

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

31 WRIT PETITION NO.9866 OF 2021

**SANTOSH HITANAND JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner: Mr. Wakade Ramesh I.
AGP for Respondents No. 1 to 3: Mr. K. N. Lokhande

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

DATE: 06th SEPTEMBER, 2021

PER COURT:

1. The proposal seeking approval to the transfer of the petitioner from unaided to aided post is approved but in a phase wise grant-in-aid.

2. It is the contention of the petitioner that the petitioner has worked on unaided post for more than five years before transfer to the aided post. The aided post to which the petitioner is transferred on 100% grant-in-aid for which the approval has to be on 100% grant-in-aid post.

3. The learned A.G.P. waives service for respondents no. 1 to 3.

4. The petitioner has placed on record the chart giving the date of appointment on unaided post, the approval granted to the appointment on unaided post and the date of transfer to the aided post.

The same is reproduced as below-

Sr. No.	Name & Qualification of Employees	Appointment & Approval of "Assistant Teachers" on unaided basis w.e.f. & Name appeared in approval at Sr. No.	How many years worked on unaided basis	Transfer date w.e.f. unaided to aided	Approval as "Shikshan Sevak" on aided basis w.e.f.
1.	Santosh S/o Hitanand Joshi (M.Sc. B.Ed.) (Category - Open)	10.11.2011 Vide approval order dt. 11.07.2016 Serial No. 03 Page No.	05 Years, 11 Months 29 Days	01.11.2017 Vide order dt. 01.11.2017	01.11.2017 for 3 years Vide approval dt. 13.04.2018 Page No.

5. It is submitted that the petitioner has worked on unaided post for five years and more.

6. We have in our Judgment dated 04.07.2019 in Writ Petition No. 1493 of 2018 with connected writ petitions held that some of the clauses of the Circular dated 28.06.2016 do not apply. It appears that respondent no. 3 / Deputy Director of

Education, while granting approval to the appointment of the petitioner as an Assistant Teacher from the date of transfer to the aided post had granted approval on grant-in-aid in phase-wise manner to the effect that after five years, the petitioner would be granted approval on 20% grant-in-aid. The same would not be in tune with the order passed by this Court from time to time at this Bench and also at Principal Seat.

7. In case the petitioner is transferred on 100% grant-in-aid post since the date of completion of three years, he shall be considered on 100% grant-in-aid post. In case the petitioner is transferred on grant-in-aid post, for example on 60%, then from the date of transfer, he would be on 60% grant-in-aid post, but if the petitioner, after having completed three years on unaided post and is transferred on 100% grant-in-aid post, his services will have to be considered on 100% grant-in-post. This aspect has been ignored by respondent no. 3 / Deputy Director of Education.

8. In the light of above, the impugned order of granting approval in phase-wise manner is quashed and set aside and modified.

9. In case respondent no. 3 / Deputy Director of Education is satisfied about approval to the transfer of the petitioner on aided post and if the petitioner has completed three years and more on unaided post before he is transferred to aided post on 100% grant-in-aid post, then respondent no. 3 / Deputy Director of Education shall consider grant of approval to the transfer of the petitioner on 100% grant-in-aid post within a period of six (06) months.

10. Writ Petition accordingly stands disposed of.
No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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