

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

WRIT PETITION NO. 12417 OF 2015

Tukaram Balaji Jadhav,
Age: Major, Occu: Service,
R/o Rajshree Shahu Vidayalya,
Vasant Nagar, Nanded,
Tq. & District Nanded.

.. 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),
Latur, Tq. & Dist. Latur.
4. Marathwada Shikshan Sanstha,
Nanded, Through its President.,
Shankarrao Deshmukh Baradkar,
Age Major, Occu: Nil,
R/o Rajshree Shahu Vidayalya,
Vasant Nagar, Nanded,

Tq. & District Nanded.

.. Respondents

WITH
WRIT PETITION NO. 12423 OF 2015

1. Pandhari s/o Madhavrao Yemalwad,
Age major, Occu: Service,
R/o Rajshree Shahu Vidayalya,
Vasant Nagar, Nanded.
Tq. & District Nanded.

.. 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),
Latur, Tq. & Dist. Latur.
4. Marathwada Shikshan Sanstha,
Nanded, Through its President,
Shankarrao Deshmukh Baradkar,
Age Major, Occu: Nil,
R/o Rajshree Shahu Vidayalya,

Vasant Nagar, Nanded,
Tq. & District Nanded.

.. Respondents

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

Shri. K. N. Lokhande, A.G.P. for Respondent Nos. 1 to 3.

Shri. N. B. Kamble, Advocate for Respondent No. 4. (absent)

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATED : 16th April, 2018

ORAL JUDGMENT (PER S.V. GANGAPURWALA, J.):

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

2. The petitioners assail the order of the Deputy Director of Education rejecting the proposals for the approval of the transfer of the petitioners from the secondary to higher secondary.

3. Mr. Karne, learned advocate for the petitioner 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. The learned counsel submits that, the petitioners are illegally transferred 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 the 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 Teacher 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 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 employees 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. Rule is available to the employees like the petitioners. Of course, on satisfying the other conditions enumerated therein.

9. The Deputy Director of Education while passing the impugned order has erroneously relied upon the Government Resolution dated 15.09.2011.

10. In the light of that, the impugned order is quashed and set aside. The Deputy Director of Education shall reconsider the 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.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]