

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

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WRIT PETITION NO.11879 OF 2019

1) Vilas Arjun Gurav
2) Sahyadri Shikshan Sanstha ...Petitioners

Versus

1) The State of Maharashtra
2) Education Officer,
(Secondary) Zilla Parishad,
Ratnagiri ...Respondents

**WITH
WRIT PETITION NO.11880 OF 2019**

1) Sachin Shivaji Patil
2) Sahyadri Shikshan Sanstha,
Sawarde, Tal. Chiplun, Dist.
Ratnagiri through its ...Petitioners
Secretary

Versus

1) The State of Maharashtra ...Respondents
2) Education Officer,
(Secondary) Zilla Parishad,
Ratnagiri

**WITH
WRIT PETITION NO.11881 OF 2019**

1) Ashok Mahadeo Sarmalkar
2) Sahyadri Shikshan Sanstha,
Sawarde, Tal. Chiplun, Dist.
Ratnagiri through its ...Petitioners
Secretary

Versus

1) The State of Maharashtra ...Respondents
2) Education Officer,
(Secondary) Zilla Parishad,
Ratnagiri

**WITH
WRIT PETITION NO.11882 OF 2019**

1) Rekha Pandurang Shinde
2) Sahyadri Shikshan Sanstha,
Sawarde, Tal. Chiplun, Dist.
Ratnagiri through its Secretary ...Petitioners

Versus

1) The State of Maharashtra ...Respondents
2) Education Officer,
(Secondary) Zilla Parishad,
Ratnagiri

**WITH
WRIT PETITION NO.11883 OF 2019**

1) Mrs. Shreya Dhananjay
Rajeshirke
2) Sahyadri Shikshan Sanstha,
Sawarde, Tal. Chiplun, Dist.
Ratnagiri through its Secretary ...Petitioners

Versus

1) The State of Maharashtra ...Respondents
2) Education Officer,
(Secondary) Zilla Parishad,
Ratnagiri

**WITH
WRIT PETITION NO.11885 OF 2019**

1) Mrs. Sanchita Santosh
Kadam
(Smt. Sanchita Dattatraya
Surve)
2) Sahyadri Shikshan Sanstha,
Sawarde, Tal. Chiplun, Dist.
Ratnagiri through its Secretary ...Petitioners

Versus

1) The State of Maharashtra ...Respondents
2) Education Officer,
(Secondary) Zilla Parishad,
Ratnagiri

....

Mr. Narendra V. Bandiwadekar with Mr. Vinayak Kumbhar i/b.
Mrs. Ashwini Navjyot Bandiwadekar for the Petitioners.
Mr. N.C. Walimbe, AGP for Respondents-State

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 19th OCTOBER, 2020.

P.C.:-

Rule. Rule is made returnable forthwith. With consent, taken up for final hearing at the stage of admission.

2. The Petitioners have challenged rejection of the proposal for transfer of their services from unaided to aided schools run by the same Management.

3. The Petitioner No.1 in respective petitions were appointed as Assistant Teachers against unaided posts after following the prescribed procedure. The appointment of these Petitioners as Assistant Teachers was approved by the Education Officer. Considering the seniority of these Assistant Teachers, the Management passed resolutions to transfer them from

unaided schools to aided schools run by the same institutions against vacancies, which had become available due to transfer/retirement or promotion of the teachers appointed on the said aided posts. Accordingly, transfer orders came to be issued transferring these Assistant Teachers from unaided/partially aided schools to sanctioned posts in aided schools. Upon being relieved from unaided /partially aided posts, these Assistant Teachers joined the fully aided posts /schools. The Headmasters of the respective aided schools submitted proposals to the Education Officer for approval of the transfer of these Assistant Teachers from the date of the transfer. By the impugned order the Education Officer has declined to grant approval mainly on the ground that as per Clause No.5(b) (1) of Government Circular dated 28/06/2016, a teacher, who is transferred to aided post is entitled only for 20% grant- in-aid and that the balance 80% salary has to be paid by the concerned Management.

4. Shri Bandiwadekar, learned counsel for the Petitioners submits that in a catena of judgments, the Division Bench of this Court has held that Rule 41 of Maharashtra Employees of Private Schools (Condition of Services) Rules 1981 permits

transfer of the Assistant Teachers from unaided post /school to aided post/school. He submits that the Circular dated 28/06/2016, which imposes restrictions / conditions on transfer, cannot override the statutory rules. He submits that the validity of the Circular has been considered by the Division Bench of this Court in ***Pramod Prabhakar Pokale vs. The State of Maharashtra and Ors.Writ Petition No. 6114 of 2018*** and ***Ms Deokar Deepali Kisan and Ors. vs. The State of Maharashtra and Ors. in Writ Petition No.5313 of 2017 alongwith other group matters*** and that it has been held that the said Circular is not valid in law.

5. Learned AGP has also relied upon the decision in ***Pramod Pokale*** (supra) to contend that the State Government can issue directions to the Education Institution to fulfill its obligation as indicated in Sub Clause 5(b) of clause 3 of the Circular dated 28/06/2016. Learned AGP submits that Circular dated 28/06/2016 is in consonance with Section 5 of the Employees of Private Schools (Condition of Service Regulation) Act, 1977 (M.E.P.S. Act)

6. It is well settled that there is no embargo for effecting

transfer of a teacher from unaided to aided schools run by the same Education Institution. The question is whether the powers of the Management to effect such transfers can be circumscribed by the conditions imposed under Circular dated 28/6/2016. Clause Nos. 3(1) and (2) of the Circular stipulate that till the surplus teachers are absorbed, no approval should be granted for transfer of the Assistant Teachers from unaided school to aided school. Clause 3 Sub Clause 5(b) requires the Assistant Teacher, who is proposed to be transferred from unaided post to aided post to give an undertaking for acceptance of stage wise release of grant. This clause provides that upon such transfer, the Assistant Teacher who has completed five years on unaided post would be entitled for 20% grant from the Government in the first year of his transfer and that the balance 80% will have to be borne by the Education Institution. Similarly, for the second, third and fourth year he will be entitled for 40%, 60% and 80% Government grant and the balance 60%, 40% and 20% respectively will be borne by the Institution. It is only upon completion of five years of the transfer that the Assistant Teacher will receive 100% grant from the Government.

7. The validity of this circular particularly Sub Clause 5(b) of Clause 3 has been considered by the Division Bench of this Court in ***Pramod Pokale***. It has been held that when there is vacant post in the aided school, the institution can transfer senior most qualified Assistant Teacher working on unaided post to fill up the said vacancy, and if such senior most teacher is available in the same school, said post on aided basis can be offered to him. The Division Bench has observed that when the Management can legally transfer Assistant Teacher serving in the unaided school to aided school, there is no reason to obtain an undertaking from such teacher as stated in Sub Clause 5 (b) of Clause 3 of the aforesaid Circular. It is further held that the formula of proportionate salary to be disbursed by the State Government and the concerned institution in the manner stated in Sub Clause 5(b) of Clause 3 of the said Circular can be made applicable only when a fresh appointment is made on a new sanctioned post on aided basis. It is only in such cases that the State Government can issue directions to the institutions to fulfill its obligation to the extent of disbursement of salary amount as indicated in Sub Clause 5(b) (1) to (5) of Clause (3) of the said circular. The Division Bench has held that there is no reason to ask for an undertaking when a teacher, who has

served for five years or more and whose appointment is approved, is transferred on existing vacant post on aided basis.

8. In ***Devkar Deepali*** (supra) the Division Bench of this Court has upon considering the earlier judgments has reiterated that the transfer of a teacher from unaided post to aided post is permissible in law. It has been held that the Clauses 1 and 2 of sub Clause 3 of GR dated 28/06/2016, which affect the rights of the Management to transfer such teachers, are not valid in law. The Division Bench has further held that the Circular dated 28/6/2016, has no statutory force in law and being contrary to the subordinate legislation, the same is not valid in law.

9. It is thus well settled that the transfer is not a fresh appointment and that Management has a right to transfer a teacher from unaided post/school to aided post/school. A teacher, who is transferred from unaided school to aided school or from unaided post to an existing sanctioned post on aided basis, is entitled to receive salary with 100% grant and that the Government cannot withhold the grant in the manner stated in Sub Clause 5 (b) (1) to (5) of Clause 3, by issuing such Circular, which has no statutory force in law.

10. In the instant case, the Assistant Teachers were appointed as Assistant Teachers on substantive vacant posts after following the prescribed selection procedure. These Assistant Teachers are duly qualified and their appointments have been approved by the Education Officer. These teachers have completed the probation period. Taking into consideration their seniority and the service rendered by these Assistant Teachers in unaided school, the Management had transferred them from unaided school to vacant sanctioned post in aided schools run by the respective institutions. The transfer of these Assistant Teachers was not in contravention of any provisions under the Act or Rules framed thereunder and as such, the Education Officer was not justified in declining to grant approval to their transfer on the basis of a Circular, which has been held to be not valid in law. The decision of the Education Officer is contrary to the law laid down by the Division Bench of this Court. Hence, the impugned orders cannot be sustained.

11. Under the circumstances and in view of discussion supra, the impugned orders are quashed and set aside. Respondent No.2 -Education Officer is directed to grant approval

to the transfer of the Petitioner No.1 in respective petitions to the 100% aided posts of Assistant Teachers w.e.f. the date of their transfer. Respondent No.2 to release the grant-in-aid for payment of monthly salary of these Assistant Teachers from the date of their transfer. The aforesaid exercise shall be completed from the period of three months from the date on which this order is uploaded.

12. Rule is made absolute in above terms.

13. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)