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

WRIT PETITION NO. 10982 OF 2016

Shree Shahu Marathi School and Anr. ... Petitioners

V/s.

Deputy Director of Education and Anr. ... Respondents

Mr. M.S. Topkar for the Petitioners

Mr. Suresh M. Kamble for Respondent No.2

***CORAM : NITIN JAMDAR &
C.V. BHADANG, JJ.***

(Through Video Conferencing)

DATE : 19 JUNE 2021

P.C. :-

Heard the learned Counsel for the parties.

2. Notices have been issued in this Petition and considering the limited question involved in this Petition, the Petition is taken up for disposal at the admission stage.

3. The Petitioner – Management had sought to post one Tanaji Ganapati Patil, working as assistant teacher in the un-aided

division of the school conducted by the Petitioner No.1 – school to the aided division. This proposal of the Petitioner has been rejected by the Primary School Board, Municipal Corporation, Kolhapur by impugned communication dated 4 June 2014. Another proposal sent by the Petitioner for the same purpose was rejected on 6 April 2016 on the ground that it already stands rejected.

4. In the impugned communication, two grounds are given for rejection of the proposal of the Petitioners : (i) that there is a ban on recruitment by virtue of the Government Resolution dated 2 May 2012; and (ii) there is no such provision to post a teacher from un-aided division to aided division.

5. This Court, in various decisions, has taken a view that posting of a teacher from un-aided division to aided division within the management is a transfer. In respect of the Petitioner – Management itself this view is taken by the Division Bench by order dated 12 March 2020 in Writ Petition No.8377 of 2016. This fact is also not disputed by the learned Counsel for the Respondent – Corporation. He, however, contends that apart from these two grounds there are other grounds as stated in the affidavit-in-reply. The learned Counsel for the Petitioner submits that these grounds are not tenable. Be that as it may, the impugned order does not proceed on the ground referred to in the affidavit-in-reply. As the impugned order stands, it is liable to be quashed and set aside as

once the proposal of the Petitioner is considered as a transfer, then both the grounds raised in the impugned order do not survive.

6. We accordingly set aside both the impugned orders and restore the proposals of the Petitioner to the Respondent – School Board, who will give an opportunity to the Petitioner to submit an additional representation and take a decision as per law.

7. The learned Counsel for the Petitioner – Management states that setting aside the impugned orders and directing it to be reconsidered will not affect the rights of any employee working in the Petitioner – Management. This statement is accepted.

8. The Writ Petition is disposed of in above terms.

C.V. BHADANG, J.

NITIN JAMDAR, J.