

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

WRIT PETITION NO.6585 OF 2019

Smt. Annapurna Shikandar Gangane,
Age-30 years, Occu:Service as
Assistant Teacher,
R/o. C/o-Matoshri Ganganadevi Secondary
School, Latur, Taluka and District-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai,
- 2) The Deputy Director of Education,
Latur Division, Latur,
- 3) The Education Officer (Secondary),
Zilla Parishad, Latur,
- 4) Shri Gajanan Bahu-uddeshiya
Shikshan Sanstha, Latur,
Balaji Nagar, Nanded Road,
Latur, District-Latur,
Through its Secretary,
- 5) Matoshri Narmadadevi Gangane
Secondary School, Balaji Nagar,
Nanded Road, Latur,
Through its Headmaster.

...RESPONDENTS

...
Mr.Anand V. Patil (Indrale) Advocate for Petitioner.
Mr.S.N. Kendre, A.G.P. for Respondents No. 1 to 3.
Mr.D.B. Rode Advocate for Respondent Nos. 4 and 5.
...

**CORAM: SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 5th FEBRUARY, 2021

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. After hearing learned counsel for the parties, it appears that petitioner has been appointed as assistant teacher under order dated 20th February 2011, against a permanent post which had fallen vacant. His appointment was accorded permanent status by order dated 13th June 2013, on completion of probationary period. In 2018 petitioner's services were purportedly terminated. She had approached school tribunal, Latur by filing Appeal No. 5 of 2018, which had been allowed under order dated 1st August 2018, setting aside the termination of the petitioner.

3. Thereafter, the education officer has granted permanent approval to appointment of petitioner on unaided divisions in the school which is being run on non grant-in-aid basis. Subsequently, the management has transferred the petitioner from unaided divisions to aided divisions of 8th to 10th standards of respondent No. 5 school.

. A proposal, accordingly, for approval had been sent to education officer since petitioner being transferred from unaided divisions to aided divisions. The education officer declined to grant approval to the transfer, referring to circular dated 28th June, 2016, since surplus teachers being available. As such, the petitioner is before us.

4. Learned counsel Mr. Anand Patil (Indrale) submits that refusal to grant approval to petitioner's transfer from non aided divisions to aided divisions with reference to circular dated 28th June 1996, is wholly untenable. He refers to that said circular has been held to be having no efficacy and does not have force of any government instructions. Learned counsel places reliance on a decision of division bench of this court dated

4th July 2019, in a group of matters bearing writ petition No. 1493 of 2018 and other companion petitions. Learned counsel further points out that in paragraph No. 17 division bench, with regard to said circular, has observed thus:-

“17. The question would be whether by way of an executive instructions, the powers of the management under Rule 41 of MEPS Act for transfer of an employee can be circumscribed, curtailed and eroded. Rule 41 is framed under the Rule making power of the Government as provided under Section 13 of the MEPS Rules. The MEPS Rule is piece of subordinate legislation. It is trite that, executive instructions cannot override the statutory Rules. Precisely, this has been held by the Division Bench of this Court at Principal Seat at Bombay in Writ Petition No. 513 of 2017 with connected writ petitions decided on 25.04.2019. The Division Bench in the said judgment held that:

“ The circular dated 28.06.2016 can hardly be said to be Government instructions. It has no statutory force in law. Rule 41 of the MEPS Act which is the subordinate legislation, the administrative decisions which run contrary to them cannot be held to be valid in law. We find that, since Clauses 1 and 2 of the said circular, run contrary to the provisions of the subordinate legislation a found in Rule 41, the same would not be valid law. ”

While delivering the said judgment, the Division Bench considered the earlier judgments of this Court. Sub-clauses 1 and 2 of Clause of the circular has already been held to be not valid in law by the Division Bench. There is no reason for us to take different view. The impugned circular as it affects the rights of the management to transfer, as such, same is improper and does not have any enforceable status. ”

. Learned counsel further adverts to that the division bench has considered that it would not be proper to take different view and has further observed that the circular would not have any enforceable status. He therefore, urges to set aside impugned order and allow the writ petition.

5. Learned AGP, however, purports to submit that the decision referred to and relied upon on behalf of the petitioner comes with other observations with regard to seniority to be maintained as well as roster to be followed.

6. The position clearly emerges that circular with reference to which the impugned order has been passed, is no longer having any efficacy. Impugned order dated 13th February 2019 passed by respondent No. 3 – the Education Officer (Secondary), Zilla Parishad, Latur, being based only on the circular dated 28th June 2016 is unsustainable and is accordingly set aside. The proposal for grant of approval to transfer of petitioner, eventually, stands revived for reconsideration and for passing appropriate orders. While considering the same, the decision dated 4th July 2019, in a group of matters bearing writ

petition No. 1493 of 2018 and other companion petitions, referred to above, relied upon on behalf of the petitioner be kept in view. Having regard to that petitioner is appointee of 2011, decision on proposal for grant of approval to transfer be taken as early as possible, preferably within a period of six weeks from the date of receipt of writ of this order.

7. Rule is made absolute in above terms. Writ petition accordingly stands disposed of.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]

asb/FEB21