

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

WRIT PETITION NO. 11884 OF 2019

Ramesh Ganpati Chavan & Anr. ..Petitioners

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. N.V.Bandiwadekar a/w. Mr. Vinayak Kumbhar i/b. Ashwini N. Bndiwadekar and Neha N. Bandiwadekar for the Petitioner.
Mr. N.C.Walimbe, AGP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 21st OCTOBER, 2020.**

P.C.

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally at the stage of admission.
2. The Petitioner has challenged the Order dated 26th August, 2019 passed by the Respondent No.2 Education Officer, refusing to grant approval for transfer of Petitioner No.1 from Unaided School to Aided School in the post of a Junior Clerk.
3. The Petitioner was appointed as a Junior Clerk on an Unaided post vide Appointment Order dated 1st April, 2010. The appointment was made after following required selection procedure and his appointment was approved by the Education

Officer vide Order dated 24th June, 2010. Subsequently the school had started receiving 20% grant-in-aid and thus the school was partially aided school. One of the junior Clerks appointed on sanctioned Post on aided basis in the school of Petitioner No.2, had retired from service w.e.f. 30th June, 2019 and the post of a Junior Clerk on aided basis had fallen vacant. The Management of the Petitioner No.2, taking into consideration the seniority of the Petitioner and service rendered by him on unaided/partially aided basis, passed a resolution to transfer the Petitioner No.1 from partially aided school to aided school. Accordingly transfer order dated 26th June, 2019 was issued and Petitioner no.1 was transferred from the post of Junior Clerk partially aided school to the post of Junior Clerk in aided school w.e.f. 1st July, 2019.

4. The Headmaster of the said Aided school submitted a proposal to Respondent No.2 with a request to grant approval to the transfer of the Petitioner as a junior Clerk on aided post w.e.f. 1st July, 2019. The said proposal was rejected on the ground that G.R. dated 28th June, 2016 does not provide for transfer of non-teaching staff from unaided to aided post. Vide letter dated 16th

August, 2019, the Headmaster of the Aided School brought to the notice of Respondent No.2 Education Officer that there is no embargo for transfer of non-teaching staff from unaided post to aided post and requested the Education Officer to reconsider the proposal and grant approval. The said proposal has been rejected on a ground that G.R. dated 28th June, 2016 does not provide for transfer of non-teaching employee from Unaided to Aided post. This order is under challenge in the present petition.

5. Shri Bandiwadekar, learned Counsel for the Petitioner submits that Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 applies to teaching as well as non-teaching staff and permits transfer of such staff. Relying upon the decision of the Division Bench of this Court in *Rajaram S. Mandale vs. State of Maharashtra & Anr.* (Writ Petition No. 8643 of 2019), he submits that there is no embargo under the MEPS Act or the Rules framed thereunder to transfer a non teaching staff from unaided school to aided school. He submits that rejection of the proposal on the grounds stated in the impugned order is arbitrary and cannot be sustained.

6. Per Contra, learned AGP states that there is no specific provision under the Act or Rules relating to the transfer of non teaching staff from unaided post to aided post. He therefore contends that the impugned order does not warrant any interference.

7. The issue relating to transfer of non-teaching staff from unaided to aided school has been considered by the Division Bench of this Court in Rajaram S. Mandale (Supra). In the said case, the proposal for grant of approval for transfer of a peon from unaided school to aided school was rejected on the ground that the transfer was subject to Government Resolution dated 28th June, 2016 and that the said resolution did not contain clarification or mention to transfer of non teaching employee. While setting aside the said order, the Division Bench of this Court has observed thus:

“3. The impugned order, to say the least, is strange. In the first place, the order chooses to refer to Government Resolution dated 28th June, 2019, which is in respect of teachers, and which, on its very face, does not apply to non-teaching staff, and then, in the same breath, it rejects the proposal for transfer of non-

teaching staff because the Government Resolution does not deal with non-teaching staff. Besides, the relevant condition of Government Resolution dated 28th June, 2016, namely want of surplus teachers at the time of transfer, has been held to be ultra vires and bad in law by a Division Bench of this Court in Writ Petition No.5313 of 2017 (Miss. Devkar Dipali Kisan and Ors. Vs. The State of Maharashtra) by order dated 25th April, 2019. As held by the Division Bench, the circular of 28th June, 2016, in the face of Rule 41 of Maharashtra Employees of Private Schools Rules, 1981, is not valid in law. For both these reasons, the impugned order passed by Respondent No.2 cannot be sustained.

4. Rule 41 applies to all employees, both teaching and non-teaching, as defined in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, of a recognized school. Rule 41, thus permits transfer of teaching and as well as non-teaching staff of a recognized school, and, as we have noted above, Government Resolution of 28th June, 2016 does not and cannot come in the way.”.

8. The issue raised in this Petition is therefore no more res integra in view of the decision, of this Court in Rajaram S. Mandale. In the light of the clear dictum and there being no embargo either under the Act or Rules the Education Officer could

not have rejected the proposal on a ground that the Government Resoslution dated 28th June, 2016 does not provide for transfer. As a result, the Petition is allowed. The impugned order is quashed and set aside. Respondent No.2 is directed to grant approval to the transfer of the Petitioner no.1 to the aided post of junior clerk w.e.f. 1st July, 2019 and release the grant-in-aid for payment of monthly salary applicable to his post from that day.

9. The order shall be complied with within a period of 6 weeks from the date of this order. Petition stands disposed of. Rule is made absolute in above terms. There shall be no order as to costs.

10. 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.)