



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.3345 OF 2024

(Ms. Dhanshree d/o. Balanand Tapre Vs. State of Maharashtra, through its Secretary,
Department of Rural Development, Mumbai and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Pushkar Ghare, Advocate for Petitioner.
Dr. Milind Sathe, Advocate General along with Mr. S.V. Narale,
Assistant Government Pleader for Respondent Nos.1 and 4.
Mr. V.M. Kulange, Advocate for respondent No.3.
Mr. A.A. Dhawas, Advocate for respondent No.5.

CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.

RESERVED FOR ORDER : 27th APRIL, 2026.

DATE OF PRONOUNCEMENT OF ORDER : 08th MAY, 2026.

1. We have heard Mr. Pushkar Ghare, learned counsel for the petitioner, Dr. Milind Sathe, learned Advocate General along with Mr. S.V. Narale, learned Assistant Government Pleader for the respondent Nos.1 and 4, Mr. V.M. Kulsunge, learned counsel for the respondent No.3 and Mr. A.A. Dhavas, learned counsel for the respondent No.5.

2. The matter was heard only on the constitutional validity of clause (iv) of Appendix IV of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967.

3. Before proceeding further, clause (iv) is reproduced as under :

“(iv) possess at least 3 years teaching or administrative experience on the Government approved post, in recognized institution, either in Primary School or

Secondary School or Higher Secondary School or D.Ed. College; or”

4. The learned counsel for the petitioner submits that the petition prays for setting aside the letter dated 30th May, 2024, 28th May, 2024 issued by the respondent No.3 and further prays for a direction to the respondents to include the petitioner in the final select list of Extension Officer (Education) and to appoint her on the said post. It also prays for quashing the final select list dated 7/6/2024 published by the respondent No.4. It prays for quashing and setting aside of its clause (iv) of Appendix IV of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967.

5. On 27/4/2026, after hearing learned counsels for both the parties, we have reserved the matter to decide on the constitutional validity of the said clause. Accordingly, we have heard learned counsel appearing for the parties.

6. The facts, which are more or less undisputed, are as under :

That the petitioner having completed her B.Sc., M.Sc. (Chemistry) and B.Ed. worked as a Post-Graduate Teacher Higher Secondary at New Horizon Scholars School, Kavesar, Thane (C.B.S.E. affiliated) from 16/7/2018 to 23/12/2021.

7. On 4/8/2023, the respondent No.4 published an advertisement bearing No.01/2023 for filling up vacant Group ‘C’ posts through direct recruitment/nomination. Out of the 18 posts advertised, three posts were reserved for O.B.C., of which one post is reserved for women. Petitioner belonging to ‘Teli’ caste, which is recognized under the O.B.C. category, applied

for the said post of Extension Officer on 25/8/2023. She also appeared for the online examination and secured 166 marks. Pursuant to the examination, the respondent No.4 published a provisional select list wherein the name of the petitioner was listed at Sr.No.1 under the Open (Women) category. On 9/3/2024, the respondent No.3 issued a communication to the petitioner calling upon her to appear for physical verification of documents on 11/3/2024. Accordingly, when the petitioner appeared for physical verification, the officials of the respondent No.3 informed the petitioner that there is no approval by the Government and hence upon request of the petitioner the said School i.e. New Horizon Scholars School, Thane, issued an email on 12/3/2024 stating that the C.B.S.E. registration number of the petitioner was 1649320.

8. In the backdrop of these facts, on 28/5/2024, the petitioner received a letter issued by the respondent No.4 stating that the petitioner is disqualified on the count that she does not satisfy the requirement of experience on a Government approved post for three years. It was stated that the petitioner does not satisfy the requirement under the Maharashtra Zilla Parishad District Services Recruitment Rules, 1967.

9. This prompted the petitioner to move a representation on 30th May, 2024 requesting them to reconsider the said disqualification. However, on the even date i.e. on 30th May, 2024 itself, the petitioner received a letter from the respondent No.3 stating that her experience is in a private un-aided school affiliated to C.B.S.E., which is not having a personal approval by the competent authority to the

Government approved post. This action is challenged in the petition along with the constitutional validity of the of clause (iv) of Appendix IV as stated supra.

10. The learned counsel for the petitioner submits that bare perusal of the said clause would reveal that the said clause contemplates three years teaching or administrative experience on a Government approved post in recognized Institution and the petitioner is duly qualified in pursuance to the said clause. He further submits that the condition of having teaching or administrative experience on the Government approved post has no reasonable nexus with the object sought to be achieved i.e. of having an appointment of Extension Officer (Education). He further submits that there is no intelligible differentia inasmuch as the clause leaves out candidates like the petitioners, who are otherwise qualified and have worked in a school affiliated by the C.B.S.E. This as submitted by the counsel for the petitioner violates Article 14 of the Constitution of India and, therefore, the said clause is required to be declared unconstitutional. He relies on a judgment of this Court in **2024 SCC Online Bom. 618, Sushil Chokhaji Bambole and another Vs. State of Maharashtra, through its Secretary and others.**

11. To support his plea he submits that 'the Court has to consider and understand the scope of applicability of the doctrine of "*Lex non-cogit. marked portion ad impossibilia.*" (*the law does not compel a man to do what he can not possibly perform*); "*impossibilium nulla obligatio est*" (*the law does not expect a party to do impossible*).' He further submits that the experience in a C.B.S.E. school can also be considered and,

therefore, prays for declaration of the clause being unconstitutional. He also relies on a judgment of this Court in Writ Petition No.1920/2023, in which co-ordinate Bench of this Single Judge of this Court has held that the provisions of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 would be applicable to the schools being administered by the petitioner therein.

12. Per contra, the learned Advocate General has stated that the clause is perfectly legal and valid. He submits that the scheme of 1967 Rules has to be read as a whole. He further submits that before the amendment, 'the post to which the recruitment was to be made were (i) Extension Officer (Education), (ii) Assistant Education Officer, (iii) Senior Assistant Deputy Educational Inspector. Now, the recruitment is to the post of Extension Officer (Education) and the qualifications are mentioned in the appendix appended thereto. It is his submission that the qualification and experience requirements provided under the new post provided under the new Rules is a specified educational qualification and three years teaching or administrative experience on the Government approved post. He further submits that the prescribed experience satisfies the test of intelligible differentia and reasonable nexus in its entirety. It is his submission that the eligibility criteria described under the Rules requires a candidate to possess three years of teaching or administrative experience on a Government approved post. He submits that the post to be filled in is a post of Extension Officer (Education), by way of direct recruitment or nomination. Thus, it is his submission that the duties attached to the said post the

Government has consciously prescribed experience in “Government or Government recognized institutions”, since it ensures familiarity with the administrative procedures, statutory compliance and public accountability. He, therefore, submits that such a classification between the persons working in Government approved post in recognized institution and persons not working on the said institutions is a reasonable classification founded on intelligible differentia and, therefore, the Clause (iv) of the Appendix IV cannot be faulted with. He relies on a judgment of the Delhi High Court reported in **2018 SCC Online 8392, Pratyush Anand Mishra and others Vs. Union of India and others**. He also relies on a judgment of Hon’ble Apex Court in **Zahoor Ahmad Rather Vs. Sheikh Imtiaz Ahmed (2019) 2 SCC 404**.

13. Rival contentions call for our consideration.

14. As can be seen from the clause (iv), Entry 2, column 4, Part I, Appendix IV of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1976 is concerned, it prescribes for administrative experience on a Government approved post in recognized Institution. Here, Rule 2 (vi), defines “Government” as under, while 2 (vii) defines “Recognized” as under :

“(vi) *“Government” means the Government of Maharashtra.*

(vii) *“Recognized” means recognized by Government”*

15. As has been rightly submitted by the learned Advocate General, the post to be filled in is of a Extension

Officer (Education). Thus, it is the prerogative of the employer i.e. Zilla Parishad on the basis of Rules framed by the State to appoint a candidate who is having experience in Government or Government recognized Institution in view of the nature of duties attached to the said post. As held by the Hon'ble Delhi High Court in the judgment of *Pratyush Anand Mishra* (supra), it is the exclusive domain of the employer to decide upon the eligibility for the post to be filled in. In the judgment of *Pratyush Anand Mishra* referred supra advertisement for the post of Law Officer (E1 Grade) required that a candidate should have a Bachelor's degree in law (BL or LL.B.) from the Colleges approved by Bar Council of India and one year's post-qualification experience as an Executive/Officer in the Legal set up of the Government/Semi-Government/ Public Sector Undertakings/Nationalized Banks/Listed Companies on NSE/BSE. In the said matter a grievance was made that the experience qualification cannot be an essential qualification as in other public sector undertaking it is not so. Having heard the matter, the Delhi High Court held that the mandatory requirement of one year's experience in Government/Semi-Government/Public Sector Undertakings/ Nationalized Banks/Listed Companies on NSE/BSE cannot be said to be arbitrary for the reason that experience in the abovesaid forums facilitates the effective functioning of law officers in the respondent organization. It is not that the lawyers are completely excluded. It is only as per the advertisement that further experience as a lawyer or of working in reputed law firms is desirable. So, it cannot be said that there is any hostile discrimination by requiring one year's mandatory experience in

the afore-referred forums or organizations. It was further held that it is not the duty of the Courts to consider the relevance of the qualification prescribed for any post. It is essentially a policy matter and it is up to the employer to prescribe qualification whether mandatory or otherwise.

16. Furthermore, as relied by the learned Advocate General, the judgment of *Zahoor Ahmed Rather and others* referred Supra in para 26 and 27 it is held as under.

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K.5 in the subsequent decision in Anita. The decision in Jyoti K.K.5 turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K.5 turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the

appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

*27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job. the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K.5* must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K.5* turned.”*

17. Thus, it can very well be said that the prescription of qualification for a post is a matter of recruitment policy. Thereafter in the judgment of **Dental Council of India Vs. Biyani Shikshan Samiti and another**, reported in (2022) 6 SCC 65, the Hon’ble Apex Court by taking into consideration the entire case law relating to the subject in para 26, 27 and 28 held as under :

*“26. It will be relevant to refer to the following observations of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*: (SCC p. 689, para 75)*

"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

28. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

18. If tested on the touchstone of the above dictum of the Supreme Court, none of the grounds for invalidating a subordinate legislation are made out in the present case. Thus, we do not find any infirmity in the qualification prescribed in clause (iv) of Appendix IV. We, therefore, do not find any merit in the challenge to the constitutional validity of the said clause. The challenge is, therefore, rejected.

19. The petition to proceed further.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)