

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

WRIT PETITION NO. 6379 OF 2020

Rahul s/o Janardhan Surwase ... Petitioner

**Versus**

The State of Maharashtra and others : Respondents

Mr. S. S. Thombre, Advocate for the petitioner

Mr. S. G. Karlekar, A.G.P. for respondents State

CORAM : S. V. GANGAPURWALA &  
SHRIKANT D. KULKARNI, JJ.

DATE : 9th October, 2020

**ORDER:**

1. The proposal seeking approval to the transfer of the petitioner from unaided to aided post is rejected.
2. It is submitted that the petitioner was appointed on unaided post on 31.03.2015 as an Assistant Teacher. Under order dated 11.05.2015 the Education officer granted approval to the appointment of the petitioner on probation. On 14.06.2019 , the petitioner was given permanent approval.
3. On or about 01.08.2020, the petitioner was transferred from unaided to aided post upon the post of aided category become vacant. The learned counsel submits that posts for open category was vacant. Only because the backlog of some reserved categories existed, the petitioner's proposal is rejected.
4. The Circular dated 28.06.2016 is also relied.
5. Learned AGP submits that as far as backlog is concerned, the management has not filled in the same and unless the backlog is filled in,

the management ought not to have transferred the petitioner from unaided to aided post.

6. The proposal seeking approval to the transfer of the petitioner from unaided to aided post is rejected on two grounds, 1) the Circular dated 28.06.2016 and 2) the backlog exists.

7. This Court, Writ petition No. 1493 of 2018 with connected matters, under the judgment and order dated 04.07.2019, has held that some of the clauses of the said circular does not apply.

8. As far as backlog is concerned the education officer was required to consider whether the post of open category candidate existed. If the post of open category candidate existed, then the education officer ought to have considered the proposal for approval. The education officer could have taken undertaking from the management that it would fill in the reserved category posts also subsequently but on that count, the proposal of the open category candidate ought not to be rejected if the post was available for open category candidate.

9. In light of the above, the impugned order is quashed and set aside.

10. The education officer shall decide the proposal seeking approval to the transfer of the petitioner from unaided to aided post in tune with the judgment dated 04.07.2019 in writ Petition No. 1493/2018 with connected writ petitions .

11. The aforesaid observations made in the present order shall also be considered by the education officer. The proposal shall be decided within four months.

12. Writ petition accordingly disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC