

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9395 OF 2016

Dhananjay Devidas Ingole and others .. **Petitioners**
Versus
The State of Maharashtra and another .. **Respondents**

Shri G. K. Thigale (Naik), Advocate for the Petitioners.
Shri S. G. Karlekar, A.G.P. for Respondents.

CORAM : **S. V. GANGAPURWALA &**
S. M. GAVHANE, JJ.

DATE : **16th November, 2017**

PER COURT :

1. Mr. Thigale, the learned counsel submits that petitioner Nos. 1 and 2 are appointed on 24.7.2013 on non grant in aid post. The permanent approval to their appointments is granted on 27.10.2015. The petitioner No. 3 is appointed from reserved category and the permanent approval to his appointment is granted on 27.10.2015. The learned counsel submits that petitioner Nos. 1 and 2 have been transferred from non grant in aid to grant in aid post on 12.4.2016 and the petitioner No. 3 is transferred from non grant to grant in aid post on 28.6.2016.

2. According to the learned counsel, the circular dated 28.6.2016 would not apply as they have been transferred and

appointed prior to the said circular. The proposal seeking approval to their transfer on grant in aid post is kept in abeyance by the authority only on the ground of circular dated 28.6.2016.

3. Learned A.G.P. submits that as the petitioners on transfer from non grant to grant in aid post relying on the said circular the order is correctly passed. There are surplus teacher available as such the petitioners could not have been transferred from non grant in aid to grant in aid post.

4. We have considered the submissions.

5. In numerous matters the orders are passed suggesting that a person can be transferred from non grant in aid to grant in aid post. The orders in the following matters can be relied for the said purpose-

(I) Writ Petition No. 7011 of 2016, dated 12.10.2017.

(II) Writ Petition No. 5978 of 2014 with connected matters, dated 9.10.2014.

(III) Writ Petition No. 11719 of 2016, dated 9.11.2017.

(IV) Writ Petition No. 2960 of 2012, dated 11.10.2012.

(V) Writ Petition No. 7230 of 2011 with connected matters, dated 30.11.2011.

(VI) Writ Petition No. 676 of 2014 with connected matters, dated 17.9.2014.

(VII) Writ Petition No. 3197 of 2014, dated 16.9.2014.

(VIII) Writ Petition No. 9173 of 2013 with connected matters, dated 18.2.2014.

(IX) Writ Petition No. 5258 of 2012 with connected matters, dated 12.9.2012.

6. The circular dated 28.6.2016 relied by the Education Officer would not apply in the present case. In view of the fact that the transfer of the petitioners from non grant to grant in aid post is prior to the enforcement of the said circular.

7. The aforesaid judgments referred to very unequivocally lays down that there is no bar to transfer Assistant Teacher from un-aided to aided post. The aspect of surplus teacher is also considered by the Division Bench of this court in Writ Petition No. 2960 of 2012 under judgment and order dated 11th October, 2012.

8. Considering the above, we pass the following order.

ORDER

The respondent Education Officer shall take decision upon the proposal seeking approval to the appointment and transfer of the petitioners on its own merits expeditiously and preferably within three months from today and shall not reject it on the ground that petitioners have to work as a 'Shikshan Sevak' and further that there are surplus candidates available. The proposal also shall not be rejected on the ground of circular dated 28.6.2016.

9. The writ petition is accordingly allowed in above terms. No costs.

[S. M. GAVHANE, J.]

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[S. V. GANGAPURWALA, J.]