

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8643 OF 2019

Rajaram S Mandale & Anr ...Petitioners

Versus

The State Of Maharashtra Through ...Respondents
Secretary, School Education Dept. And Anr

Mr. N. V. Bandiwadekar a/w Vinayak Kumbhar and Ms. A. N.
Bandiwadekar- Advocate for the petitioner.
Ms. M. S. Shrivastav – AGP for the Respondent/State

CORAM : S. C. GUPTE AND
MADHAV J. JAMDAR, JJ.

DATE : 8th OCTOBER, 2020.

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties. Rule. Rule made returnable forthwith. By consent, the petition is taken up for final hearing. Ms. Shrivastav, AGP, waives service for the Respondent-State.

2. This Writ Petition challenges an order passed by Respondent No.2-Education Officer, Zilla Parishad, Sangli, refusing to grant approval for transfer of Petitioner No.1 from an un-aided School of Petitioner No.2 to an aided school of

Petitioner No.2 on the post of a peon. The impugned order indicates that the proposal, signed by the School Management for transfer of Petitioner No.1, is refused by Respondent No.2 on the ground that the transfer was subject to Government Resolution dated 28th June, 2016, but that Resolution contained no clarification or mention about transfer of non-teaching employees. Learned AGP, for the Respondent-State, supports the impugned order.

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, 2016, 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 that 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-virus and bad in law by a Division Bench of this Court in Writ Petition No. 5313 of 2017 (Miss. Devkar Dipali Kisan and Ors. V/s. 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 recognised school. Rule 41, thus, permits transfer of teaching and as well as non-teaching staff of a recognised school, and, as we have noted above, Government Resolution of 28th June, 2016 does not and cannot come in the way.

5. The impugned order of Respondent No.2-Education Officer is, accordingly, quashed and set aside. Respondent No.2 is directed to grant approval to the transfer of Petitioner No.1 with effect from 1st July, 2018 and sanction for payment of monthly salary applicable to his post from that day.

6. Rule is made absolute and the Petition is allowed in the aforesaid terms.

7. This order shall be complied with Respondent No.2 within four weeks from today.

8. This order will be digitally signed by the Private Secretary

of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

[MADHAV J. JAMDAR, J.]

[S. C. GUPTE, J.]