

hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11065 OF 2014

Mrs. Shilprekha Vinayak Joshi . ..Petitioner(s)

Versus

The State Of Maharashtra Through The
Secretary, School Education Dept. And Ors. ...Respondent(s)

WITH

Writ Petition NO. 469 OF 2017

Shri Ganesh Sharad Kulkarni And Anr. ...Petitioner(s)

Versus

The State Of Maharashtra Through Its Principal Secretary, School
Education Dept. And Ors. ...Respondent(s)

WITH

Writ Petition NO. 473 OF 2017

Shri. Dattatraya Shriram Sonavane And Anr. ...Petitioner(s)

Versus

The State Of Maharashtra Through The Secretary School
Education Dept. And Anr. ...Respondent(s)

WITH

Writ Petition NO. 475 OF 2017

Miss Seema Kashinath Patil And Ors. ...Petitioner(s)

Versus

The State Of Maharashtra Through Its Secretary, School Edu.
Dept. And Anr. ...Respondent(s)

WITH

Writ Petition NO. 2212 OF 2016

Smt. Bodhale Vrushali Chandrakant And Anr. ...Petitioner(s)

Versus

The State Of Maharashtra Thorough The Secretary And Anr.
...Respondent(s)

WITH

Writ Petition NO. 2257 OF 2016

Shri Bharat Tukaram Wargude And Anr ...Petitioner(s)

Versus

The State Of Maharashtra Through The Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 2262 OF 2016

Mrs. Archana Pravin Marwade And Anr ...Petitioner(s)
Versus

The State Of Maharashtra Through The Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 4941 OF 2016

Miss Sujata Narayan Waikar ...Petitioner(s)
Versus

The State Of Maharashtra Through The Secretary, School
Education Dept. And Ors. ...Respondent(s)

WITH
Writ Petition NO. 6931 OF 2016

Shri Sonawane Rajendra Prakash And Anr ...Petitioner(s)
Versus

The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 8123 OF 2016

Shri Shelar Ujwal Subhash And Anr ...Petitioner(s)
Versus

The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 8327 OF 2016

Shri. Pranit Vishnu Sawant And Anr ...Petitioner(s)
Versus

The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 8759 OF 2016

Smt. Kulkarni Deepali Bapusaheb And Anr ...Petitioner(s)
Versus
The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 9795 OF 2016

Sandesh Harishchandra Sagvekar And Anr ...Petitioner(s)
Versus
The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH
Writ Petition NO. 10440 OF 2016

Miss Snehal Sanjay Kadam ...Petitioner(s)
Versus
The State Of Maharashtra Through Secretary And Ors
...Respondent(s)

WITH
Writ Petition NO. 11824 OF 2016

Mrs. Sandhya Parag Borate And Anr. ...Petitioner(s)
Versus
The State Of Maharashtra Through The Secretary, School Edu.
Dept. And Anr. ...Respondent(s)

WITH
Writ Petition NO. 11946 OF 2016

Smt Sharmila Vishnu Gaikwad And Ors. ...Petitioner(s)
Versus
The State Of Maharashtra Through The Secretary, School Edu.
Dept. And Anr. ...Respondent(s)

WITH

Writ Petition NO. 12186 OF 2015

Smt. Rameshwari Dnyaneshwar Dalave And Anr ...Petitioner(s)

Versus

The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH

Writ Petition NO. 12187 OF 2015

Miss Asmita Subhash Gaikwad And Anr ...Petitioner(s)

Versus

The State Of Maharashtra Through Secretary And Anr
...Respondent(s)

WITH

Writ Petition NO. 13287 OF 2016

Smt. More Sheetal Kisanrao And Ors. ...Petitioner(s)

Versus

The State Of Maharashtra Through The Secretary, School
Education Dept. And Anr. ...Respondent(s)

Mr. N.V. Bandiwadekar i/by Shri. Sagar Mane for the petitioner.

Mrs. R.M.Shinde, AGP for the respondent State.

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

DATED : FEBRUARY 14, 2017.

P.C.

Parties through their counsel.

2. Petitioners claim that they were appointed as Assistant Teachers in unaided school. From the unaided school, they were transferred to aided school run by the same Management. Their grievance is that though they have been appointed as Assistant Teachers and

transferred as such from unaided to aided school, they have not been treated and paid the salary of the post of Assistant Teachers but are being treated and paid salary of Shikshan Sevaks on the ground that they could not have been transferred from unaided to aided school on the post of Assistant Teachers in view of the GR dated 13.10.2000.

3. According to the learned counsel for the petitioners, the question involved in these writ petitions 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 WP No. 5258 of 2012 decided on 12.9.2012, 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, in the case of Shri. Chintamani Dinkar Vidwans Vs. The State of Maharashtra and Ors. in WP No. 6199 of 2013 decided on 8th October, 2014 as also in the case of Dattu Bhima Thorat Vs. The State of Maharashtra 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 these petitions 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 petitioners as Shikshan Sevaks is not sustainable.

4. On the other hand learned AGP has contended that the petitioner have rightly been treated as Shikshan Sevaks in view of the GR dated 13.10.2000.

5. 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 Government Resolution, 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."

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

7. In the circumstances, we allow all these petitions 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 they be treated and paid monetary benefits in regard to the said post of Assistant Teachers from the date they have been so transferred. All the writ petitions stand disposed of in aforesaid terms

(PRAKASH D. NAIK, J.)

(SHANTANU KEMKAR, J.)