

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9624 OF 2016

Manoj Shriram Nikam

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri P. R. Katneshwarkar, Advocate for the Petitioner.
Shri K. D. Mundhe, A. G. P. for Respondent Nos. 1 and 2.
Respondent Nos. 3 and 4 served.

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

DATE : **7th November, 2017**

PER COURT :

1. Mr. Katneshwarkar, the learned counsel for petitioner submits that, on 26.9.2014 proposal is given by the Headmaster to the Education Officer Secondary seeking approval to the appointment and transfer of the petitioner from unaided to aided post. According to the learned counsel, the petitioner was appointed on 25.9.2012 and since then is continuously working with respondent Nos. 3 and 4. The said transfer to the aided post is permissible. The learned counsel relied on the following judgments 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.

So also rule 41 of the Maharashtra Employees of the Private Schools (Condition of Service Regulation) Rules.

2. The learned A. G. P. for respondent Nos. 1 and 2 submits that, there are large number of surplus candidates, who are required to be absorbed and thus act of transfer of the petitioner to aided post is not permissible. The learned counsel also relies on the Circular dated 28.06.2016 to submit that, the petitioner will have to first work as a Shikshan Sevak on the said post.

3. The circular dated 28.06.2016 would not apply in the present matter as the petitioner is transferred from unaided to aided post in the year 2014 i.e. prior to the said circular.

4. The aforesaid judgments referred to supra lay down that, there is no bar to transfer the Assistant Teachers from unaided to aided posts. The aspect of surplus teachers is also considered by the Division Bench of this Court in Writ Petition No. 2960 of 2012 under judgment dated 11th October, 2012.

5. Considering the above, we pass the following order-

ORDER

I] The impugned order is quashed and set aside.

II] The respondent – Education Officer shall decide the proposal submitted by the Headmaster seeking approval of the petitioner afresh, on its own merits, in accordance with law and shall not reject it on the ground enumerated in the impugned order.

III] The said proposal be decided expeditiously and preferably within four (4) months .

6. The writ petition is accordingly disposed of. No costs.

[S. M. GAVHANE, J.]

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[S. V. GANGAPURWALA, J.]