

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

**WRIT PETITION NO. 8377 OF 2016**

M.I.G. Marathi School through  
Head Mistress & Anr.

.. Petitioners

v/s.

Deputy Director of Education & Anr.

.. Respondents

Mr. Meelan Topkar a/w Pavitra Manesh for the petitioners  
Mr. P.G. Sawant, AGP for respondent – State  
Mr. S.M. Kamble for respondent no.2

**CORAM : R.K. DESHPANDE &  
PRITHVIRAJ K. CHAVAN, J.J.**

**DATED : 12<sup>th</sup> MARCH, 2020**

**P.C.**

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the respective parties.

2. The petitioner was appointed to teach the classes of primary school, which were run on no-grant basis, as *Shikshan-Sevak* on 1<sup>st</sup> July, 2000. On 1<sup>st</sup> July, 2003, the petitioner was confirmed in service. The initial appointment as well as confirmation was approved by respondent no.2 -

Primary Education Board. On 31<sup>st</sup> January, 2015 the vacancy arose in the aided division of the same school due to retirement of one Mrs. Suman Vilas Nangare on attaining the age of superannuation. The Management- School Committee passed a resolution on 27<sup>th</sup> January, 2015 to absorb the present petitioner from unaided division to the aided division w.e.f. 2<sup>nd</sup> February, 2015. The proposal for grant of approval was forwarded to the respondent no.2 - Primary Education Board.

3. The proposal was rejected on 4<sup>th</sup> May, 2016 by the respondent no. 2 assigning the reason that the petitioner was working in the primary school and there is no provision under the Maharashtra Employees of Private Schools Act ("MEPS Act" for short) for transfer from unaided school to aided school. The another reason assigned was that there was ban on recruitment, imposed by Government Resolution dated 2<sup>nd</sup> May, 2012 and, therefore, fresh appointment of the petitioner on the aided division of the same school cannot be approved unless and until the teachers from the surplus list maintained are absorbed.

4. We have gone through the provisions of MEPS Act and Rules thereunder. The definition of “School” in Section 2(24) includes the ‘primary school’ which is defined under section 2(19) of the Act means a recognized school or a part of such school in which primary education is imparted. We have, therefore, no doubt that the provisions of the MEPS Act and the Rules framed thereunder are applicable to govern the conditions of service of the teaching and non-teaching employees. Rule 41 under the MEPS Rules confers the power upon the management to transfer the teachers from one school to another school. It would, therefore, apply to the teachers working in primary schools run by the same management.

5. In the present case, though the order dated 31<sup>st</sup> January, 2015 shows that the petitioner is appointed on the aided division of primary school, in fact, it is the transfer from one unaided division of the same school to the aided division. It is not a fresh appointment for the reason that no advertisement was issued and no selection committee was constituted to make appointment of the petitioner. Obviously, in our view, it is in fact the transfer from unaided division of the primary

school to the aided division of the same school.

6. It is the contention raised by the learned Counsel appearing for respondent no.2 that only senior most teachers working can be transferred from unaided to aided division of the school, if at all it is permissible. The question of seniority has not been gone into though there is nothing produced on record to show that some rival claimant has raised the issue. Be that as it may, the question can be examined by the respondent no.2.

7. Once it is held that the petitioner has been appointed by transfer from unaided division of primary school to the aided division of primary school, the question of applicability of ban on recruitment as per the Government Resolution dated 2<sup>nd</sup> May, 2012 does not arise. Consequently, the question of absorption of surplus staff from other schools would, therefore, not survive.

8. In view of the aforesaid position, the writ petition is partly allowed and following order is passed :-

## **ORDER**

(i) The order dated 4<sup>th</sup> May, 2016 passed by the respondent no.3 rejecting the approval of the transfer / appointment on the aided division of the primary school is hereby quashed and set aside.

(ii) The respondent no.2 shall examine the aspect of seniority of the employees working on unaided division of primary school and then pass an appropriate order keeping in view the observations made by this Court. The respondent no.2 shall carry out this exercise within a period of four weeks.

9. Rule is made absolute in the aforesaid terms. No order as to costs.

**(PRITHVIRAJ K. CHAVAN, J.)**

**(R.K. DESHPANDE, J.)**