IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6794 OF 2022

Chandrasing S/o Rama Valvi,
Age : 33 years, Occu. : Asst. Teacher,
R/o. Patel Galli, Sakegaon, Tq. Bhusawal,
Dist. Jalgaon .. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.

2] The Education Officer (Secondary),
Zilla Parishad, Jalgaon

3] Waghur Shikshan Prasarak Mandal,
Sakegaon Through its Chairman,
Dilipsingh S/o Pratapsingh Patil,
Age : 53 years, Occu : Chairman,
R/o. Sakegaon, Tq. Bhusawal,
Dist. Jalgaon

4] Bhadu Rupchand Patil,
Age : 83 years, Occu : Secretary,
Waghur Shikshan Prasarak Mandal,
Sakegaon, R/o. Sakegaon, Tq. Bhusawal,
Dist. Jalgaon

5] Indira Gandhi Madhyamik Vidyalaya,
Through its Headmaster,
Sakegaon, Tq. Bhusawal,
Dist. Jalgaon

6] The Deputy Director of Education,
Nashik Division, Nashik .. Respondents

AND
CIVIL APPLICATION NO. 7853 OF 2025 IN WP / 6794 /2022
(Chandrasing Rama Valvi Vs. The State of Maharashtra and others)

AND
CIVIL APPLICATION NO. 8977 OF 2024 IN WP / 6794 /2022
(Chandrasing Rama Valvi Vs. The State of Maharashtra and others)

AND
CIVIL APPLICATION NO. 2514 OF 2024 IN WP / 6794 /2022
(Chandrasing Rama Valvi Vs. The State of Maharashtra and others)

...
Advocate for petitioner : Mr. R.I. Wakade
Addl.GP for the respondent – State : Mr. P.S. Patil
Advocate for respondents no. 3 and 4 : Mr. S.V. Dixit
Advocate for respondent no. 5 : Ms. Nayana Patil h/f. Ms. Surekha Mahajan
...

CORAM : KISHORE C. SANT AND JITENDRA JAIN, JJ.

RESERVED ON : 29 SEPTEMBER 2026
PRONOUNCED ON : 06 OCTOBER 2026

JUDGMENT (PER – JITENDRA JAIN, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is heard finally.

2. This petition is filed by the petitioner under Article 226 of the Constitution of India seeking direction against respondents no. 3 to 5 for payment of salary from the date of his appointment as Assistant Teacher and further seeks direction for his transfer from unaided division to grant-in-aid division.

3. In sofar as the first prayer is concerned with respect to payment of salary from the date of appointment, both the parties agree that the decision rendered in Writ Petition No. 6509 of 2020 can be made applicable to the present petitioner since issue involved is similar. In our separate order passed today in Writ Petition No. 6509 of

2020, we have directed respondents no. 3 to 5 to make payment of the salary to the petitioner from the date of appointment till the employment continues. However, in the present case, this direction would apply subject to the order passed in Writ Petition No. 14210 of 2023 filed by the petitioner. The petitioner in his Civil Application No. 8977 of 2024 has stated that his name appears in TET examination scam, whereby his result of TET examination has been cancelled and has been permanently debarred from appearing in TET examination in future. Subject to the orders passed in Writ Petition No. 14210 of 2023, the prayer for payment of salary from the date of appointment is allowed till his employment continues. The management would be at liberty to take appropriate action against the petitioner in accordance with law based on the outcome of Writ Petition No. 14210 of 2023 and if the petitioner is found ineligible for any reason.

4. In sofar as the second prayer is concerned with regard to the transfer from unaided division to grant-in-aid division, the issue is now no more res integra. This Court in Writ Petition No. 14956 of 2017 in the case of ***Syeda Shahana Firdaus V. The State of Maharashtra and others*** on 18.03.2024, based on the analysis of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981, has held that it is the right of the management to transfer the teacher

from unaided to aided and the teacher cannot seek such a transfer as a matter of right.

5. Relevant paragraphs no. 10 to 15 of the above judgment in the case of ***Syeda Shahana Firdaus*** (supra), read as under :-

> "***10. The plain reading of the aforesaid provisions depicts that management is empowered to effect the transfers of the employees based on request or exigencies however, rules, no where stipulates right in favour of employees to seek transfer. Even the amended Rule 41-A opens with the words "the management may transfer". The aforesaid provision gives discretion in favour of management to transfer the employee subject to administrative exigency. We are of the considered view that the scheme of the MEPS Act and Rules framed thereunder does not contemplate right in favour of the petitioners to seek transfer from unaided to aided post. The discretion is left to management, conducting more than one school, to transfer any of its employee from one school to another, in case of administrative exigency, promotion or request of the employee subject to administrative convenience.***
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> ***11. Pertinently, respondent no.3 is recognized as minority institute and enjoys the privileges guaranteed under Article 30 of the Constitution of India. This Court in case of Sandeep Babasaheb Chate and Ors. Vs. Shri. Vardhaman Sthanakwasi Jain Shrawak Sangh and Ors., [Writ Petition No.1451/2017] disposed vide order dated 04.04.2019, observed in paragraph no.23 thus:***
>
> > ***"If the Government wanted to grant right to the teachers working on unaided post for transfers from unaided post to aided post, there should have been specific provision to that effect. In absence of statutory provision, the petitioners and others have no right to claim that they should be automatically transferred from unaided post to aided post of the same institute."***
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> ***12. Similarly, giving reference to the right of the minority institute under Article 30 (1) of the Constitution***

of India, as underlined in case of Modern Dental College Vs. State of M.P.[1], this Court further observed that:

> ***"unnecessary interference in the administration of minority institute would violate the constitutional right and it is not permissible, although there can be reasonable restrictions on such rights in order to ensure transparency, fairness and nonexploitiveness of education which is field of larger public interest.".***

13. It is accordingly held that the High Court cannot issue direction under Article 226 of the Constitution of India to transfer the teachers from unaided post to aided post, particularly in case of minority institute.

14. It is trite law that the powers of Writ Court, particularly to issue Writ of Mandamus can be exercised only when the public authority fails to exercise the legal duty. The Writ of Mandamus can be issued in favour of the person, who establishes legal right in himself. Such legal duty emanates from either discharge of public duties or by operation of law. The object of issuing writ of mandamus is to prevent failure of justice. The reference can be given to the observations of the Supreme Court of India in case of Director of Settlements, A.P. and Others Vs. M. R. Apparao and another[2]. When it comes to the issuance of Writ of Mandamus against non-Governmental institute like respondent no.4, particularly, when it is recognized as minority institute, unless it is pointed that there is failure of discharge of legal duties or statutory obligations, this Court would be very slow in invoking jurisdiction under Article 226 of the Constitution of India.

15. Looking to legal position as discussed above, in our view petitioners have failed to establish legal right to seek transfer from unaided to aided post. No such obligation of respondent management is discernible from provisions contained in MEPS Rules or any state policy. Writ Petition sans merit. Hence, stands dismissed."

1 2016 (7) SCC 353
2 (2002) 4 SCC 638

6. In our view, this decision squarely applies to the facts of the present case and, therefore, the prayer sought for transfer by the petitioner from unaided to grant-in-aid, cannot be accepted.

7. The petition is disposed of.

8. Pending Civil Applications, if any, also stand disposed of.

9. Rule stands discharged.

[JITENDRA JAIN]
JUDGE

[KISHORE C. SANT]
JUDGE

arp/

AFTER PRONOUNCEMENT OF JUDGMENT :

10. At the request of learned Advocate Mr. Dixit for respondents no. 3 to 5, operation of the order is stayed for a period of six (6) weeks from today.

[JITENDRA JAIN]
JUDGE

[KISHORE C. SANT]
JUDGE

arp/