

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

73 WRIT PETITION NO. 5000 OF 2021

**ANAND SIKANDAR GANGNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioners : Mr. S.P. Katneshwarkar.
AGP for Respondents : Mr. A.S. Shinde.
Advocate for Respondent No. 2 : Mr. P.R. Tandale.
Advocate for Respondent Nos. 3 & 4 : Mr. Amol Vasmatkar.

**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.
DATED : 26.07.2021**

PER COURT :

We have heard Mr. Katneshwarkar, learned Advcoate for the petitioner and Mr. Tandale, learned Advocate for the respondent.

2. The petitioner claims to have been appointed as an assistant teacher on an unaided post on 15.06.2012. The appointment of the petitioner on unaided post is approved under the order dated 31.12.2014 by the Education Officer. On 14.07.2020, the petitioner is transferred to the aided post. The proposal submitted for approval to the transfer of the petitioner from unaided to aided post is rejected. The same is rejected basically on the ground that there are surplus teachers available.

3. Mr. Tandale, the learned counsel relies upon the circular dated 28.06.2016 and submits that the petitioner has not followed the procedure envisaged under Section 5 of the MEPS Act.

4. We have, under our judgment and order dated 04.07.2019 in Writ Petition No. 1493/2018 with connected Writ Petitions, observed that the Management / employer has the powers to transfer the employee from unaided to aided division under Rule 41 of the MEPS Rules and some of the clauses of circular dated 28.06.2016 are erroneous.

5. The Education Officer naturally is required to consider the seniority, roaster and the qualification of the petitioner before passing the order of approval to the transfer from unaided to aided post. However, if the petitioner is senior and as per the roaster the post is available so also the petitioner possesses the requisite qualification, then, only on the ground that there are surplus teachers available the proposal for approval cannot be rejected.

6. In the light of that the impugned order is quashed and set aside. The Education Officer (Primary) shall reconsider the proposal seeking approval to the transfer of the petitioner from unaided to

aided post in tune with the judgment and order of this Court dated 04.07.2019 in Writ Petition No. 1493/2018 with connected Writ Petitions. The said proposal shall be decided expeditiously, preferably within four months.

7. Writ Petition is disposed of. No costs.

(R.N. LADDHA, J.)

(S.V. GANGAPURWALA, J.)

S.P.C.