

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

WRIT PETITION NO. 6952 OF 2018

Vishnu S/o Kanu Surashe
Age: 51 years, Occu: Service,
R/o Shiveshwar Vidyalaya,
Takali (Antur), Tq. Kannad,
District Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Pune.
3. The Deputy Director (Education),
Aurangabad, Tq. & Dist. Aurangabad.
4. The Accounts Officer,
Zilla Parishad, Aurangabad.
5. Dhareshwar Shikshan Sanstha,
Through its President,
R.P. Sapkal,
Age Major, Occ : Nil,
R/o Shiveshwar Vidayalya,
Takali (Antur), Tq. Kannad,
District Aurangabad

.. RESPONDENTS

**WITH
WRIT PETITION NO. 7427 OF 2018**

Sardarsing S/o Nursing Rajput
Age : 51 years, Occ : Service,
R/o Vasantryao Naik Junior
College, Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Pune.
3. The Deputy Director (Education),
Aurangabad, Tq. & Dist. Aurangabad.
4. The Accounts Officer,
Zilla Parishad, Aurangabad
5. Vasantryao Naik Shikshan Prasarak
Mandal, Aurangabad
Through its President,
Rajaram Rathod
Age : Major, Occ : Nil,
R/o Vasantryao Naik Junior
College, Aurangabad.

.. RESPONDENTS

Shri. G. J. Karne, Advocate for the Petitioners.

Shri. K.N. Lokhande and Mr.A.B. Chate, A.G.Ps. for Respondent Nos. 1 to 3.

**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.
DATED : 30th November, 2018**

ORAL JUDGMENT (PER S.S. SHINDE, J.):

. Rule, Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners assail the orders of the Respondent No.4 Accounts Officer, Zilla Parishad, Aurangabad denying to fix the pay of the petitioners on account of their transfers from the secondary to higher secondary.

3. Mr. Karne, learned advocate for the petitioners submits that the Government Resolution dated 15.09.2011 is erroneous and is illegal to the extent it does not protect the pay scale of the petitioners. Learned counsel submits that, the petitioners are illegally transfered from secondary to higher secondary by following due procedure and upon the clear vacancy. The pay scale of the petitioners, needs to be protected and is required to be given the pay scale applicable to the teacher at Junior College.

4. Learned Additional Government Pleader, submits that the Government Resolution dated 15.09.2011 would not apply to the petitioners and it applies only to newly appointed candidates. According to the learned Addl. G. P. Government Resolution dated 15.09.2011 as it stand is legal and valid.

5. We have considered the submission canvased by learned counsel for respective parties.

6. The Government Resolution dated 15.09.2011 has its area of operation limited to those who have been appointed by nomination. The petitioners herein are promoted and transferred to the higher secondary posts. The management is within its powers to transfer the Assistant Teachers working in secondary division to higher secondary division. Of course, considering the seniority and in case the vacancy is available, Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to 'M.E.P.S. Rules) give power to the management to effectuate such a transfer of an employee from secondary to higher secondary division. Sub rule 5 of rule 41 is relevant. The same reads thus;

[5] Where a Management runs a secondary school or secondary schools and a Junior College of

Education-

[a] Teachers in a Junior College of Education shall not be transferred to a secondary school against their will. Such transfers may, however, be made if they are at employee's own requests, subject to availability of vacancies in secondary schools. In the event of such a transfer, the pay drawn by the teacher in the Junior College of Education shall not be protected. He shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly refixed on his joining the secondary school.

[b] Teachers in secondary school shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made if they are at the employee's own requests, subject to the the following conditions, namely:

(i) Vacancies should be available in the Junior College of Education;

(ii) The concerned employee shall retain the same place in the common seniority list; and

(iii) Their pay in the Junior College of Education shall be fixed at the same stage of pay as

their existing pay or at the minimum of the scale of pay in the Junior College of Education, whichever is higher.]

7. The case of the petitioners is covered by sub rule 5 of Rule 41. In case, the vacancies are available in the Junior College of Education, then the teacher in the secondary school can be transferred to the Junior College (higher secondary division) and that employee retains the same place in the common seniority list. The pay of such an employee transferred from secondary to higher secondary (Junior College) shall be fixed at the same stage of pay as their existing pay or at the minimum scale of pay in a Junior College of Education whichever is higher.

8. The benefit of clause 'b' sub rule 5 of Rule 41 of M.E.P.S. Rules is available to the employees like the petitioners. Of course, on satisfying the other conditions enumerated therein.

9. The Accounts Officer while passing the impugned orders have erroneously relied upon the Government Resolution dated 15.09.2011.

10. In the light of that, the impugned orders passed by the Accounts Officer are quashed and set aside. The Deputy Director of Education shall consider the pending proposals of the petitioners considering clause 'b' of sub rule 5 of Rule 41 of M.E.P.S. Rules. The same shall be done

expeditiously and preferably within a period of four (04) months.

11. It is made clear, as the Government Resolution dated 15.09.2011 is not relevant to the petitioners, we have not considered the challenge raised to the said Government Resolution. The writ petitions accordingly partly allowed. No costs.

[K.K. SONAWANE, J.]

[S. S. SHINDE, J.]

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