

WRIT PETITION NO.5068/2019

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<u>CORAM</u> :	AVINASH G. GHAROTE
	ANIL. L. PANSARE AND
	ABHAY J. MANTRI, JJ.

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ORDER : (PER : AVINASH G. GHAROTE, J.)

1. This Full Bench, has been constituted, on account of the referral order dated 02/08/2023 passed in *Writ Petition No.5068/2019 (Dhiraj Narayan Narekar Vs. Maharashtra State Road Transport Corporation through its Divisional Controller)*, in which the learned Division Bench (*Coram : A.S. Chandurkar and Mrs. Vrushali V. Joshi, JJ.*) finding a discord between the views taken in *Vijay Rai Vs. Maharashtra State Road Transport Corporation, 2013 SCC OnLine Bom. 1978* and *Pravin s/o Sahebrao Deshmukh Vs. Vice-Chairman and Managing Director, Maharashtra State Road Transport Corporation, Mumbai and another 2017 (2) Mh.L.J. 860*, which hold in terms of the Government Resolution dated 14/06/1999 (pg.35) and the subsequent Government Resolution dated 28/02/2007 (pg.28) that the equivalence, granted by the Bombay Hindi University, Bombay (Bombay Hindi Vidyapeeth), is not of universal applicability and the other set of judgments, namely, *Pawan Subhash Marale Vs. Maharashtra State Road Transport Corporation, Mumbai and others (Writ Petition No.6505/2013 decided on 30/07/2014)* ; *Gajanan Prakash Otari Vs. The State of Maharashtra through its Secretary, Department of Surface Transport, Mantralaya, Mumbai – 400032 and another (Writ Petition No.*

*No.9879/2015, decided on 04/02/2016) and **Rahul s/o Subhash Patil Vs. The State of Maharashtra, Through its Secretary, Department of Transport, Mantralaya, Mumbai – 32 and another** (Writ Petition No.7233/2016, decided on 27/01/2017) which hold otherwise, has framed the following question to be answered by the Full Bench:*

“Whether the applicability of equivalence prescribed by Government Resolution dated 14/6/1999 is restricted to the matters stated therein or whether such equivalence can also be made applicable to employees of the Maharashtra State Road Transport Corporation ?”

2. We have heard Mrs. Sonal Tripathi, learned counsel for the petitioner and Mr. Rohan Chhabra, learned counsel for the respondents/MSRTC.

3. Mrs. Tripathi, learned counsel for the petitioner while supporting the view taken in **Pawan Subhash Marale; Gajanan Prakash Otari** and **Rahul s/o Subhash Patil** (supra) submits, that the equivalence granted by the Government Resolution dated 14/06/1999 (pg.35) and the subsequent Government Resolution dated 28/02/2007 (pg.28), is of universal applicability and would

entitle a candidate, who possesses the same to make use of the same, for the purpose of securing employment, which requires a candidate to have passed SSC, everywhere. She therefore submits, that the view taken by the above judgments, is the correct one.

4. Mr. Chhabra, learned counsel for the respondent No.1, 5
on the other hand, supports the view taken in ***Vijay Rai*** and ***Pravin Sahebrao Deshmukh*** (supra) to contend that the equivalence granted to the qualification of *Uttama* granted by the Bombay Hindi Vidyapeeth as being equivalent to SSC, cannot be said to be an equivalence, having a general applicability, so as to enable a person 10
to claim satisfaction of the requirement of having passed SSC, where the recruitment rules so require.

5. The concept of 'Interpretation' has been explained in ***Commissioner of Wealth Tax Vs. Smt. Hashmatunnisa Begum and others 1989 Supp (2) SCC 43*** in the following words : 15

"21. The very concept of interpretation connotes the introduction of elements which are necessarily extrinsic to the words in the statute. Though the words "interpretation" and "construction" are used interchangeably, the idea is somewhat different. Dr. Patrick Devlin says [See Samples of Law Making, Oxford University Press, pp. 70-71] :

“A better word, I think, would be construction, because construction, although one often used it alternatively with interpretation, suggests that something more is being got out in the elucidation of the subject-matter than can be got by strict interpretation of the words used. In the very full sense of the word ‘construction’ the judges have set themselves in this branch of the law to try to frame the law as they would like to have it....”

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22. *“A statute” says Max Radin “is neither a literary text nor a divine revelation. Its effect is, therefore, neither an expression laid on immutable emotional overtones nor a permanent creation of infallible wisdom. It is a statement of situation or rather a group of possible events within a situation and as such it is essentially ambiguous.” [See Statutory Interpretation, 43 Harv LR 863 at 868]*

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23. *The observations of Lord Russel of Killowen in Attorney General v. Carlton Bank [(1899) 2 QB 158] though an early pronouncement, is refreshing for its broad commonsense:*

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“I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed.... Courts have to give effect to what the legislature has said.”

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24. *The rule of construction that if the statutory provision is susceptible or admits of two reasonably possible views then the one which would promote its constitutionality should be*

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preferred on the ground that the legislature is presumed not to have intended an excess of its own jurisdiction, is subject to the further rule that it applies only where two views are reasonably possible on the statutory language. If the words of the statute, on a proper construction, can be read only in a particular way, then it cannot be read in another way by a court of construction anxious to avoid its unconstitutionality.

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*In a case, as here, a reference arises under an 'Act', the question of the constitutionality of the 'Act' cannot be examined and pronounced upon. In *State of Punjab v. Prem Sukhdas* [(1977) 2 SCC 774 : 1977 SCC (Tax) 344 : AIR 1977 SC 1640 : (1977) 3 SCR 408] this Court made the point clear: SCC p. 777, para 4 (SCR p. 410):*

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"This amounts to nothing short of legislation. We think that the view is an impossible one. The principle that, where a provision is capable of one of two interpretations, the interpretation which validates rather than one which may invalidate a provision applies only where two views are possible. It cannot be pushed so far as to alter the meanings of the clear words used in an enactment and to, in effect, repeal statutory provisions by making, them useless without holding them to be void."

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(emphasis supplied)

6. In *Sudevanand Vs. State Through Central Bureau of Investigation (2012) 3 SCC 387* while explaining the difference between interpretation and application, this is what has been said :

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“28. Now, the interpretation of a legal provision and its application to a set of facts are two different exercises requiring different approaches.

28.1. “Interpretation” means the action of explaining the meaning of something. For interpreting a statutory provision, the court is required to have an insight into the provision and unfold its meaning by means of the well-established canons of interpretation, having regard to the object, purpose, historicism of the law and several other well-known factors.
But, what is important to bear in mind is that the interpretation of a legal provision is always independent of the facts of any given case.

28.2. “Application” means the practical use or relevance (of something to something); the application of a statutory provision, therefore, is by definition case related and as opposed to interpretation, the application or non-application of a statutory provision would always depend on the exact facts of a given case. Anyone associated with the process of adjudication fully knows that even the slightest difference in the facts of two cases can make a world of difference on the question whether or not a statutory provision can be fairly and reasonably applied to it.”

7. The cannons of interpretation mandate that where the words are plain and unambiguous, a literal meaning has to be given to them. In *Special Land Acquisition Officer Vs. Karigowda and others (2010) 5 SCC 708* this is what has been said in regard to interpretation :

*“30. At the cost of some repetition, we may notice that the provisions of Sections 23 and 24 of the Act have been enacted by the legislature with certain objects in mind. The intention of the legislature is an important factor in relation to interpretation of statutes. The statute law and the case law go side by side and quite often the relationship between them is supplementary. In other words, interpretation is guided by the spirit of the enactment. Interpretation can be literal or functional. Literal interpretation would not look beyond *litera legis*, while functional interpretation may make some deviation to the letter of the law. Unless the law is logically defective and suffers from conceptual and inherent ambiguity, it should be given its literal meaning. -----” Where the law suffers from ambiguity, it is said: (Peerless General Finance case [RBI v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424] , SCC p. 450, para 33)*

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say that if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.”

8. The intention, object and purpose for granting equivalence, has thus to be gathered from the words used in the Government Resolutions, which grant such equivalence, and if these are plain and simple, the natural meaning flowing therefrom, have

to be attributed to such words. It is equally trite, that when words of a restrictive meaning have been used, the user of such restrictive words would indicate that the intention is not to permit them to be used in a wider sense but in a restrictive one.

9. The entire issue depends upon the consideration of the language of the Government Resolution dated 14/06/1999, which reads as under :

“शासन निर्णय : संदर्भीय शासन निर्णयान्वये भारतातील ऐच्छिक हिंदी संस्था, ऐच्छिक संस्कृत संस्था यांनी प्रदान केलेल्या परीक्षांना समकक्ष परीक्षांचा दर्जा, केंद्र शासनाच्या सूचनेनुसार मान्य केला आहे. तसेच केंद्रीय किंवा राज्य विधी मंडळाने अधिनियमाद्वारे भारतातील विद्यापीठाने दिलेल्या पदव्या/पदविका आणि संसदेने अधिनियमाद्वारे इतर शैक्षणिक संस्था स्थापित केल्या आहेत किंवा विद्यापीठ अनुदान आयोगाने घोषित केलेल्या मानीव विद्यापीठांनी प्रदान केलेल्या पदवी/पदविकांना समकक्ष दर्जा देण्याची मान्यता या निर्णयाद्वारे देण्यात येत आहे.

२. ज्या पदवी / पदविकांना समकक्षता दिलेली आहे त्या सोबतच्या विवरणपत्र “अ” मध्ये देण्यात आल्या आहेत.

३. विवरणपत्र “अ” मध्ये दर्शविलेली समकक्षता ही खालील अटींवर राहिल.

अ) ऐच्छिक हिंदी संस्थांच्या परीक्षांना दिलेली मान्यता ही समकक्ष म्हणून नमूद केलेल्या परीक्षेसाठी विहित केलेल्या हिंदीच्या दर्जापुरतीच मर्यादित असेल. संपूर्ण पदवी परीक्षेच्या बरोबर त्यांना मान्यता मिळणार नाही.

ब) ही मान्यता फक्त दुय्यम शाळेतील हिंदी शिक्षकांच्या जागेवर नेमणूक करतेवेळी विचारात घेतली जावी व याप्रमाणे शैक्षणिक पात्रताधारकाची हिंदी शिक्षकांच्या जागेवर हिंदी शिक्षकांची नेमणूक करून मंजूर केलेली वेतनश्रेणी द्यावी.

क)

विवरणपत्र 'अ'
संस्थेचे नाव

क्र.	संस्थेचे नांव	मान्यता दिलेल्या परीक्षा	समकक्ष परीक्षेसाठी विहित केलेला दर्जा
१३.	हिंदी साहित्य संमेलन अलाहाबाद	१) प्रथमा २) मध्यमा (विशारद) ३) उत्तमा (हिंदी साहित्य)	१) एस.एस.सी. २) बी.ए. ३) बी.ए.आनर्स

It is equally necessary to consider the language of the Government Resolution dated 28/02/2007, which is as under :

“पहा:- १) शासन निर्णय, उच्च व तंत्रशिक्षण विभाग, क्र. समक १०९९/१३४/मशि-४, दि.१४ जून १९९९.

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शासन निर्णय :- “बम्बई हिन्दी - विद्यापीठ, मुंबई” या ऐच्छिक हिंदी संस्थेच्या नावात “मुम्बई हिन्दी - विद्यापीठ” असा बदल झाला असल्याने सदर संस्थेने मुम्बई हिन्दी - विद्यापीठ, मुंबई या नावाने दिलेल्या खालील पदव्यांना समकक्षता प्रदान करण्यात येत आहे.

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संस्थेचे नाव	मान्यता दिलेल्या परीक्षक	समकक्ष परीक्षेसाठी विहित केलेला दर्जा
मुम्बई हिन्दी - विद्यापीठ, मुंबई	१) उत्तमा	एस.एस.सी
	२) भाषा रत्न	इंटर (बारावी)
	३) साहित्य सुधाकर	बी.ए.

२. ही समकक्षता शासन निर्णय, उच्च व तंत्रशिक्षण विभाग, क्र. समक १०९९/१३४/मशि-४, दिनांक १४ जून, १९९९ मधील सर्व अटी यापुढेही कायम राहतील या अटीच्या अधिन राहून देण्यात येत आहे.

३.....”

A perusal of the Government Resolution dated 14/06/1999, would indicate that the equivalence granted to a qualification of *Uttama* (Hindi Literature) by the Hindi Sahitya Sammelan, Allahabad as being equivalent to BA Hons., is only for the purpose, as indicated in Clause 3 (b) of the aforesaid Government Resolution, which mandates that the said equivalence would be permissible to be taken into consideration only while appointing Hindi Teachers in Secondary School. The language therefore of Clause 3 (b) of the aforesaid Government Resolution does not indicate, that the equivalence which is granted by the said Government Resolution, is of universal applicability or is to be used for any other purpose than what has been stated therein. On the contrary, the restrictive words “दिलेली मान्यता ही समकक्ष म्हणून नमूद केलेल्या परीक्षेसाठी विहित केलेल्या हिंदीच्या दर्जापुरतीच मर्यादित असेल. संपूर्ण पदवी परीक्षेच्या बरोबर त्यांना मान्यता मिळणार नाही” used in Clause 3(a) by itself would indicate that the equivalence granted is for the limited purpose as indicate in Clause 3(b), therein i.e. for a considering the candidature of an applicant for being appointed as a Hindi Teacher in secondary school.

10. It is also necessary to note that Clause 2 of the Government Resolution dated 28/02/2007 (pg.28), grants

equivalence to *Uttama* as SSC. This, however, is qualified by Clause 2 of the Government Resolution dated 28/02/2007, which states that this equivalence is subject to the terms and conditions as contained in the Government Resolution dated 14/06/1999. A perusal of Clause 3 (a) of the Government Resolution dated 14/06/1999 as pointed out above, would indicate that the equivalence granted therein is only for the purpose of subject 'Hindi' and not for the entire graduate examination. This is further apparent from the restrictive and negative words used therein.

11. So also, as indicated above, the Government Resolution dated 14/06/1999 grants equivalence only for the purpose of appointment as Hindi teacher in Secondary School, as is indicated by Clause 3 (b) of the same. Thus, when the equivalence granted by the Government Resolution dated 28/02/2007, is made subject to the conditions, as contained in the Government Resolution dated 14/06/1999, then in view of what has been stated in Clause 3 (b) of the Government Resolution dated 14/06/1999, it can by no stretch of imagination, be read, beyond the language of Clause 3 (b) to construe the equivalence as being of universal applicability. This is more so, as neither of the Government Resolutions dated

14/06/1999 and 28/02/2007, indicate that the subjects taught for the qualification of *Uttama*, though in Hindi medium, are the same as those taught in SCC, nor has anything to indicate this, has been placed before us, during the course of arguments.

12. We, therefore, find that what has been held in *Vijay Rai* 5 (supra) that Clause 3 (a) thereof shows that the equivalence granted is only for the purpose of subject 'Hindi' and it is not equivalent for the entire graduate examination and further that the equivalence should be accepted while appointing the incumbent on the post of Hindi teachers, is in fact what is spelt out from the plain and simple 10 language of the Government Resolution dated 14/06/1999 read in conjunction with the Government Resolution dated 28/02/2007.

13. The contrary view taken in *Pawan Subhash Marale*, (supra), has also been considered by the learned Division Bench in *Pravin Sahebrao Deshmukh* (supra) in which it has been observed 15 that the judgment in *Pawan Subhash Marale* (supra) does not consider either the judgment in the case of *Vijay Rai* (supra) or for that matter the language of the Government Resolution dated 14/06/1999 or 28/02/2007, which is a correct position, for this is

so indicated from a perusal of the judgment in ***Pawan Subhash Marale*** (supra) as all that it refers to, is merely to the said two Government Resolutions without analyzing its language, scope and applicability. ***Gajanan Prakash Otari*** (supra) also does not consider the language of the aforesaid two Government Resolutions, but 5 merely relies upon ***Pawan Subhash Marale*** (supra), which is also the case with ***Rahul s/o Subhash Patil*** (supra).

14. We are therefore of the considered opinion that considering the language, intent and purpose of the Government Resolution dated 14/06/1999 read with that of the Government 10 Resolution dated 28/02/2007, the equivalence granted to the qualification of *Uttama* by the Bombay Hindi University, as being equivalent to SSC, cannot be said to be of universal applicability but is restricted only to the subject 'Hindi', for the purpose of considering a person to be appointed as a Hindi teacher in 15 Secondary School and not otherwise.

15. We are, therefore, of the further considered opinion that ***Vijay Rai*** (supra) lays down the correct law. For the reasons recorded above, we are constrained to hold that ***Pawan Subhash***

Marale, Gajanan Prakash Otari and ***Rahul s/o Subhash Patil*** (supra)

do not lay down the correct law.

16. The question referred to us is thus answered as follows:

Question	Opinion
<i>Whether the applicability of equivalence prescribed by Government Resolution dated 14/6/1999 is restricted to the matters stated therein or whether such equivalence can also be made applicable to employees of the Maharashtra State Road Transport Corporation ?”</i>	<p><i>The applicability of equivalence prescribed by Government Resolution dated 14/6/1999 is restricted to the matters stated therein, i.e. for appointment of Hindi Teacher in a Secondary School.</i></p> <p><i>The equivalence cannot be made applicable to employees of the Maharashtra State Road Transport Corporation, or for that matter for any purpose, other than for appointment of Hindi Teacher in a Secondary School.</i></p>

17. Having rendered the above opinion, the matter be now 5
placed before the learned Division Bench, to decide the matter on its
own merits, in light of the above opinion.

18. We also express our appreciation to the assistance rendered to us by the learned Counsels, who have addressed us on the issue.

(ABHAY J. MANTRI, J.) (ANIL. L. PANSARE, J.) (AVINASH G. GHAROTE, J.) 5

Wadkar