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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.14530 OF 2018

1] Shri Ranjitsing Kalyansing Kachhava,
2] Murbad Taluka Duiyam Shikshan Sanstha,
Murbad, District Thane through its Secretary.

..Petitioners

Vs

1] The State of Maharashtra, through the
Secretary, School Education Department,
2] The Education Officer (Secondary),
Zilla Parishad, Thane.

..Respondents

Mr. N.V. Bandiwadekar i/b Ashwini N. Bandiwadekar for Petitioners.
Ms. M.S. Bane, AGP for State/Respondent Nos.1 and 2.

CORAM : A.S.GADKARI, J.

DATE : 7th October 2019.

P.C.:

1] Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final hearing.

2] The jurisdiction of this Court under Article 227 of the Constitution of India is basically invoked by the petitioner No.1-teacher impugning the Order dated 14.12.2018 passed by the respondent No.2, rejecting the proposal of petitioner No.2 to transfer the petitioner No.1 from an unaided post to aided post in another school run by the same management i.e. the petitioner No.2.

3] Heard Mr. Bandiwadekar, learned counsel for the petitioners and Ms. Bane, learned AGP for the respondents-State. Perused the record annexed to the petition and the affidavit-in-reply dated 21.01.2019 filed by Mr. Ankush Shinde, Deputy Education Officer (Secondary), Zilla Parishad, Thane, District Thane.

4] The record indicates that, by an Order dated 24.4.2015, the respondent No.2 granted approval for appointment of the petitioner No.1 as an Assistant Teacher with effect from 28.6.2012 on probation basis, initially for a period of two years on unaided post in New English School and Junior College, Thane. In due course of time, the petitioner No.1 became senior in hierarchy. That one teacher from the said School namely Mr. Y.C. Sarode was due to retire from service on 30.4.2018 on superannuation and therefore the post of teacher on aided post was to become vacant and available in the said school from 1.5.2018. As per the seniority amongst the teachers on unaided basis, the petitioner No.1 was senior teacher and therefore he was entitled for being transferred to the aforesaid aided vacancy. The Management of the petitioner No.2 Institution therefore conducted a meeting of the management on 20.3.2018 and a resolution No.4 came to be passed and it was decided to transfer the petitioner No.1 to the said aided vacancy of Assistant Teacher from 1.5.2018. The record further indicates that, the Head Master of New English School, Murbad Taluka run by petitioner No.2 Institution sent a proposal dated 3.5.2018 to the respondent No.2 seeking transfer of of the petitioner No,.1 from unaided

post to aided post in the said school. The said proposal was accompanied by all necessary documents as per the provisions of law and rules framed therein. By the impugned Order dated 14.12.2018 the respondent No.2 refused to grant approval to the said transfer of the petitioner No.1 on the ground that, in view of para No.3 of the Government Resolution dated 28.6.2016, the transfer of the petitioner No.1 from unaided post to aided post in another school, though ran by the same management is not permissible. That there are 12 surplus teachers in the Thane District for Marathi subject and unless all the surplus teachers are absorbed, approval cannot be granted to the transfer of the petitioner No.1 and the said post be made available for absorption surplus teacher.

5] It is to be noted hear that, the said Government Circular dated 28th June 2016 came up for judicial scrutiny before the Division Bench of this Court in Writ Petition No. 5313 of 2017 and other related Petitions. The Division Bench of this Court in para No.12 of its Judgment dated 25th April 2019 has held as under :-

“12. It can thus be clearly seen that the Division Bench has clearly held that, Clause-3, Sub-Clauses 1 and 2 of the G.R. dated 28th June 2016 have been held to be contrary to the view taken by the various Division Benches of this Court. We are in complete agreement with the view taken by the Division Bench at Aurangabad. It is further to be noted that the Circular dated 28th June, 2016 which provides for those instructions can hardly be said

to be government instructions. It has no statutory force in law. When Rule 41 of the M.E.P.S. Act which is the subordinate legislation, the administrative decisions which run contrary to them cannot be held to be valid in law. As such, though the learned Judges of the Division Bench at Aurangabad have not considered this aspect, we find that since Clauses-1 and 2 of the said Circular, run contrary to the provisions of the subordinate legislation as found in Rule 41, the same would not be valid in law. In the result, we are convinced with the view taken by the various Division Benches and that transfer of a Teacher from unaided post to aided post is permissible in law. Equally, a transfer of an employee from unaided post to an aided post in another School run by the same Management would also be permissible in law.”

It is thus clear that, the transfer of a teacher from unaided post to an aided post is permissible in law. As has been held in the said Judgment, the said Government Circular dated 28th June 2016 cannot be held to be valid in law.

6] In view of the observations made by the Division Bench of this Court in its Judgment dated 25th April 2019 in the aforesaid Writ Petition, the reason given by the respondent No.2 for rejecting the proposal of the petitioner No.1 cannot be sustained. In that view of the matter, the impugned Order dated 14.12.2018 passed by the respondent No.2 is quashed and set-aside. The respondent No.2 is hereby directed to grant approval to the transfer of the petitioner No.1 from unaided post to aided post, as per the proposal dated

3.5.2018 submitted by the petitioner No.2.

The necessary procedure be complied with within a period of three weeks from the date of uploading of the present Order on the High Court Website.

7] It is needless to mention that, the petitioner No.1 will be entitled for all the necessary and relevant monetary benefits as per law. The petitioner No.1 would be entitled for regular salary from the month of October 2019. The petitioner No.1 is entitled for arrears of salary from the date of transfer i.e. from 1.5.2018 till 30th September 2019. The respondent No.2 is hereby directed to release the said salary within a period of two months from the date of uploading the present Order on the High Court Website.

8] Petition is accordingly allowed in the aforesaid terms.

Rule is made absolute.

9] All the concerned to act on the basis of an authenticated copy of this Order.

(A.S.GADKARI, J.)