

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5446 OF 2019

Shri Sudhakar Ramchandra Gajare ... Petitioner
Versus
The Education Officer (Secondary)
Zilha Parishad Solapur
And Others ... Respondents

....
Mr. Sugandh B. Deshmukh for Petitioner.

Mr. K.S. Thorat, AGP for the Respondents-State.

**CORAM : S.C. GUPTE &
MADHAV JAMDAR, JJ**

DATE : 20 OCTOBER 2020

P.C. :

Heard learned Counsel for the Petitioner and learned AGP for the State. **Rule.** Rule taken up for hearing forthwith by consent.

2 This petition challenges an order passed by Education Officer (Secondary), Zilha Parishad, Solapur refusing to accord approval to the transfer of the Petitioner, who was working in an unaided division to the aided division in the same school. The Petitioner was appointed as an Assistant Teacher with Shelave Krushi Vidyalay and Kanisht Mahavedyalaya Shelave, Taluka-Pandharpur, District-Solapur by an

order dated 15 January 2012. The Petitioner possesses the requisite qualifications and was appointed after following due process as per the statute and rules framed thereunder in an Open category. By an order dated 4 January 2013, the Petitioner's appointment was approved by Education Officer with effect from 15 June 2012. The Petitioner has since been working with the school. In June 2018, there was a vacancy in the aided posts of the school in open category. The Petitioner being the senior most in the unaided posts was appointed on the aided post with effect from 15 June 2018. An appointment order was accordingly issued by the management in favour of the Petitioner on 31 May 2018. The school management thereafter sent a proposal to Respondent No.1-Education Officer seeking approval to the appointment of the Petitioner on the aided post. Since the application for approval was not decided by Education Officer for a long time, the Petitioner filed a writ petition, being Writ Petition No.2075 of 2019. The writ petition was disposed of by this court by an order dated 18 February 2019, directing Respondent No.1-Education Officer to decide the proposal. By his impugned order dated 29 March 2019, Education Officer refused to accord approval to the Petitioner's transfer to the aided post *inter alia* on the ground that there were surplus teachers in the district, who were to be absorbed, and that under Government Resolution dated 28 June 2016, approval could not accordingly be granted to the transfer of the Petitioner to the aided post. The other reason given by Education Officer to deny the approval was that there was a

dispute in the management of the school.

3 So far as the alleged dispute in the management is concerned, surely, the Petitioner as a Teacher working in the school has nothing to do with it; in any event, his appointment or its approval cannot be withheld on account of any such dispute. So far as Government Resolution dated 26 June 2016 and position of surplus teachers in the district are concerned, it has now been made clear by the Respondent-State in its affidavit dated 19 October 2020 that all surplus teachers have since been absorbed and there was as of the date of transfer of the Petitioner, there no surplus teacher in the district to be absorbed under the applicable Government Resolution. If that is so, there cannot be any objection to granting approval to the Petitioner's transfer from an unaided post to an aided post in the same school.

4 Accordingly, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order dated 29 March 2019 and directing Respondent No.1-Education Officer to grant approval to the Petitioner's transfer as an Assistant Teacher from an unaided post to the aided post in the school, namely, Shelave Krushi Vidyalay and Kanisht Mahavedyalaya Shelave, Taluka-Pandharpur, District-Solapur and pay salary and other benefits to the Petitioner accordingly.

5 This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MADHAV JAMDAR, J.)

(S.C. GUPTE, J.)