

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

WRIT PETITION NO. 11216 OF 2016

Manisha Kisan Jadhav .. Petitioner

Versus

1. The State of Maharashtra
and others .. Respondents

Shri V. S. Panpatte, Advocate for the Petitioner.

Mrs. R. P. Gaur, A.G.P. for Respondent Nos. 1 and 2.

Shri Sunil D. Kaldate, Advocate for Respondent Nos. 3 and 4.

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

DATE : 09TH NOVEMBER, 2017.

FINAL ORDER :

. Mr. Panpatte, the learned counsel for the petitioner submits that, on 13.06.2015 proposal is given by the Head Master 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 with effect from 01.01.2011 and since then is continuously working with respondent No. 4. The approval is granted on 09.06.2011 on probation. By order dated 21.08.2013 approval is granted on permanent basis. The petitioner is transferred on vacant post on aided basis on 01.07.2015 to teach English subject. The proposal submitted is rejected on 12.08.2016. The said transfer to the aided post is permissible.

The learned counsel relies 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 Assistant Government Pleader for the respondent No. 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 A. G. P. 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. We have heard the learned Advocate for Respondent Nos. 3 and 4 also.

4. The circular dated 28.06.2016 would not apply in the present matter as the petitioner is transferred from unaided to aided post on 01.07.2015 i. e. prior to the said circular.

5. 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.

6. Considering the above, we pass following order.

7. The impugned order is quashed and set aside. The respondent No. 2 shall take decision upon the proposal of the petitioner afresh, expeditiously and preferably within a period of three (03) months from today and shall not reject it on the ground of Sec. 5(1) of the M. E. P. S. Act and Rules and on the ground that, there are surplus candidates available. So also shall not reject it on the ground of Circular dated 28.06.2016. The writ petition accordingly is disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]