

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9126 OF 2017

Vidya Vijay Barkale and Another ...Petitioners
vs.
The State of Maharashtra and Another ...Respondents

Mr. N.V. Bandiwadkar, for the Petitioner
Mr. V.S. Gokhale, AGP for Respondents-State.

**CORAM : SHANTANU KEMKAR &
N. W. SAMBRE, JJ.**

DATE : JULY 13, 2018

P.C.:

- . Parties through their counsel.
2. Rule.
3. With consent of the parties, heard finally and disposed of at the stage of admission itself.
4. Challenging the order dated 24th July, 2017 (Exhibit "E") passed by Respondent No. 2 - Education Officer (Secondary) by which approval to the transfer of Petitioner No. 1 as Junior Clerk from unaided school to the aided school of Petitioner No. 2 has been rejected, the Petitioners have filed this Petition.
5. According to the Petitioners in the impugned order, there is total non application of mind as it reveals that the reason assigned in the said order is that the vacancy arose due to

promotion of Junior Clerk to Senior Clerk and therefore the Petitioner No. 1 cannot be transferred. The reliance also has been placed on the Government Resolution dated 12th February, 2015 for taking the approval to the transfer of Petitioner No. 1 on her being transferred from unaided to aided school by Petitioner No. 2.

6. We find that the question involved in this Petition has already been considered and decided by the various Division Benches including in the case of **Sandhya Laxman Ghosalkar vs. State of Maharashtra decided on 12th September, 2012 in Writ Petition No. 5258 of 2012**. The said order has been followed by another Division Bench at Aurangabad in the case of **Dattu Bhima Thorat vs. The State of Maharashtra in Writ Petition No. 2960 of 2012 decided on 11th October, 2012**. The paragraph No. 6 of the order dated 11th October, 2012 passed in Writ Petition No. 2960 of 2012 reads thus:

“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 of 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 as 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. Keeping in view the aforesaid position of law which has rightly not been disputed by the learned AGP for the State, we dispose of this Petition in the light of observation made in paragraph No. 6 of the order dated 11th October, 2012 passed by the Division Bench at Aurangabad in Writ Petition No. 2960 of 2012.

8. As a result, the Petition is allowed in terms of prayer clause (b).

9. Rule is made absolute on the aforesaid terms.

(N.W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)

Vishal Parekar

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