

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.**

WRIT PETITION NO.1648 OF 2015.

Shri Ganesh s/o Raghu Jadhav,
age 22 years, occu. Assistant Teacher,
r/o Vitthalnagar, Near Maruti Hospital,
Sangamner, Taluka Sangamner,
District Ahmednagar. .. PETITIONER.

Versus

1. The State of Maharashtra,
through its Principal Secretary,
Secondary School Education Department,
Mantralaya, Mumbai-32.

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.

3. Janata Shikshan Prasarak Mandal,
A & P : Chandanapuri, Tq. Sangamner,
Dist: Ahmednagar,
through its Secretary. .. RESPONDENTS.

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Advocate for Petitioner : Mr.Shelke Shivaji T.
APP for Respondents 1 and 2: Mr.V.H. Dighe.
Advocate for R.No.3: Mr. S.S. Wagh.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

RESERVED ON : 13.04.2015.

PRONOUNCED ON : 15.04.2015.

JUDGMENT: [Per SHINDE, J]

1. The learned Counsel for the petitioner makes an oral prayer to substitute the words "*Assistant Teacher*" by words "*Shikshan Sevak*". Oral prayer granted. Amendment to be carried out forthwith.

2. Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

3. The petitioner herein possesses B.Sc.B.Ed. Qualification. He came to be appointed as Assistant Teacher by respondent No.3, which runs four aided schools by order dated 31st July, 2014. On 2nd September, 2014, respondent No.2 granted approval to the appointment of the petitioner on no grant basis. In Mangaleshwar Vidyalaya run by respondent No.3, there was a workload of Mathematics subject and no teacher of this subject was available. On 20.6.2014 Respondent No.3 proposed to transfer the petitioner to the said school however, the petitioner sought guidance of

respondent No.2, who advised that if the said teacher is granted approval, the transfer can be effected as a “Shikshan Sevak”. On 1.9.2014 the petitioner came to be transferred in Mangaleshwar Vidyalaya as Shikshan Sevak.

4. The respondent No.3 submitted proposal for grant of approval to the appointment of the petitioner. The query raised as regards vacancy also came to be satisfied by respondent No.3. However, the approval came to be rejected on the ground that there cannot be a transfer from unaided to aided school/division and the absorption process of surplus teachers as per Government Resolution dated 20th June, 2014 is not completed. It is contention of the petitioner that the absorption process was virtually completed before the impugned communication. The respondent No.2 by communication dated 2nd February, 2015 informed respondent No.3 that the absorption process is complete.

5. The learned Counsel for the petitioner submits that

in fact, no surplus teacher was to be absorbed in the school of respondent No.3 and therefore, there was no hurdle in granting approval. Similarly, the contention of respondent No.2 that there cannot be transfer from unaided to aided school is also misconceived and is in the teeth of orders of this Court in Writ Petition No.5978 of 2014 and other petitions. It is therefore, submitted that rejection of the approval is unsustainable in law and the petition deserves to be allowed.

6. The learned AGP invited our attention to the affidavit-in-reply filed on behalf of respondent No.2 and submitted that the approval was granted by the respondent No.2 for the post of Shikshan Sevak on unaided basis by its order dated 2nd September, 2014. The respondent No.3 without issuing any advertisement for filling the vacant post of Shikshan Sevak in its aided school, transferred the petitioner for the post of Shikshan Sevak from unaided school to aided school, which is not permissible. It is submitted that there are four excess Assistant Teachers, remained to be absorbed in the

Ahmednagar District and, therefore, unless and until four teachers are absorbed, approval to the transfer of the petitioner from unaided to aided school cannot be granted in view of the policy of the government.

7. We have given careful consideration to the submissions of the learned Counsel for the petitioner and learned AGP, with their able assistance, perused the pleadings in the petition, grounds taken therein and the annexures thereto including the reply filed by respondent No.2. There are two reasons for not granting approval by the Education Officer; firstly, approval granted to the appointment of the petitioner is on non grant basis and secondly, the transfer of the petitioner from unaided to the school receiving grant-in-aid, is not permissible. It is a matter of record that by letter dated 2nd September, 2014 addressed to the President / Secretary, Janata Shikshan Prasarak Mandal, Chandanapuri, Tq. Sangamner, in which petition is serving, the Education Officer had granted approval for his appointment on non-grant-basis. Therefore, it is not open for the Education

Officer to contend that appointment of the petitioner is not in accordance with the relevant procedure / rules. Secondly, so far as filling in backlog of surplus teacher is concerned, the petitioner has placed on record list of 82 institutions / schools wherein directions are given for absorption of surplus teachers, in which name of the respondent No.3 is not mentioned. So far as transfer of the petitioner from one school to another school is concerned, according to the learned Counsel for the petitioner, all the four schools run by the respondent No.3 institution are receiving grant-in-aid except, few divisions, which will also receive grant-in-aid in due course. So far as the contention of the learned AGP that the transfer of the petitioner from unaided post to the post in aided school is concerned, the Division Bench of this Court in case of **Sudhir Dnyandeo Gadakh & ors vs. The State of Maharashtra in Writ Petition No.5978 of 2014** in its order dated 9th October, 2014 in similar fact situation, held that the course adopted by the respondent No.3 of transferring the petitioner from

unaided post to aided post is permissible. This Court has also referred to the judgment/order of this Court dated 12th September, 2012 in the case of *Ms. Sandhya Laxman Ghosalkar vs The State of Maharashtra and others in Writ Petition No.5258 of 2012 with connected petitions* and in case of *Dattu s/o Bhima Thorat vs The State of Maharashtra and others in Writ Petition No.2960 of 2012 dated 11th October, 2012*.

8. To sum up, since the name of the respondent No.3 institution is not included in the list of the institutions which are directed to absorb the surplus teachers, there was no occasion for the respondent No.2 Education Officer to assign the reason of absorption of surplus teachers in case of petitioner. Secondly, when the Education Officer himself has granted approval to the appointment of the petitioner on unaided basis, raising the query that his appointment is not in accordance with the relevant procedure, loses its importance. Thirdly, as already observed, transfer from unaided post to aided post is not expressly prohibited and there is no legal

impediment for such transfer as held by this Court in the aforementioned cases.

9. In that view of the matter, petition is allowed. The impugned communication dated 31st December, 2014 of respondent No.2 rejecting the proposal for approval to the appointment of the petitioner as Shikshan Sevak, stands quashed and set aside. The respondent No.2 Education Officer shall consider the proposal for appointment of the petitioner as Shikshan Sevak in aided post, afresh, considering that he has been transferred on the said post and is not a case of fresh appointment. The said proposal shall be considered expeditiously and preferably within three months from today. Writ petition is allowed accordingly. Rule is made absolute in above terms with no order as to costs.

[P.R. BORA, J]

[S.S. SHINDE, J]

Kadam.