

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

WRIT PETITION NO. 3630 OF 2020

Dilip Nivrutti JadhavPetitioner
v/s.

The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION NO. 3632 OF 2020**

Dhanaji Tanaji JagtapPetitioner
v/s.

The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION NO. 3631 OF 2020**

Santosh Bapurao RautPetitioner
v/s.

The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION NO. 3633 OF 2020**

Jayashree Pandurang InjePetitioner
v/s.

The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION (ST.) NO.97958 OF 2020**

Prajakta Sachin LamkanePetitioner
v/s.

The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION (ST.) NO.97960 OF 2020**

Sohani Buwasaheb GunjawatePetitioner
v/s.

The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION (ST.) NO.97957 OF 2020**

Vijaymala Subhash ManePetitioner
v/s.
The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION (ST.) NO.98064 OF 2020**

Santosh Shankar PadviPetitioner
v/s.
The State of Maharashtra and ors. Respondents

**WITH
WRIT PETITION (ST.) NO.98059 OF 2020**

Kishor Dattatraya MandharePetitioner
v/s.
The State of Maharashtra and ors. Respondents

Mr. Narendra V. Bandiwadekar a/w. Mr. Vinayak Kumbhar
i/b. Mrs. Ashwini Navjyot Bandiwadekar for the Petitioners.
Mr. Sagar Mane for Respondent No.3 (Management).
Mr. S.H. Kankal, AGP for the State in WP/3630/2020,
WPST/98064/2020 and WPST/98059/2020.
Mr. P.P. Pujari, AGP for the State in WP/3632/2020.
Mr. C.D. Mali, AGP for the State WP/3631/2020.
Mr. S.D. Rayrikar, AGP for the State in WP/3633/2020.
Mr. A.B. Kadam, AGP for the State in WPST/97958/2020.
Mr. P.V. Nelson Rajan, AGP for the State in WPST/97960/2020.
Mrs. M.S. Bane, AGP for the State in WPST/97957/2020.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th DECEMBER, 2020.

JUDGMENT :-

. Rule. Rule is made returnable forthwith. With consent, the
Petitions are taken up for final hearing at the stage of admission.

2. The Petitioners herein have challenged the order of approval dated 09/01/2019 whereby the Education Officer (Secondary), Zilla Parishad, Satara – Respondent No.2 has granted approval to the transfer of the Petitioners from un-aided to aided post as Shikshan Sevaks on monthly honorarium.

3. The Petitioner – Kishor Dattatraya Mandhare (Writ Petition (St.) No.98059/2020) has also challenged the order dated 22/09/2020 issued by the Respondent No.4 – Deputy Director of Education, Kolhapur Region, rejecting permission to Respondent No.3 – Management to include the name of the Petitioner of the said Petition in Shalartha Pranali in the post of clerk in pay scale.

4. Mr. N.V. Bandiwadekar, learned counsel for the Petitioners submits that the Petitioners were appointed as Assistant Teachers / Junior Clerk on unaided schools/posts and that their appointments were approved by the Education Officer. He submits that the Petitioners have put in more than three years of service and as such, the Education Officer was not justified in granting approval to their transfer as Shikhan Sevaks on monthly honorarium, but ought to have granted approval to the transfer as Assistant Teachers / Junior Clerk in

pay scale. In support of this contention, he has relied upon the decisions of the Division Bench of this Court in ***Ms. Sandhya Laxman Ghosalkar v/s. The State of Maharashtra and others in Writ Petition No.5258 of 2012*** along with connected writ petitions, ***Pramod s/o. Prabhakar Pokale v/s. State of Maharashtra and others, 2019 (4) Mh.L.J. 278*** and ***Miss. Devkar Dipali Kisan and ors. v/s. The State of Maharashtra and ors. in Writ Petition No. 5313 of 2017.***

5. Mr. Bandiwadekar, learned counsel for the Petitioner further submits that the Petitioner - Kishor Dattatraya Mandhare [*Writ Petition (St.) No.98059/2020*] was appointed on 15/06/2013 and as such, the Respondent No.4 could not have declined permission to include his name in Shalarnya Pranali in the post of Junior Clerk in the pay scale on the basis of subsequent Government Resolutions dated 12/02/2015 and 07/03/2019.

6. Learned AGP submits that the Management has transferred the Petitioners as Shikshan Sevaks and submitted the proposals for approval of the transfer of the Petitioners as Shikshan Sevaks. He, therefore, contends that the Education Officer was justified in granting approval to their transfers as Shikshan Sevaks on monthly honorarium.

7. Learned counsel for Respondent No.3 states that the Petitioners herein had completed more than 3 years of service and that they were the senior most Teachers/Junior Clerk in the respective schools. He states that in view of sub-clause 5(A) of clause (3) of Government Circular dated 28/06/2016, the Petitioners were transferred as Shikshan Sevaks and not as Assistant Teachers. He submits that the Management was not aware of the decisions of this Court in ***Pramod s/o. Prabhakar Pokale*** (supra) and ***Miss. Devkar Dipali Kisan and ors.*** (supra). He submits that the Education Officer who was aware of the said decisions, ought to have granted approval to the transfer as Assistant Teachers in pay scale.

8. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

9. It is not in dispute that the Petitioners were appointed as Assistant Teachers / Junior Clerk in un-aided schools/posts after following the prescribed procedure. Their appointments were approved by the Education Officer on un-aided basis. By afflux of time, vacancies were available in aided schools/posts run by the same Management. Considering the seniority of these Petitioners, the Management issued

transfer orders transferring them from un-aided schools/posts to aided schools/posts. Upon being relieved from the un-aided schools/posts, these Assistant Teachers/Junior Clerk joined duty on aided schools/posts. The Headmasters of respective Schools submitted proposals to the Education Officer for approval to the transfer of the Petitioners from the date of the transfer. By the impugned order, the Education Officer has granted approval to the transfer of the Petitioners from un-aided schools/posts to aided schools/posts as Shikshan Sevaks / Junior Clerk on monthly honorarium.

10. The only question which arises in these Petitions is whether the Education Officer was justified in approving the transfer of the Petitioners as Shikshan Sevaks on monthly honorarium.

11. It may be mentioned that in ***Ms. Sandhya Ghosalkar*** (supra), the Petitioners who were appointed as Assistant Teachers on un-aided basis, were transferred to an aided school run by the same Management. The said Petitioners had challenged the approval by the Education Officer as Shikshan Sevak. While allowing the Petition, the Division Bench of this Court has held that there was no justification

whatsoever for the Education Officer (Secondary) to grant his approval as Shikshan Sevak to the three Petitioners. It was observed that if the Petitioners had been appointed as Assistant Teachers in the aided School by transfer from the un-aided School on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. Accordingly, directions were given to the Education Officer to grant approval to the appointments of the Petitioners as the Assistant Teachers.

12. Subsequent to the decision in ***Ms. Sandhya Ghosalkar***, the Government issued a Circular dated 28/06/2016. Sub-clause 5(A) of clause 3 of the said Circular stipulates that when the Management proposes to transfer a Teacher, who has rendered less than 5 years service on un-aided basis, an undertaking should be obtained from such Teacher to work as Shikshan Sevak for three years on consolidated basis. In ***Pramod Prabhakar Pokale*** (supra), the Division Bench of this Court while considering the validity of the circular dated 28/06/2016 and in particular sub-clause 5(A) of clause (3), has held thus :-

“ Upon careful perusal of sub clause 5 (A) of clause 3 of the said Circular, it is mentioned therein that, if the teacher appointed on unaided basis, has rendered less than 5 years

service, and in case the management wishes to make such transfer from unaided school to aided school, in that case, an undertaking should be obtained from such teacher to work as Shikshan Sevak on consolidated pay. Prima facie said provision appears to be attractive, however, in case candidate is appointed on the post of Assistant Teacher after following the mandate of Section 5 of the MEPS Act, 1977, and on completion of two years probation period, if the Education Officer has granted approval to his appointment on regular basis, and in case he is senior most teacher serving in the school on unaided basis run by the Institution, requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he has already completed 3 years period as Assistant Teacher, there is no justifiable reason to ask him to work again as Shikshan Sevak on consolidated pay for three years. The sub clause 5 (A) of clause 3 of the said Circular can be invoked wherein the Assistant Teacher has not completed three years period after his appointment as an Assistant Teacher in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis. In short, if the Assistant Teacher has not completed satisfactory probation period, and if his service or services are not approved by the Education Officer on regular basis or there is no adherence to the provisions of Section 5 of the MEPS Act, 1977, in that case, the management is not entitled to transfer such teacher from an unaided school to aided school or on aided post of

Assistant Teacher / Shikshan Sevak from unaided post held by the Assistant Teacher. It is only in case where the Assistant Teacher has acquired status of regular employee on completion of two years probation period, and his appointment is in adherence to the provisions of Section 5 of the MEPS Act, 1977, and the approval is granted by the Education Officer to his appointment on regular basis on the post of Assistant Teacher on completion of satisfactory probation period, and he is senior most teacher working in the school on unaided basis, in that case, the question of invoking sub clause 5 (A) of Clause 3 of the said Circular would not arise. In such case, invoking said provision would run contrary to the judgment of the Division Bench [Coram : Dr.D.Y.Chandrachud and A.A.Sayed, JJ.] of the Bombay High Court at Principal Seat in the case of Ms.Sandhya Laxman Ghosalkar (supra), wherein it is observed in para 4 that, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three Petitioners. It is further observed that, if the Petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is especially so having due regard to the fact that they were similarly circumstanced with other Teachers in whose case approval was granted as Assistant Teachers. ”

13. In *Miss. Devkar Dipali Kisan* (supra), the challenge was to the rejection of the proposal for transfer of services from un-aided section to aided section. The Division Bench of this Court, upon considering the earlier judgments has reiterated that the transfer of a Teacher from unaided post to aided post is permissible in law. It has been held that sub-clauses (1) and (2) of clause (3) of Government Resolution dated 28/06/2016, which impose a ban on appointment till absorption of surplus Teachers, is contrary to the view taken by the various Division Benches of this Court. The Division Bench has further held that Circular dated 28/06/2016 which provides for those instructions has no statutory force in law and that administrative decisions which run contrary to the subordinate legislation are not valid in law.

14. In the instant case, the Petitioners were appointed as Assistant Teachers / Junior Clerk on substantive posts after following the prescribed selection procedure. These Assistant Teachers / Junior Clerk are duly qualified and their appointments have been approved by the Education Officer. Taking into consideration their seniority and services rendered by them on un-aided basis, the Management transferred them from unaided schools/posts to vacant sanctioned post in aided schools/posts run by the same Management. The transfer was

effected as Shikshan Sevaks mainly on the basis of sub-clause 5(A) of clause (3) of circular dated 28/06/2016. As it has been held in ***Pramod Pokale*** (supra), sub-clause 5(A) of clause (3) of Circular, could have been invoked only when the Assistant Teachers had not completed three years period after his appointment as Assistant Teachers on un-aided basis and he had not received approval of his services as an Assistant Teacher on regular basis. In the instant case, it is not in dispute that the Petitioners had completed their probation period. They had rendered service in unaided schools/posts for more than three years and that the Education Officer had approved their appointment on un-aided basis in the pay scale. Hence, there was no justification to appoint the Petitioners as Shikshan Sevaks on monthly honorarium. Appointment of these Petitioners as Shikshan Sevaks would adversely impact their seniority and deprive them of monetary benefits.

15. It is further to be noted that the Petitioner – Kishor Dattatraya Mandhare was appointed as Junior Clerk on un-aided basis vide appointment order dated 12/06/2013. The Petitioner joined the said un-aided post on 15/06/2013. The Education Officer had granted approval to his appointment as Junior Clerk in pay scale on un-aided

basis. He was transferred on a sanctioned post on aided basis which had fallen vacant due to retirement of one Madhukar Khuntale. Since the appointment of this Petitioner was prior to the issuance of circular dated 12/02/2015, the Respondent No.4 was not justified in refusing permission to the Management to include his name in Shalartha Pranali.

16. Under the circumstances and in view of discussion supra, the impugned order cannot be sustained. Hence, the following order :-

- (a) The Writ Petitions are allowed.
- (b) The impugned orders dated 09/01/2019 whereby the Education Officer granted approval to the transfer of the Petitioners from un-aided post to aided post as Shikshan Sevaks on monthly honorarium, are quashed and set-aside.
- (c) The Education Officer in respective Petitions is directed to issue a revised order granting approval to the transfer of the Petitioners as Assistant Teacher / Junior Clerk in pay scale w.e.f. the date of their transfer with further directions to release grant-in-aid for payment of salary to the Petitioners in the pay scale applicable to their post from

the date of transfer.

(d) The impugned order dated 22/09/2020 issued by Respondent No.4 – The Deputy Director of Education, Kolhapur Region, Kolhapur in Writ Petition (St.) No.98059/2020 is also quashed and set-aside.

(e) The Respondent No.4 is directed to grant permission to Respondent No.3 to include the name of the Petitioner – Kishor Dattatraya Mandhare [*Writ Petition (St.) No.98059/2020*] in Shalarcha Pranali in the post of Junior Clerk in pay scale in the aided school.

(f) The above exercise shall be completed within a period of six weeks from the date of uploading of this order.

17. Rule is made absolute in the above terms. There shall be no order as to costs.

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

(SMT. ANUJA PRABHUDESSAI, J.)