

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3635/2017

(SWARUP SURESH RAHANGDALE **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri I.N. Choudhari, counsel for the petitioner.
 Shri K.L. Dharmadhikari, A.G.P. for the R-1 & 2.

**CORAM : SMT. VASANTI A NAIK AND
A.D. UPADHYE, JJ.**

DATE : FEBRUARY 20, 2018.

By this writ petition, the petitioner challenges the order of the Education Officer (Secondary), Zilla Parishad, Gondia, dated 13.04.2017 rejecting the proposal of the petitioner's transfer from the respondent no.5-school to the respondent no.4-school.

The petitioner was appointed as an Assistant Teacher in the respondent no.5-School on 24.02.2013. At the relevant time, the classes for which the petitioner was appointed were not receiving grant-in-aid. The said classes were however brought on partial grant-in-aid in the year 2014. Since one of the teachers in the respondent no.4-school retired on 30.10.2016 and the post of a Maths teacher became vacant, the management transferred the petitioner from the respondent no.5-school to the respondent no.4-school and sent his proposal to the Education Officer for approval to the transfer. The Education Officer, by the impugned order dated 13.04.2017 rejected the proposal of the petitioner solely by relying on Clause 3(2) of the Government Resolution dated 28.06.2016 that provides that approval may not be granted to the transfer of an employee from a non grant-in-aid school to a grant-in-aid school if surplus teachers are available with the Education Department for absorption in grant-in-aid schools. The order of the

Education Officer is impugned by the petitioner in the instant petition.

Shri Choudhari, the learned counsel for the petitioner, submitted that when the petitioner was transferred from the respondent no.5-school to the respondent no.4-school, almost all the classes from the respondent no.5-school were brought on grant-in-aid and the classes which the petitioner was taking were also brought on partial grant-in-aid. It is submitted that the classes which the petitioner was teaching were brought on partial grant-in-aid in the year 2014 and hence, the Education Officer could not have refused the approval to the transfer of the petitioner from the respondent no.5-school to the respondent no.4-school by referring to Clause 3(2) of the Government Resolution dated 28.06.2016. It is stated that the Clause 3(2) of the Government Resolution provides that an employee from a non grant-in-aid school cannot be transferred to a grant-in-aid school if surplus teachers are available with the Education Department for absorption in the grant-in-aid school. It is stated that in the circumstances of the case, the impugned order is liable to be set aside.

Shri Dharmadhikari, the learned Assistant Government Pleader appearing for the respondent nos.1 and 2, has supported the impugned order. It is submitted that it is clear from Clause 3(2) of the Government Resolution dated 28.06.2016 that if surplus teachers are available while making appointment, approval may not be granted for the transfer of the teachers from a non grant-in-aid school to a grant-in-aid school. It is submitted that the classes which the petitioner was taking were brought on 20% grant-in-aid in the year 2014 and hence approval is not granted for the transfer of the petitioner from the respondent no.5-school to the respondent no.4-school.

On a reading of the Government Resolution dated 28.06.2016 and, specially Clause 3(2) thereof, on which reliance is placed by the counsel on both the sides for advancing their respective cases, it appears that the Education Officer was not justified in refusing to grant approval to the transfer of the petitioner from the respondent no.5-school to the respondent no.4-school. Except a few classes, all the other classes in the respondent no.5-school were brought on grant-in-aid even before the petitioner joined his duties as an Assistant Teacher in the respondent no.5-school. In the year 2013, when the petitioner joined his duties in the respondent no.5-school, the classes for which the petitioner was appointed were not brought on grant-in-aid. In 2014, the classes which the petitioner was teaching were however brought on partial grant-in-aid. If that is so, it cannot be said that Clause 3(2) of the Government Resolution dated 28.06.2016 would clearly apply to the case of the petitioner as it cannot be said that the petitioner was transferred from a non grant-in-aid school to a grant-in-aid school. Most of the classes in the respondent no.5-school were brought on grant-in-aid even before the appointment of the petitioner and the classes for which the petitioner was appointed were also brought on partial grant-in-aid in the year 2014. In this background, Clause 3(2) of the Government Resolution dated 28.06.2016 would not apply and it would not be permissible for the Education Officer to reject the proposal of the petitioner solely on the basis that surplus teachers were available for grant-in-aid schools. Since it appears that the petitioner's services were approved in the year 2013 and in the year 2015, he was granted approval on regular basis, it would be necessary for the Education Officer to grant approval to the transfer of the petitioner from the respondent no.5-school to the respondent no.4-school.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The Education Officer is directed to grant approval to the transfer of the petitioner to the respondent no.4-school as early as possible and positively within four weeks.

Order accordingly. No costs.

JUDGE

JUDGE

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