

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4689 OF 2021

Dipali Shankar Muchate .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Dr. R. J. Godbole, Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 3.

Shri V. B. Narke, Advocate for Respondent Nos. 4 and 5.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 04TH AUGUST, 2021.

FINAL ORDER :

. The proposal seeking approval to the transfer of the petitioner from unaided post to aided post is rejected. The said proposal is rejected on the ground that there are surplus candidates available and also backlog of reserved category candidates is not filled in.

2. We have heard Mr. Godbole, the learned advocate for the petitioner and the learned Assistant Government Pleader for respondents/State.

3. As far as ground that the surplus candidates are available and as such management could not have transferred an employee does not stand to reason in view of Rule 41 of the

Maharashtra Employees of Private Schools (Condition of Service Regulation) Rules. This Court under its judgment and order dated 04th July, 2019 in Writ Petition No. 1493 of 2018 with other connected writ petitions has observed that, some of the clauses of Circular dated 28.06.2016 are erroneous and the existence of surplus candidates with the education department would not be a bar for the management to transfer an employee from unaided to aided post.

4. The Education Officer certainly is required to consider seniority, roster, qualification of the candidate transferred from unaided to aided post, so also availability of post meant to a particular category to which the employee belongs. The petitioner claims to be belonging to general category. The Education Officer also has to confirm as to whether post for general category is available. The proposal may not be rejected on the ground that backlog of reserved category candidates is not filled in or there are surplus candidates available with the education department. All other aspects may be considered by the Education Officer.

5. With the aforesaid observations, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal in the light of the observations made above and the judgment of this Court dated 04th July, 2019 in Writ Petition No. 1493 of 2018 with other connected writ petitions. Same shall be done expeditiously and preferably within a period of four (04)

months from today.

6. In the light of the above, the writ petition is disposed of.
No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug.21