided further that, appointment by selection through limited departmental competitive examination from the Maharashtra Education Service, Group-C (Administrative Branch) and District Technical Service, Group-C shall be made in the ratio of 5:15 respectively,”

15. In the present matter as per Circular dated 17-05-2017 total 123 posts were to be filled in through LDCE out of which 31 posts were to be filled in from amongst the persons holding the post of Maharashtra Education Service, Group-C and 92 posts from amongst the persons holding the post of District Technical Service,

Group-C. Second proviso to Rule 4 provides that appointment by selection through LDCE from the Maharashtra Education Service, Group-C (Administrative Branch) and District Technical Service, Group-C shall be made in the ratio of 5 : 15, respectively. It is thus evident that 20% posts are to be filled in through LDCE, 5% thereof are to be filled in from the Maharashtra Education Service Group-C (Administrative Branch), whereas 15% thereof are to be filled in from amongst the persons holding the post of District Technical Service, Group-C. The experience of 5 years is common for the candidates belonging to both the branches.

16. As contended in the Original Application, after initial appointment as Secondary Teacher on 18.10.2008 applicant appeared for the examination of Maharashtra Education Service, Group-C and joined on 30.5.2012 on the post of District Science Supervisor with Zilla Parishad, Beed without there being any break. Thereafter, the applicant joined the post of Assistant Deputy Education Inspector with the office of the Deputy Director of Education, Aurangabad, Division Aurangabad and is still working in the said office. It is the contention of the learned counsel for the applicant that service rendered by

the applicant on all the posts are to be clubbed and if it is done so the applicant does possess the experience of 5 years as prescribed in the advertisement as well as in the Rules of 2016.

17. The applicant is working on the post which falls in Maharashtra Education Service, Group-C. It is not in dispute that the applicant had also worked on the post falling in the category of District Technical Service, Group-C i.e. on the post of Secondary School Teacher. As is revealing from the experience certificate submitted by the applicant, he worked on 2 posts in the Maharashtra Education Service, Group-C; first on the post of Assistant Deputy Education Inspector for the period of 1 year 6 months and 15 days, and the other, on the post of District Science Supervisor for the period of 3 years and 16 days. The total period for which the applicant had experience of working on the post falling in Maharashtra Education Service, Group-C is of 4 years and 7 months. The experience certificate further demonstrates that on the post of Secondary School Teacher which falls in District Technical Service, Group-C, the applicant had worked for 3 years, 7 months and 12 days. If the period of service rendered by the applicant on the post falling in

Maharashtra Education Service, Group-C and District Technical Service, Group-C is clubbed, his total period of service comes to 8 years, 2 months and 13 days.

18. The question to be determined is whether the period of service rendered by the applicant on the posts falling in the aforesaid two categories can be clubbed ?

19. The applicant is claiming to be holding more than 5 years of experience by clubbing the services rendered by him on the posts falling under Maharashtra Education Service, Group-C and District Technical Service, Group-C. It has been argued that because of the order passed by Deputy Director of Education, Aurangabad Region, Aurangabad on 18-10-2019, the services rendered by the applicant on the post of Secondary School Teacher in Zilla Parishad School are clubbed together with the service rendered by the applicant on the post of Assistant Deputy Education Inspector and the District Science Supervisor under the Government and as such the total period of service of the applicant is more than 8 years. The argument so advanced is difficult to be accepted. We have carefully gone through the order dated 18-10-2019. It reveals that the services rendered by the applicant in Zilla

Parishad School are directed to be considered as a service under the State Government for the purposes of pension, gratuity and other benefits related to that. It is, thus, evident that even on the basis of the said order no such conclusion can be recorded that the applicant has experience of 5 years holding the post of Maharashtra Education Service, Group-C or on the post of District Technical Service, Group-C.

20. The provisions under Rules of 2016, do not support the contention of the applicant. No doubt, the persons holding the post of Maharashtra Education Service Group-C and District Technical Service Group-C both are eligible for promotion to the post of Deputy Education Officer through LDCE. However, as provided under Rule 3(2)(B)(1) and Rule 3(2)(B)(2), the persons aspiring for such appointment must possess not less than 5 years of regular service either in the post of Maharashtra Education Service Group-C or the District Technical Service, Group-C. However, Rules do not permit the clubbing of services rendered under Maharashtra Education Service, Group-C and District Technical Service, Group-C. The applicant who is presently working on the post of Maharashtra Education Service, Group-C, therefore, was required to

have not less than 5 years of regular service in the post or posts of Maharashtra Education Service. The applicant is admittedly not having experience of 5 years holding the post of Maharashtra Education Service, Group-C. The applicant also does not have the experience of 5 years' regular service on the post of District Technical Service Group-C.

21. It is significant to note that as per second proviso to Rule 4, out of total 123 posts to be filled in of the Deputy Education Officer through LDCE 31 posts are prescribed to be filled in from amongst the persons holding the posts of Maharashtra Education Service, Group-C whereas 92 posts are prescribed to be filled in from amongst the persons holding the post of District Technical Service, Group-C. The ratio of 5 : 15, thus, has been maintained. Having considered the Recruitment Rules of 2016, percentage of posts to be filled in from amongst the persons holding the post of Maharashtra Education Service Group-C and from amongst the persons holding the post of District Technical Service, Group-C has been distinctly provided.

22. Considering the provisions as aforesaid under the Rules of 2016, it is quite evident that the candidates from amongst the persons holding the posts of Maharashtra Education Service Group-C can compete for 31 posts as specified in the Government Circular dated 17-05-2017 and are required to have not less than 5 years of regular service on any of the posts of Maharashtra Education Service, Group-C. Similar will be position for the candidates holding the post of District Technical Service, Group-C. The only distinction is that the number of posts prescribed for them is 3 times more than the posts prescribed for the candidates from amongst the Maharashtra Education Service, Group-C. However, even for the candidates from amongst holding the post of District Technical Service Group-C, the criteria of experience is the same that he must have not less than 5 years of regular service in any of the posts falling under District Technical Service Group-C.

23. In Schedule-B appended to the Rules of 2016, in part 1 thereof designations are provided which would fall in Maharashtra Education Service Group-C and in part 2 thereof the designations are provided which would fall in District Technical Service, Group-C. Considering the

position of Rules as aforesaid there seems no error on the part of MPSC in declaring the applicant ineligible for his appointment on the post of Deputy Education Officer through LDCE for want of experience of 5 years on the post of Maharashtra Education Service, Group-C.

24. Learned Counsel for the applicant relied upon the following judgments to substantiate the contentions raised by him that the services rendered by the applicant on the posts held in Maharashtra Education Service Group-C and District Technical Service Group-C are liable to be clubbed and the total experience will be in compliance with the requirement as envisages in the Government Circular dated 17-05-2017 as well as under the Recruitment Rules of 2016. Judgments relied upon by the learned Counsel for the applicant, are thus:

“(1) Renu Mullick (Smt) V/s. Union of India and Another reported in [1994 (1) SCC 373]

(2) Union of India and Another V/s. V.N.Bhat reported in [2003 (8) SCC 714]

(3) State of Maharashtra and Others V/s. Uttam Vishnu Pawar reported in [2008 (2) SCC 646]”

25. We have considered the judgments relied upon by the learned Counsel for the applicant. There cannot be a dispute about the ratio laid down in the aforesaid judgments. However, the law laid down in the aforesaid judgments would not apply to the facts of the present case. In the present matter, appointments are being made in accordance with the Recruitment Rules of 2016. As elaborately discussed by us hereinabove the Recruitment Rules do not permit clubbing of services rendered in Maharashtra Education Service Group-C and District Technical Service, Group-C. The applicant has not challenged the validity of the Recruitment Rules. The respondents have declared the applicant ineligible in accordance with the provisions under the said Rules. In the circumstances, we uphold the decision of MPSC impugned in the present application.

26. In case of **Renu Mullick**, *cited supra*, there was specific provision in the Rules providing for clubbing of the services. In the present matter, as discussed hereinabove, Rules do not provide such clubbing of services. In the case of **V.N.Bhat**, *cited supra*, issue involved was pertaining to the benefits in case of transfer of an employee from one department to another. As such, that judgment also

cannot be made applicable in the present matter. The judgment of the Hon'ble Apex Court in the case of **Uttam Vishnu Pawar**, *cited supra*, also will not be applicable in the present case which is based on the decisions rendered in the case of V.N.Bhat and Renu Mullick, *cited supra*.

27. We reiterate that in absence of any challenge to the Rules governing the appointments of Deputy Education Officer, we are unable to accept the contentions raised on behalf of the applicant. Impugned order is in consonance with the Recruitment Rules of 2016 and hence requires no interference.

28. For the reasons stated above the O.A. fails and is accordingly dismissed, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 06-11-2023.