

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

WRIT PETITION NO. 11555 OF 2019

Vinod Atmaram Mohite

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Narendra Bandiwadekar a/w. Vinayak Kumbhar i/b. Mrs.
Ashwini Navjyot Bandiwadekar for the Petitioner.
Smt. V.S.Nimbalkar, AGP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 26th OCTOBER, 2020.**

P.C.

1. Rule. Rule made returnable forthwith. With consent, the petition is heard finally at the stage of admission.
2. The Petitioner has challenged the order dated 15.05.2019 whereby Respondent No.2 has refused to grant approval to the transfer of the Petitioner as an Assistant Teacher from unaided post to aided post in Respondent No.4 school.
3. It is not in dispute that by order dated 10.6.2003, the

Petitioner was appointed as an Assistant Teacher on unaided post in a school run by Respondent No.3 institution, after following the prescribed procedure. The appointment of the Petitioner on unaided post was approved by the Education Officer on 15.10.2003. The said post received 20% grant and became partially aided post since 2016. Whereas, Standard 5 and 6 divisions, which was receiving stage wise grant became 100% aided from April 2009 and 2010 respectively.

4. By afflux of time, one 100% aided post was available in Respondent no.4 school. The Petitioner, claiming to be the senior-most teacher on unaided post made an application dated 24.11.2008 for transfer to 100% aided post of a trained graduate teacher. In a meeting held on 1.12.2018, the Management resolved to transfer the Petitioner from an unaided/ partially aided post to 100% aided post in Respondent No.4 school w.e.f. 1.12.2018. Accordingly, transfer order dated 1.12.2018 came to be issued transferring the Petitioner as an Assistant Teacher from an unaided post to fully aided post in Respondent no.4 school.

5. The Headmaster of Respondent No.4 school submitted a proposal dated 9.1.2019 to Respondent No.2 Education Officer for grant of approval to the transfer of the Petitioner as Assistant Teacher from unaided to aided post w.e.f. 1.12.2018. Respondent No.4 Education Officer returned the proposal stating that approval cannot be granted till the surplus teachers in the district are absorbed.

6. Shri Bandiwadekar, learned Counsel for the Petitioner has relied upon the decisions of this Court in ***Pramod Prabhakar Pokale vs. State of Maharashtra 2019 (4) Mh.L.J. 278*** and ***Devkar Dipali Kisan & Ors. vs. State of Maharashtra (Writ Petition No. 5313 of 2017)*** along with other group matters to contend that the circular dated 28.6.2016, which prohibits approval to transfer till surplus teachers are appointed, has no statutory force in law and that sub-clause (1) and (2) of clause (3) of the said circular is contrary to Rule 41 of MEPS Rules which is subordinate legislation.

7. Per contra, Smt. Nimbalkar, learned AGP submits that the

proposal has not been rejected, but had been returned for re-submission after the surplus teachers are absorbed.

8. It is not in dispute that the Petitioner had been appointed as Assistant Teacher on an unaided post after following the prescribed selection procedure. The appointment of the Petitioner on unaided post has been approved by the Education Officer. The Petitioner had satisfactorily completed the probation period and being a senior most teacher, the Management took a resolution to transfer the Petitioner from unaided to aided post which had fallen vacant. Accordingly a transfer order was issued transferring the Petitioner as Assistant Teacher from unaided (partially aided) post to fully aided post in Respondent No.4 school.

9. It is well settled that transfer from an unaided post to aided post is not a fresh appointment. The provisions of the MEPS Act or the Rules framed thereunder do not create any embargo on such transfers. The Government had issued a circular dated 28.6.2016. The validity of this circular, which imposed a bar on grant of approval to transfer of teacher from unaided school to

aided school till the surplus teachers are absorbed has been considered by the Division Bench of this Court in several decisions. In *Devkar Dipali Kisan & Ors. vs. The State of Maharashtra*. (Writ Petition 5313 of 2017 with other group matters) the Division Bench of this Court has reiterated that transfer of an employee from unaided post to aided post is permissible in law. It has been held that G.R. dated 28.06.2016 has no statutory force and that sub-clause (1) and (2) of Clause (3) of the said G.R. which run contrary to the provisions of the subordinate legislation as found in Rule 41, is not valid in law. Under the circumstances and in the absence of any provision under the Act or the Rules framed there under, which bars transfer from unaided post to aided post till surplus teachers are absorbed, the Respondent No.2 Education Officer was not justified in declining to grant approval to the transfer of the Petitioner. Hence the impugned decision is unsustainable and is liable to quashed and set aside.

10. Under the circumstances, the Writ Petition is allowed. The impugned order is set aside. The Respondent No.2 Education Officer is directed to grant approval to the transfer of the

Petitioner from unaided post to aided post as per the proposal dated 9.1.2019 submitted by the Management, and to release grant-in-aid in respect of the said post from the date of his transfer. The said exercise shall be completed within a period of four weeks from the date of uploading of the order.

11. Rule is made absolute in above terms.

12. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production, by Fax or E-Mail, of a digitally signed copy of this order.

(ANUJA PRABHUDESSAI, J.)