

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

WRIT PETITION NO.5328 OF 2008

Smt. Sayada Mumtaz Jahan Sayad Ahteshamuddin,
Age : 32 Years, Occ: Service as Primary Teacher,
in R-2 School, R/o. House No.6-7-309,
Behind Nutan Kanya School,
Bansilal Nagar, Railway Station Road,
Aurangabad.

PETITIONER

VERSUS

- 1] Talat Shikshan Mandal,
Kabadipura, Aurangabad,
Through its Secretary.
- 2] The Education Officer [Primary],
Zilla Parishad, Aurangabad.
- 3] The Director of Education [Primary],
Central Building, Pune 411 001.

RESPONDENTS

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Mr. Ajay S. Deshpande, Advocate for the Petitioner
Mr. A.M.Karad, Advocate for the Respondent No.1
Mr. Dilip Patil Bankar, Advocate for Respondent No.2
Mr. S.R.Yadav, AGP for the Respondent No.3

...
WITH

WRIT PETITION NO.5330 OF 2008

Smt. Parveen Sultana Abdul Gani,
Age : 43 Years, Occ: Service as Primary Teacher,
in R-2 School, R/o. 5/5/46, Rajashree Colony,
Bhadkal Gate, Aurangabad.

PETITIONER

VERSUS

- 1] Talat Shikshan Mandal,
Kabadipura, Aurangabad,
Through its Secretary.

- 2] The Education Officer [Primary],
Zilla Parishad, Aurangabad.
- 3] The Director of Education [Primary],
Central Building, Pune 411 001. **RESPONDENTS**

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Mr. Ajay S. Deshpande, Advocate for the Petitioner
 Mr. A.M.Karad, Advocate for the Respondent No.1
 Mr. Dilip Patil Bankar, Advocate for Respondent No.2
 Mr. S.R.Yadav, AGP for the Respondent No.3

...

WITH

WRIT PETITION NO.1958 OF 2009

Smt. Sameena Kauser d/o. Sardar Fazal Mohd. Khan,
 Age : 28 Years, Occ: Service as Assistant Teacher,
 in Talat High School, R/o. Asifiya Colony,
 A-6/269, Town Hall, Aurangabad. **PETITIONER**

VERSUS

- 1] Talat Shikshan Mandal,
Kabadipura, Aurangabad,
Through its President.
- 2] The Education Officer [Secondary],
Zilla Parishad, Aurangabad.
- 3] The Education Officer [Primary],
Zilla Parishad, Aurangabad. **RESPONDENTS**

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Mr. Ajay S. Deshpande, Advocate for the Petitioner
 Mr. A.M.Karad & Mr. E.G.Irale, Advocates for the
 Respondent No.1
 Mr. U.B.Bondar, Advocate for respondent Nos.2 and 3.

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

Reserved on : 14.12.2015
 Pronounced on: 23.12.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] In Writ Petition No.5328/2008, the petitioner has taken exception to the impugned order of transfer dated 16.04.2008 at Exhibit-B. In Writ Petition No. 5330/2008, the petitioner has taken exception to the impugned order of transfer dated 16.04.2008 at Exhibit-B. In Writ Petition No.1958/2009, the petitioner therein has taken exception to the impugned order of transfer dated 28.03.2009 at Exhibit-A.

All these three Writ Petitions have been heard together since in all these Petitions exception is taken to the transfer orders against respondent No.1 and also other respondents are common.

In view of the order passed by this Court on 10th February, 2010 in Writ Petition No.1958/2009, even Writ Petition No.1958/2009 was directed to be listed under caption 'final disposal' along with Writ Petition No. 5328/2008 and 5330/2008. Therefore, Rule, taken up for final hearing with the consent of the parties.

Brief facts necessary for adjudication of these Petitions, are as under:

2] It is the case of the petitioners in Writ Petition No.5328/2008 and Writ Petition No.5330/2008 that, they have joined the services as Assistant Teachers in Talat High School, Barudgar Nala, Juna Bazar, Aurangabad, run by the respondent No.1. The petitioners possessed H.S.C. D.Ed. qualifications, and thus, they are qualified for appointments as Primary Teachers. The appointments of the petitioners have been duly approved by the respondent No.2.

It is further the case of the petitioner in Writ Petition No.1958/2009 that, the petitioner joined the services as an Assistant Teacher in the same School, run by the respondent No.1. The petitioner possessed H.S.C. D.Ed. qualification, and thus, she is qualified for appointment as an Assistant Teacher. The appointment of the petitioner has been also duly approved by the respondent No.2.

3] It is further the case of the petitioners that, they have acquired status of deemed permanent employees, by virtue of the provisions of Section 5 [2] of MEPSR Act. The petitioners have been rendering services as Assistant Teachers in Talat High School, Barudgar Nala, Juna Bazar, Aurangabad.

4] It is further the case of the petitioners that, the petitioners are aware that, transfers are incident of service and since they have been transferred at a distance of few meters in Aurangabad itself, they may not be able to sustain challenge to the said order of transfers. Keeping this in mind, upon being transferred from one school to another by order of transfers, they immediately reported at transferred places. The petitioner in Writ Petition No. 1958/2009, joined at transferred place in the month of April, 2009.

It is further the case of the petitioners that, Therefore, for all practical purposes, they have submitted to the order of transfer and respected the same. The distance between the earlier place of transfer and the present place is hardly 300 meters. On this score, the petitioners are not in a position to demonstrate any inconvenience as such and as a result, they opted to submit to the order of transfers and immediately reported to duty.

5] It is further the case of the petitioner that, in order to appreciate the nature of challenge and the reasons therefor, it would be appropriate to know the background on which the petitioners came to be transferred from one

High School to another Primary School. Undoubtedly, the order of transfer in so many words state that, the salary, seniority, service protection shall continue to be as before, even after transfer, which was a predominant factor to dissuade the petitioners from taking recourse to the remedies available to them under law, challenging the order of transfers.

6] It is further the case of the petitioners that, there has been extreme strained relations between most of the employees and management of Talat Shikshan Mandal. The root cause of the strained relations is exploitation of the employees in whatever possible manner. The employees have been made to suffer extreme financial hardship by paying them a meager amount of Rs.1000/- or Rs.2000/- as against their entitlement of Rs.8500/- to Rs. 9000/-. Similarly, huge amount of loan has been shown from the Bank and Society, when in fact none of the employees have received any amount. Resultantly, regular installments towards repayment of the said so-called loan, of which no amount has ever been received by any of the employees, are being regularly deducted. The petitioners, however, were being paid an amount of Rs.5000/- per

month towards salary during 2005-06, 2006-07. It continued upto May 2007 and since then, they are actually receiving an amount of salary which they are legally entitled to, as per the pay scale prescribed. The petitioners are getting an amount of about Rs.9000/- [Rs.Nine Thousand only] or thereabout and the installments are being deducted from the said amount, as the record shows that, they have availed a loan from Bank and society both.

7] It is further the case of the petitioners that, extreme financial harassment of the employees culminated in unrest amongst the employees and there have been police cases / complaints and cross complaints against each other. The respondent Management has also fabricated the record to deprive its employees from their rightful legitimate claim and to bestow underserving benefits to those employees, who are in good books. Writ Petition No. 7375/2007 also came to be filed before this Court wherein this Court directed the Director of Education [Primary], Maharashtra State, Pune to hold a discrete enquiry and to take appropriate decision in respect of the representations of the employees. Pursuant to the aforesaid directions of this Court, on 03.03.2008, the Director of Education

[Primary], M.S., Pune conducted an inquiry and having noticed many irregularities, illegalities, fabrication of record etc., recommended for withdrawal of recognition of Primary Schools run by the respondent No.1 at Kabadipura, Shahanoorwadi at Aurangabad and also at Gangapur.

8] It is further the case of the petitioners that, in spite of voluminous record against the respondent No.1, which is good enough for withdrawal of recognition of all three primary schools of respondent No.1, the respondent No.1 could manage to abort the resolution regarding withdrawal of recognition in the General Body of the Zilla Parishad, Aurangabad. It is an open secret that such Resolutions can conveniently be disapproved for extraneous considerations, which are known to law. The voluminous record at Exhibit-A would make it absolutely clear that, withdrawal of recognitions of the Primary Schools run by the respondent No.1 was very much warranted, having regard to the huge mal-practices, embezzlement of funds, fabrication of record etc. However, since the respondent No.1 to afford to manage the things, the General Body of Zilla Parishad could not pass a Resolution as tabled, in view of horse-trading by the

respondent No.1.

9] It is further the case of the petitioners that, they are indeed aggrieved by the transfer from the Talat High School, Juna Bazar to Talat Urdu Primary School, vide its order of transfers. The said transfers have been effected to rebuke the petitioners for having not acceded to the dictates of the management and thereby to remain associated with the employees who have been agitating against the management, to protest against the extreme financial harassment being made. It is further the case of the petitioner that, joining of the petitioners at transferred places is under compulsion. Had petitioners not joined at the transferred places, petitioners would not have been permitted to perform the duty and solely with an object to ensure earning of their daily bread for their livelihood, they opted to join at the transferred places. However, in the wake of the proceedings relating to withdrawal of recognition, in respect of which documents have been placed on record at Exhibit-A, it is more than clear and it leaves no room for doubt that, those who were not in the good book of respondent No.1, were singled out for being posted in Primary Schools, of which recognition was in

danger. In this view of the matter, if the things are viewed in its right earnest, the *mala fides* on the part of the respondent No.1 are writ large, warranting interference to subserve the ends of justice.

10] It is further the case of the petitioner that, since transfers are prerogative of the management, initially, the petitioners did not feel it appropriate to challenge the order of transfers. However, considering the background and the attending circumstances, petitioners later on felt it appropriate to challenge the said transfers. One of the prime consideration to assail the order of transfers is that, since they joined at the transferred places, their salary has not been released by the respondent No.1. The respondent No.2 has disapproved the transfer of the petitioners and thus refused to accord approval and to release the salary. The said refusal is reported to be on account of the action of withdrawal of recognition proposed by the respondent No.3, to advocate the cause of employees of respondent No.1. Salary of one Smt. Tabassum Rana Yasmin Mohd. Ismail who has been transferred from Primary School to Talat High School is also not being released and both the teachers are being made to suffer at the hands of of

respondent No.1. It is for the respondent No.1 to get the issue settled between respondent No.1 and respondent No. 2, however, the respondent No.1 cannot be permitted to shirk its responsibility to make payment of the salary to the petitioners, having been extracted work from the petitioners. On account of non-payment of salary for more than three and half months, the petitioners are facing extreme financial hardships and it would also culminate in recovering penal interest on the due installments of the loans, which the petitioners never availed in reality.

11] It is further the case of the petitioners that, one more facts deserves consideration of this Court at this stage that, increments which were otherwise due to the petitioner, have been illegally withheld by the respondent No.1. As a matter of fact, withholding of increments is a minor punishment under the Rules, which contemplates adherence to the procedure prescribed. However, with the extreme grudge *mala fides* and vengeance, respondent No. 1 has towards the petitioners, having protested against the financial harassment being made, the respondent No.1 has deliberately withheld two increments, which the petitioner would otherwise eligible and entitled.

12] It is further the case of the petitioners that, they have not been issued order of appointment by the respondent No.1 at any point of time. It has been the practice of respondent No.1 to obtain acknowledgment of the order of appointment, however, the order of appointments is never given to the employees. Still, however, on the basis of the seniority list, pay bill submitted by the respondent No.1, under the signature of the Head Mistress, who also happens to be the Secretary of the respondent No.1, the name of the petitioner appears in the seniority list and pay bills. The said seniority list and pay bill establish that, the petitioners have been working with the respondent No.1 since 1997, 1990 and 2002 respectively. The said list has been obtained by the petitioners from the office of respondent No.2, which also bears the number and date of the order of approval of their appointment. In the list of staff working during 2007-08 as well, against the name of the petitioners, the date of first appointment is mentioned as 01.09.1990.

13] It is the case of the petitioner in Writ Petition No.1958/2009 that, as a result of illegalities after illegalities being committed by the respondent No.1, the respondent

No.2 has directed to deposit an amount of Rs.10,25,022/- deducted from the salary of the teachers / employees working in various schools run by respondent No.1. The Education Officer, Primary i.e. respondent No.3 has also issued a final show cause notice to respondent No.1 on 14.05.2008 seeking explanation from the petitioner for the grave irregularities and illegalities, which is likely to culminate in withdrawal of recognition of primary schools run by respondent No.1. Copies of the said communications dated 14.05.2008 and 02.02.2009 are being placed on record at Exh.F colly, for kind perusal of this Court. In the light of the irregularities and the action in the offing against the respondent No.1, there is every likelihood that the permission of the primary Schools run by the respondent No.2 would be withdrawn. The impugned order of transfer is therefore, required to be considered in the light of the action proposed against the respondent No.1. Since the petitioner has been considered amongst those employees, who are agitating against the respondent No.1 for their legitimate claims, such employees are being selected for being transferred from High School to Primary Section and the blue eyed employees are being chosen to be brought from Primary School to Secondary School. On this

background, in view of the ex-facie unsustainable order of transfer and the malice behind issuance thereof, petitioner seeks to approach this Court to seek protection from this Court, which deserves to be afforded to them, to subserve the ends of justice.

14] It is further the case of the petitioners that, on the aforesaid canvas, they are approaching this Court against the impugned order of transfer and non-payment of salary till date, invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India. Having regard to the extreme financial crisis being suffered by the petitioners, appropriate orders to sub-serve the ends of justice, deserves to be passed.

15] The learned counsel appearing for the petitioner invited our attention to the pleadings in the petition, annexure thereto and submits that, transfers of the petitioners are with vengeance and *mala fide* intention of the respondent No.1. It is further submitted that, in view of the Circular dated 26.10.1990 issued by the Government of Maharashtra, the employees from primary establishment to secondary establishment and vice versa are not permissible. The learned counsel appearing for the

petitioners invited out attention to the pleadings in the Petition and submits that, the petitioners have been made to suffer extreme financial loss by paying them meager amount by the respondent No.1. It is submitted that, the respondent No.1 has committed irregularities, illegalities and fabrication of record. The inquiry was also held against the respondent No.1. However, the respondent No.1 could manage to abort the Resolution regarding withdrawal of recognition in the General Body of the Zilla Parishad, Aurangabad. It is submitted that, the transfers of the petitioners were illegal and contrary to the Government Circular, therefore, the impugned orders deserve to be quashed and set aside.

16] The learned counsel appearing for the respondent No.1, relying upon the averments in the affidavit-in-reply, submits that, the respondent No.1 is a minority institution, which receives grant-in-aid from the State. It is submitted that, as per the provisions of Bombay Primary Education Act, 1947, it is the duty cast upon respondent No.2 i.e. the Education Officer [Primary], Zilla Parishad, Aurangabad, to release the salary of the teachers, working in the minority institution. It was informed to the

respondent No.2 that, the petitioners are transferred from Talat High School, Juna Bazar, Barudgarnala, Aurangabad to Talat Urdu Primary School, Kabadipura / Shahanoorwadi, Aurangabad. It is submitted that, in the Writ Petition averments are made regarding withdrawal of recognition of Talat Urdu Primary School, Kabadipura. It is submitted that, Writ Petition No.7375/2007 was filed before this Court. The respondent No.1 was not made party in the said Petition. On 17.12.2007, this Court directed respondents to decide the issue involved in the Petition on its own merit. Pursuant to the directions given by this Court, the enquiry was conducted and the report was prepared by the Director, Primary Education. As per the provisions contemplated in Bombay Primary Education Act, 1947, the report was kept in the meeting of Education Committee, Aurangabad Zilla Parishad, however, upon considerable debate the proposal to withdraw the recognition of respondent No.1 was refused by the Education Committee. It is submitted that, the petitioners are transferred as per the provisions of law, they joined the service, intimation of their transfers are given to the Education Officer, their pay bills for releasing the salary are already submitted to the Education Officer, Zilla Parishad, Aurangabad. It is submitted that, by the

impugned orders, the petitioners were transferred, and accordingly, petitioners joined services on their respective transferred places, which shows that, the petitioners are accepted the transfer orders and acted upon as per the law. It is submitted that, the allegations made in the Petition against the respondent No.1 are denied in *toto*. The said allegations are without any proof, and there is no substance in the said allegations.

17] The learned counsel also invited our attention to the additional affidavit filed on behalf of the respondent No.1. It is submitted that, the petitioners have been paid regular salary. It is submitted that, the petitioners have been appointed as Assistant Teachers. It is submitted that, since the petitioners are possessing qualifications necessary for the appointment as Primary Teacher, they were appointed as Primary Teacher. It is submitted that, the respondent No.1 is running various Schools. It is submitted that, though the school is named as Talat Urdu High School, the classes are conducted in the said school are from V to VII Standard and VIII to X Standard. The classes from VIII to X are of High School. However, classes from V to VIII are attached in the same school. The

petitioners were teaching to the students studying in V to VII Standard. The transfers were made on administrative ground. It is submitted that, the provisions of Rule 41 of the MEPS Rules enables the management to transfer Assistant Teachers from one school to another school on administrative ground. The said provision does not contemplate that, the schools should take permission of the concerned Authorities for effecting transfer of the employees of the Institution. It is submitted that, the petitioners were transferred having recourse to the provisions of Rule 41 of the MEPS Rules, 1981. The Circular dated 26.10.1990 is in respect of transfers of the teachers from Secondary School. In the present case, the petitioners were transferred, who are working as Assistant Teachers, from Primary Section to another Primary Section of the same management. Therefore, the provisions of Circular dated 26.10.1990 has no application in the facts of the present case. It is submitted that, without admitting but assuming that, the said Circular is applicable, even in the said Circular there is no total prohibition for the transfers from the High Schools to Primary Schools. It is only mentioned in the Circular that, in case some difficulties regarding service or financial loss of the particular teacher

arises in future, in that case the Government will not be responsible for such losses and the management will be held responsible for such loss.

18] The learned counsel further submits that, the petitioner in Writ Petition No.1958/2009 has challenged her transfer order dated 28th March, 2009, by which she was transferred from Talat High School, Barudganwala Primary Section to Talat Urdu Primary School, Shahanoorwadi, Aurangabad. It is submitted that, the said transfer was on administrative ground, without affecting salary or pay of the petitioner.

19] The learned counsel appearing for the respondent No.1 submits that, bald allegations are made against the respondent No.1 by the petitioners without any substance, and therefore, those allegations are totally denied by the respondent No.1.

20] During the course of hearing, the learned counsel appearing for the respondent No.2 invited our attention to the provisions of Rule 41 of the MEPS Rules. He further submitted that, the transfer is an incident of service. It was not necessary for the respondent No.1 to

seek prior permission of the Education Officer for transfer. In support of this contention, the learned counsel appearing for the petitioners placed reliance *Marathwada Banjara Seva Sangh Vs. State of Maharashtra*¹.

21] It is submitted that, since transfers were effected in the year 2008 and 2009, and the interim relief was refused by this Court, this Court may not entertain Petitions after lapse of considerable period.

22] The learned counsel appearing for the respondent No.2, relying upon the averments in the affidavit-in-reply, submits that, the primary establishment and secondary establishment are two different institutions. The schools having standard I to IV or I to VII, if attached with primary schools are the primary establishments and standard VIII to X and standards V to X if attached to secondary schools are secondary establishments. It is submitted that, the primary establishment is controlled by the Education Officer [Primary / Director of Primary, Maharashtra State, and Secondary establishment is controlled by the Education Officer [Secondary] / Director of Secondary, Maharashtra State. It is submitted that, the

1 2004 [4] Mh.L.J. 8

budgetary provisions are also separate from both the establishments. The seniority criteria / lists are also separate for both the establishments. If any employee enters to any of such establishments, either by way of appointment or transfer, from the date of such entry, his / her seniority would be counted and therefore in case of seniority, the earlier services of such of the employee gets affected when he / she is transferred from primary establishment to secondary establishment vice versa, which leads to further problems of promotion, pensionary and other economical benefits, etc.

23] It is further submitted that, as the concerned Government Department has realized the problems, circular dated 26.10.1990 has also been issued to the effect that, the transfer of the employees from primary establishment to secondary establishment and vice versa in the private grant-in-aid schools leads to several complications in respect of any pay fixation, seniority, pensionary benefits etc. However, if the concerned employee specifically gives his / her consent for such transfer / change of establishment, the Education Officer would have no objection for the same but if there is no such

consent, then it is the whole responsibility of the concerned School / Institution in respect of all prospective losses of service conditions and economic consequences, for which the Government would not be responsible. Therefore, vide said Circular, such of the transfers have been prohibited.

24] It is further submitted that, subject matter of transfers of the petitioners and other employees in their places are the transfers from primary establishment to secondary establishment or vice versa of the respondent Institution. It is submitted that, it shows that, the transfers were made way back in the month of April, 2008. However, the proposal for approval has been forwarded to the office of respondent – Education Officer [Primary], after more than three months, that too, without forwarding all necessary information in that respect. The same is the case of submission of pay bills of such of the employees. It is submitted that, unless the transfers are approved by the Education Officer, the pay bill of such of the employee can not be released. It is submitted that, after getting the relevant information from the respondent Institution, the Education Officer [Primary], Zilla Parishad, Aurangabad, found that, the subject matter transfer from one

establishment to other establishment as explained above, has no consent of the petitioners to the same. Therefore, in view of the above said Circular, the same cannot be approved. The Education Officer [Primary], vide communication dated 10.10.2008 has also intimated the said fact to the Head Master of the respondent / concerned Talat Urdu High School. In view of the same, the Education Officer can not release the salary of such of the employees and the same is the responsibility of respondent institution / School.

25] During the course of hearing, the learned counsel appearing for the respondent No.2 submitted that, the respondent No.1 has not sought permission / approval of the Education Officer [Primary] for transfer of the petitioners from secondary school to primary school.

26] It is further submitted that, the respondent – Education Officer [Secondary], Zilla Parishad, Aurangabad communicated respondent No.1 that, *inter se* transfers from one establishment to another establishment cannot be accorded approval arising out of the subject matter transfer. Therefore, relying upon the averments in the affidavit in reply and the afore-mentioned Circular, the

learned counsel appearing for the respondent No.2 submits that, Writ Petitions deserve to be dismissed against the respondent – Education Officer.

27] We have heard the learned counsel appearing for the petitioners, the learned counsel appearing for the respective respondents at length. With their able assistance, we have perused the pleadings in the Petitions, annexure thereto, affidavit-in-replies filed by the respondents, the provisions of MEPS Rules and also the Government Circular dated 26.10.1990. In these two Writ Petitions i.e. Writ Petition Nos.5328/2008 and Writ Petition No.5330/2008, this Court was pleased to issue Rule, however, no interim relief was granted. The petitioners have disclosed in the Petitions that, they have joined at transferred places. It is not in dispute that, the transfers of the petitioners were from one school at Aurangabad to another school at Aurangabad run by the respondent No.1 management. It is also not in dispute that, the petitioners possessed qualifications which was required for appointment as Assistant Teacher [Primary]. It is also not in dispute that, the respondent No.1 management runs more than one School in Aurangabad City and also outside

Aurangabad, at Gangapur. Rule 41 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Rules, 1981, reads thus:

41. Transfers.

- (1) *Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned if it is administratively convenient to do so.*
- (2) *Save in exceptional case, and unless reasons are recorded in writing by the Management, such transfers shall not be effected in the middle of the term.*
- (3) *The Management shall see that the transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfers do not result into loss in the pensionary benefits as admissible to them.*
- (4) *The expenditure on Traveling allowance and Daily allowance if any, at the rates applicable to the Government employees*

of the comparable status, shall be borne by the Management. If the transfer is at the request of the employee, this expenditure shall be borne by the employee concerned. Provided that, the transfer involves change of headquarters, the joining time to be allowed to an employee shall be limited to six days [excluding Sunday] and actual days of journey. Subject to this limit, the period of joining time shall be treated as "duty" for all purposes:

Provided that, an employee shall not be entitled to joining time if transfer is effected during the vacation.

(5) Where a Management runs a secondary school or secondary schools and a Junior College of Education. -

(a) Teachers in a Junior College of Education shall not be transferred to a Secondary school against their will. Such transfers may, however, be made if they are at employees own requests, subject to availability of vacancies in secondary schools. In the event of such a transfer, the pay drawn by the teacher in the

Junior College of Education shall not be protected. He shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly reflexed on his joining the secondary school.

(b) Teachers in secondary school shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made if they are at the employees own requests, subject to the following conditions, namely -

(i) Vacancies should be available in the Junior College of Education;

(ii) The concerned employees shall retain the same place in the common seniority list; and

(iii) Their pay in the Junior College of Education shall be fixed at the same stage of pay as their existing pay or at the minimum of the scale of pay in the junior College of Education, whichever is higher.]

28] Sub rule (1) of Rule 41 prohibits the Management conducting more than one school, to transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned if it is administratively convenient to do so. Upon careful perusal of the impugned orders of transfer issued by the President, Talat Shikshan Mandal, Aurangabad, it appears that, the petitioners were transferred on administrative grounds. It is also further mentioned in the said order that, the service conditions shall remain unaffected. Upon perusal of the sub rule (3) of Rule 41 of the said Rule, the responsibility is cast upon the Management that, transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfers do not result into loss in the pensionary benefits as admissible to them. The said rule does not provide for seeking permission of the Education Officer for such transfer.

29] In the facts of the present case, it is not in dispute that, the petitioners were appointed as Assistant Teacher [Primary], since they possessed qualification of S.S.C./H.S.C. D.Ed. It is true that, from the School from

which petitioners are transferred, same is called secondary school and where petitioners are transferred is a Primary School. However, it is not in dispute that, the petitioners even in Secondary School were teaching to the students studying from V to VII Standards i.e. primary section and not to the students from VIII to X Standards. The School where the petitioners are transferred, the classes are from I to VII Standards. It is specifically mentioned in the transfer orders that, the petitioners' seniority, pay scale, pension salary and service conditions shall remain unaffected due to such transfers. Therefore, upon perusal of the contents of the transfer orders, in the first place the transfer is on administrative ground, and *secondly*, said transfer order is passed ensuring that, the transfers do not adversely affect the pay or pay scale of the petitioners and that such transfers will not result into loss in the pensionary benefits as admissible to the petitioners. Therefore, the transfer order has taken care of the mandate of sub-rule (3) of Rule 41 of the said Rules.

The contention of the learned counsel appearing for the petitioners and the respondent No.2 that, teachers from the Secondary School to Primary School,

even if it is run by the same management, and though the petitioners are appointed as Assistant Teachers [Primary], is not permissible, does not find place in sub-rule (5) of Rule 41 of the said Rules. In sub-rule (5) of Rule 41 it is specifically mentioned that, teachers in a Junior College of Education shall not be transferred to a secondary school against their will. Except on own requests of the employees and subject to availability of vacancies in secondary schools. However, in the event of such a transfer, the pay drawn by the teacher in the Junior College of Education shall not be protected and he shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly reflexed on his joining the secondary school. Sub-rule (5) (b) further provides that, teachers in secondary school shall not be transferred to a Junior College of Education against their will. Said provision further provided some exception for such transfers on request of the concerned employees on certain conditions. If it was the intention of the Legislature that, teachers who are teaching in the secondary school, and in the facts of the present case, in V to VII Standards, shall not be transferred to a Primary School run by the same management, certainly

such provision might have been incorporated in sub-rule (5) of the said Rules. As already observed, in the facts of the present case, the petitioners are appointed as Assistant Teachers [Primary] since all of them possessed qualification of S.S.C. / H.S.C. D.Ed. at the time of their appointment and they are also teaching to the students upto VII Standard, which is included in Primary Education. In our opinion, there is no force in the contention of the learned counsel appearing for the petitioners and also respondent – Education Officer that, such transfers were not permissible by the management. As already observed, sub-rule (1) of Rule 41 of the said Rules, does not prohibit the management from transferring the employees from one school to another school on administrative grounds. In case of such transfer, as required under sub-rule (3) of Rule 41 of the said Rules, the management shall ensure that, the transfers do not adversely affect the pay or pay scale of the employees concerned, and that such transfers do not result into loss in the pensionary benefits as admissible to them.

30] The learned counsel appearing for the petitioners and the respondent No.2 have placed reliance on the Government Circular dated 26.10.1990. The

Government Circular dated 26.10.1990, reads thus:

महाराष्ट्र शासन

क्रमांक -अमाशा-6181-34574-क दिनांक 26/10/1990

विषय : अशासकीय माध्यमिक शाळातील शिक्षकांच्या बदल्या करण्याबाबत.

शासनाच्या असे निदर्शनास आले आहे की, काही संस्थाचालक अशासकीय अनुदान प्राप्त माध्यमिक शाळातील शिक्षकांच्या बदल्या माध्यमिक शाळातून प्राथमिक शाळा विभागाकडे करतात व काही कालावधीनंतर त्यांच्या पुन्हा माध्यमिक शाळांकडे बदल्या केल्या जातात. त्यामुळे अशा शिक्षकांच्या बाबतीत वेतननिश्चिती, सेवाज्येष्ठता सेवानिवृत्ती वेतन वगैरे बाबतच्या सेवाविषयक समस्या नंतर निर्माण होतात. या समस्या प्रचलित शासकीय तरतुदीचे आधीन राहून सोडविता येत नसल्यामुळे संबंधित शिक्षकांना आर्थिक सेवाविषयक समस्यांना तोंड द्यावे लागते. आपल्या जिल्ह्यातील सर्व माध्यमिक शाळांना आपण या संदर्भात योग्य ते परिपत्रक पाठवून कोणत्याही परिस्थितीत अनुदानप्राप्त अशासकीय माध्यमिक शाळातील शिक्षकांच्या बदल्या संस्थेने आपल्या प्राथमिक शाळांकडे करू नयेत व जर यापुढेही अशा प्रकारे संस्थांची शिक्षकांच्या वरील स्वरूपाच्या बदल्या केल्याचे निदर्शनास आले तर त्यांच्या

परिणामाची संपूर्ण जबाबदारी संस्थेवर राहिल व शिक्षकांच्या संभाव्य सेवाविषयक व आर्थिक नुकसानीस शासन जबाबदार राहणार नाही याची त्यांना जाणीव द्यावी.

2) जर एखादा कर्मचारी शिक्षक स्वतः च्या सोयासाठी अशी बदली स्वतः होउन करून घेत असेल तर मात्र अशी बदली करण्यात खात्याची हरकत राहणार नाही. अशी बदली करतांना सदर शिक्षकास या बदलीमुळे काही सेवाविषयक कायदांना जरी मुकावे लागले तरी ही त्यांची जबाबदारी राहिल अशी स्पष्ट कल्पना बदलीचे वेळी त्यांस लेखी देण्यात यावी.

[True translation by the Official Translator, of the above-mentioned Government Circular dated 26.10.1990, reads thus:

GOVERNMENT OF MAHARASHTRA
No.PSS-6181-34574-C Dated 26-10-1990.

Subject : Regarding transfer of teachers working in private secondary school.

It has come to the notice of government that some management of private granted institutions make transfer of their teachers from granted Secondary School to their Primary School and after some time they again make transfer of such teachers to the Secondary School. Due to such type of

practice the problem of pay fixation, seniority and retirement etc. of such teachers arises. Since such problems can not be solved in accordance with the prevailing government provisions, the concerned teachers have to face their financial service related problems. You are therefore, directed to bring this issue into the notice of all Secondary Schools in your district by issuing a proper circular in this regard so that in no circumstances teachers working in the private Aided Secondary School should be transferred to their Primary School. And, hereinafter if it is noticed that such types of transfer of teachers have been made by the institutions the entire responsibility of the consequences towards such types of transfer shall lie on the institution and government shall not be responsible for the incidental financial service related losses of such teachers. This may be brought into their notice.

2] If any teacher voluntarily gets his transfer done then there shall not be any objection to the department. While seeking such type of transfer by the said teacher it should be brought in writing to his notice that if he has to loose any service related benefits due to such transfer he shall be responsible therefor.]

31] Upon careful perusal of the contents of the aforesaid Circular, it appears that, the State Government

noticed that, the person who runs private institution on aided basis, effects the transfers of the teachers from secondary school to primary school and after some period, again transfers are made from primary school to secondary school. Therefore, such transfers of the teachers create problems / difficulties about pay fixation, seniority, pension, salary, etc. in future. These difficulties / problems cannot be solved in accordance with prevailing Government provisions, and therefore, such teachers have to face financial service related difficulties arising out of such transfers. Therefore, such transfers from all employees from aided private secondary school to primary School shall not be effected, and if such transfer orders are passed in future by the institutions, the concerned institution will be held fully responsible for any loss caused to the concerned employees, arising out of the breach of any service conditions or financial loss, and the Government will not be responsible for such losses. However, transfer can be allowed on the request of the teacher, though he may sustain loss in future.

32] In our opinion, though such Circular is issued by the State Government, it cannot override the provisions of

Rule 41 of the said Rules and secondly, even upon reading the contents of the said Circular in its entirety, in case of breach of provision in the said Circular that, there should not be transfer of the teacher from secondary school to primary school and vice versa, though run by the same management, if concerned employee sustains any financial loss or any loss arising out of change in service conditions, salary, pension, pay etc. concerned Institution would be responsible for such loss, and not the State Government.

In the facts of the present case, as already observed, the transfer order itself makes mentioned that, due to the transfer of the petitioners, service conditions, salary, pay, pension, etc. of the petitioners shall remain unaffected. As already observed, in pursuant to the transfer orders issued to the petitioners, they have joined at transferred places 7/8 years back, since there was no any interim order passed by this Court, staying transfer orders. In the light of discussion in foregoing paragraphs, we are not inclined to interfere in the impugned orders of transfer. However, we make it clear that, the respondent No.1 would be responsible in case any of the petitioners have sustained financial loss as contemplated by sub-rule

(3) of Rule 41 of the said Rules and afore-mentioned Circular due to such transfer. The petitioners have not brought to the notice of this Court any such loss sustained by them due to such transfers.

33] The petitioners have made serious allegations against the respondent No.1 in the Petitions, including harassment to the petitioners, financial losses caused to the petitioners, illegalities and irregularities and fabrication of record etc. by the respondent No.1. It appears that, though, the proceedings were initiated for withdrawal of recognition of the respondent No.1 in the meeting of Education Committee of the Zilla Parishad, Aurangabad, the report regarding withdrawal of recognition of the respondent No.1 school is disapproved. We do not wish to enter into the allegations made in the Petitions and also denial of the said allegations by the respondent No.1. We are confined our adjudication of these Petitions only so as to find out whether the orders of transfers were in conformity with the provisions of Rule 41 of the said Rules and the afore-mentioned Circular.

34] The Bombay High Court Bench at Aurangabad in the case of *Marathwada Banjara Seva Sangh Vs. State of*

Maharashtra [cited supra], while interpreting the provisions of Rule 41 of the said Rules in para 6 held thus:

“6. Plain reading of the provisions contained in Rule 41 would therefore disclose that it is left to the discretion of the management to take appropriate decision in the matter of transfer of its employees, albeit the transfers cannot be at the whims and fancies of the management but are necessarily to be for administrative reasons or at the request of the employee/s concerned. Certainly it can also result from the promotion granted to an employee. Undoubtedly, sub-rule (2) of Rule 41 also clarifies that except in exceptional cases mid-term transfer should be avoided. However, the rule nowhere provides that permission or consent is required from the authorities for effecting transfer of the employees of the institution. It is not in dispute that the decision to withhold the grant was taken solely on the ground that permission of the authorities was not taken, and secondly that mid-term transfer is prohibited. As already seen above, there is neither requirement of permission nor total prohibition against mid-term transfer. Being so, the basis on which the decision to withhold the grant

was arrived at was itself contrary to the provisions of law and the authorities could not have withheld the grant to the petitioner on either of the grounds.”

Therefore, it follows from the observation in para 6 of the Judgment in the case of *Marathwada Banjara Seva Sangh* [cited supra] that, Rule 41 does not provide that, permission or consent is required from the authorities for effecting transfer of the employees of the institution. However, we make it clear that, so far allegation made in the Petitions by the petitioners about the less payment of salary to them, their harassment at the hands of the respondent No.1, any financial loss caused to them, any irregularity or illegality and fabrication of documents by the respondent, which caused loss to the petitioners, by which the petitioners are aggrieved or affected their service conditions, they may seek appropriate remedy for redressal of their grievances. We have not expressed any opinion about the availability of such remedy or on merits of such allegations made by the petitioner and denied by the respondent No.1.

35] In the light of discussion in the foregoing paragraphs, we are not inclined to interfere in the

impugned order of transfers, hence Petitions stand dismissed. Rule discharged. No order as to costs.

36] In view of dismissal of the Petitions, Civil Applications stand disposed of.

[P.R.BORA]
JUDGE

[S.S.SHINDE]
JUDGE

DDC