

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

WRIT PETITION NO. 9719 OF 2016

Prasad Kachru Gadve

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri R. O. Awasarmol, Advocate for the Petitioner.

Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1 and 2.

Shri R. I. Wakade, Advocate for Respondent Nos. 3 and 4.

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

DATE : 29TH NOVEMBER, 2017.

FINAL ORDER :

. The petitioner assails the order rejecting the proposal seeking transfer of the petitioner from unaided to aided post.

2. The petitioner was appointed on 01.04.2013 on aided post as an assistant teacher. It is the contention of the petitioner that on 07.11.2015 the petitioner was transferred to aided post. The aided post has become vacant as one Mr. Sandipan Misal left the school. He was from the S. T. category. The petitioner belongs to the S.C. category. According to the learned advocate for the petitioner, the petitioner is ready to be absorbed as Shikshan Sevak on aided post with effect from 07.11.2015. Such a transfer

is permissible. The learned counsel relies on the following judgments and orders of the Division Bench of this Court.

- (i) Order dated 12.09.2012 in Writ Petition No. 5258 of 2012 Ms. Sandhya Laxman Ghosalkar Vs. The State of Maharashtra with other connected writ petition.
- (ii) Order dated 18.02.2014 in Writ Petition No. 9173 of 2013 with other connected writ petitions.
- (iii) Order dated 16.09.2014 in Writ Petition No. 3197 of 2014.
- (iv) Order dated 17.09.2014 in Writ Petition No. 676 of 2014 with other connected writ petitions.
- (v) Judgment dated 11.10.2012 in Writ Petition No. 2960 of 2012.
- (vi) Order dated 09.10.2014 in Writ Petition No. 5978 of 2014 with other connected writ petitions.

3. Mr. Wakode, the learned advocate for the respondent/institution supports the contention of Mr. Awasarmol, the learned advocate for the petitioner.

4. The learned Assistant Government Pleader submits that, there are large number of surplus teachers required to be accommodated. No permission was sought by the institution before transferring the petitioner on aided post. No error has been committed by the Education Officer in rejecting the

proposal.

5. We have considered the submissions. It is held in number of matters that, a person appointed on unaided post can be transferred on aided post on vacancy being created. The aforesaid judgments referred to supra lay down that, there is no bar to transfer the Assistant Teacher from unaided to aided posts. The petitioner has also accepted that he be considered on the aided post from 07.11.2015 i. e. the date of his transfer to the aided post.

6. The issue of surplus teachers would not arise as has been held by the Division Bench of this Court in Writ Petition No. 2960 of 2012 under judgment and order dated 11th October, 2012.

7. Considering the above, we pass following order.

8. The impugned order is quashed and set aside. The respondent No. 2/Education Officer shall decide the proposal submitted by the institution seeking approval to the appointment/transfer of the petitioner on its own merits, in accordance with law and shall not reject it on the ground that permission of Education Officer was not obtained or there were surplus candidates available. The proposal of the petitioner shall

be considered as Shikshan Sevak from 07.11.2015. The said proposal shall be decided expeditiously and preferably within a period of four (04) months from today. The writ petition is disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 17