

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.2522 OF 2004

Sakharam s/o Shankarrao Kaldate,
Aged about 33 years, Occ. Service,
R/o Loni-Gawali, Tq. Mehkar,
Distt. Buldana.

... **PETITIONER**

...V E R S U S...

1. The State of Maharashtra,
through the Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Amravati Division, Amravati,
Tq. and Distt. Amravati.
3. The Education Officer (Secondary),
Buldhana, Tq. and Distt. Buldhana.
4. Shri Shivaji Shikshan Sanstha,
Loni-Gawali, Tq. Mehkar,
Distt. Buldhana,
through its Secretary.
5. Deshbhakta Baburao Patil Vidyalaya
and Kanishta Mahavidyalaya,
Loni-Gawali, through its Head Master,
Loni-Gawali, Tq. Mehkar,
Distt. Buldhana.

... **RESPONDENTS**

Shri C. A. Joshi, Advocate for the petitioner.
Shri S. J. Kadu, A.G.P. for respondent Nos.1 to 3.
None for respondent Nos.4 and 5.

**CORAM:- B.P.DHARMADHIKARI &
ARUN D. UPADHYE, JJ.**

DATED : 27/03/2018.

ORAL JUDGMENT : (PER B. P. DHARMADHIKARI, J.)

1. Order cancelling the approval to transfer of petitioner from M.C.V.C. Course in Junior College to Secondary School passed on 05/06/2004 has been questioned in the present matter. This order is passed by respondent No.3 – Education Officer. Earlier order dated 01/04/2002 granting approval to his transfer is also passed by the very same authority.

2. Shri Joshi, learned counsel points out that Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and Rules framed thereunder regulate service conditions of petitioner. Rule 41 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 empowers management to order such transfer and hence, respondent No.3 cannot object to it. He states that though petitioner was not receiving salary grants in M.C.V.C. Course, his appointment was duly approved by the Deputy Director of M.C.V.C. and as such, necessary procedure for recruitment was followed. He is also relying upon the Judgment dated 12th September, 2012 in Writ Petition No.5258/2012 and other connected matters delivered at Bombay.

3. Shri Kadu, learned A.G.P. relies upon the impugned order. He submits that the school in which petitioner is transferred is

under supervision of Deputy Director of Education and the said authority has got no say in institutes which conduct M.C.V.C. Course. He points out that hence, apart from impermissibility of such transfer, fact that petitioner earlier was in un-aided employment is also given as reason in the impugned order.

4. The impugned order which cancels approval earlier given basically puts forth two grounds. First ground is transfer from M.C.V.C. Course to Conventional School. The other ground is, transfer is from un-aided employment to aided employment.

5. Section 5 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act obliges employer to seek previous permission before filling in any vacancy in Conventional School. Object is to enable Education Department / State Government to forward surplus teachers / other staff members who are receiving salary without work to such school. If such procedure is not prescribed, teachers and non-teaching staff found surplus under Rule 25 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules would continue to receive salary without work for rest of their lives. However, in present matter, petitioner was duly approved when he joined M.C.V.C. Course in an un-aided school. The reply filed on record by respondent No.3 in para 2 shows that his appointment was

approved by Deputy Director of Vocational Education and Training. It cannot, therefore, be said to be a backdoor recruitment.

6. In the situation, Rule 41 of 1981 Rules empowers management to transfer him to its other school. It is not in dispute that M.C.V.C. Course / School is also regulated by Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rules.

7. The Judgment dated 12th September, 2012 looks into transfers from un-aided Conventional Schools to aided schools. Facts mentioned in para 2 of that Judgment show that employment provided to that petitioner in an un-aided school was duly approved by the Education Department. Again, therefore, by such transfer, question of backdoor recruitment was ruled out.

8. In present matter also, as petitioner had due approval as peon in M.C.V.C. Course from Deputy Director of Vocational Education and Training, it is clear that his recruitment there is not backdoor recruitment.

9. His transfer was earlier approved and then that approval is cancelled. In the situation, we find that impugned order dated 05/06/2004 is unsustainable. It is accordingly quashed and set

aside. The order dated 01/04/2002 passed by respondent No.3 is, therefore, restored. However, we are not settling the law in this respect as petitioner is protected by this Court since long.

10. It is to be noted that on 21/06/2004 while issuing notice in this matter, parties were directed to maintain status quo and hence, the impugned order dated 05/06/2004 could not come into force. The petitioner has been treated and accepted as approved in terms of earlier order dated 01/04/2002.

11. In peculiar facts, the respondents' objection that there cannot be any transfer from M.C.V.C. Course to conventional school is kept open and can be agitated in more appropriate facts. Similarly question whether un-aided school employee can be brought to aided school, grant can be claimed for him and vice versa is kept open.

12. Hence, in view of above observations, we allow the writ petition and dispose it of. No costs.

JUDGE

JUDGE