

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8508 OF 2016

Raghunath Shrimant Galave ...Petitioner
vs.
The State of Maharashtra and Others ...Respondents

Mr. N.V. Bandiwadkar, for the Petitioner
Ms. Nisha Mehra, AGP for the Respondents-State.

CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.

DATE : **MARCH 21, 2017**

P.C.:

- . Not on board. Upon mentioning taken on board.
2. Parties through their counsel.
3. Petitioner claim that he was appointed as Assistant Teacher in unaided school. From the unaided school, he was transferred to aided school run by the same Management. His grievance is that though he has been appointed as Assistant Teacher and transferred as such from unaided to aided school, he has not been treated and paid the salary of the post of Assistant Teacher but is being treated and paid salary of Shikshan Sevaks on the ground that he could not have been transferred from unaided to aided school on the post of Assistant Teacher in view of the GR dated 13.10.2000.

4. According to the learned counsel for the Petitioner, the question involved in the Writ Petition is no longer *res integra*. He placed reliance on the various judgments passed by this Court namely in the case of **Ms. Sandhya Laxman Ghosalkar Vs. State of Maharashtra** in W.P. No. 5258 of 2012 decided on 12.9.2012, and in the case of **Ms. Rupali Maruti Shingte and Anr. Vs. The State of Maharashtra and anr**, WP No. 9173 of 2013 decided on 18th February, 2014, and in the case of **Shri. Chintamani Dinkar Vidwans Vs. State of Maharashtra & Ors.** in WP No. 6199 of 2013 decided on 8th October, 2014 as also in the case of **Dattu Bhima Thorat Vs. State of Maharashtra** decided by Aurangabad Bench on 11.10.2012 in WP No. 2960 of 2012. He in the circumstances, prayed that since the question involved in the Petition has already been considered and decided more particularly, the Aurangabad Bench of this Court having specifically dealt with the Government Resolution dated 13.10.2000, the action of the Respondent-State to treat the Petition as Shikshan Sevak is not sustainable.

5. On the other hand learned AGP has contended that the Petitioner has rightly been treated as Shikshan Sevak in view of the GR dated 13.10.2000.

6. We have gone through the judgments passed by this Court in the case of Ms. Sandhya Ghosalkar (supra) and various judgments including the judgment of Aurangabad Bench in the case of Dattu Bhima Thorat (supra). In Paragraph 5 and 6 of the said judgment, the Aurangabad Bench having considered the effect of GR dated 13.10.2000 has held thus :

“5. Respondent No.3 Education Officer has presented an affidavit in reply and contested claim of the petitioner. It is the contention of Education Officer that the posts falling vacant in aided school are required to be filled in by appointing Shikshan Sevaks and it would not be permissible for the Institution to fill in said vacancy by transferring a teacher from the school which does not receive grant in aid. Reliance is placed on the Government Resolution dated 13.10.2000 wherein a scheme for making appointment of Shikshan Sevaks is provided for. Relying upon contents of aforesaid G. R. it is contended that the mode for making appointment in aided school is by appointing Shikshan Sevaks and not by way of transfer of a teacher from unaided school.

6. The Education Officer has failed to make distinction so far as instant matter is concerned. Since Respondent No.2 Institution is not proposing to fill in the vacancy by appointing any new recruit, the vacancy is being filled in by transferring a Assistant teacher from the school which does not receive grant in aid run by the same Institution. There is no prohibition prescribed in Government policy for effecting such transfer from unaided school to aided school. Reliance is placed on the judgment in the matter of Ms.Sandhya Laxman Ghosalkar Vs. State of Maharashtra (Writ Petition No.5258/2012 and other companion matters, decided at Bombay on 12.09.2012). While dealing with an identical issue, the Division Bench of this Court has observed that there is no prohibition for transfer of an Assistant teacher appointed in unaided school to aided school on the basis of seniority and if such transfers are effected, it is incumbent upon the Education Officer to accord approval. The petitioner herein was serving as an Assistant teacher in the unaided school and on his transfer to aided school, run by Respondent No.2 Institution, his status remains as an Assistant teacher. There is no justification for contending that the vacancy in the aided school shall be filled in only by appointing Shikshan Sevaks and transfer of an Assistant teacher serving in the same Institution to fill in the vacancy is not permissible.”

7. In view of the aforesaid view taken by this Court, in our considered view the stand taken by the State that the Petitioner cannot be treated as Assistant Teachers and cannot be paid salary of Assistant Teacher, has no merits.

8. In the circumstances, we allow all the Petition and direct the concerned authorities of the Respondent-State that the Petitioner's transfer be treated and approved on the post of Assistant teacher and accordingly he be treated and paid monetary benefits in regard to the said post of Assistant Teacher from the date he has been so transferred.

9. The Petition stands disposed of in aforesaid terms.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)