

WRIT PETITION NO. 125 OF 2021

Bhujbal Yogesh Purushottam .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Shivaji T. Shelke, Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 and 2.

Shri S. S. Wagh, Advocate for the Respondent No. 3.

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

DATE : 16TH SEPTEMBER, 2021.

FINAL ORDER :

. The proposal seeking approval to the transfer of the petitioner from unaided to aided post as junior clerk is rejected under the impugned order.

2. Mr. Shelke, the learned counsel for the petitioner submits that, the petitioner was appointed as junior clerk on unaided post on 29.11.2004. The appointment of the petitioner as junior clerk on unaided post was approved on 02.01.2010. The learned counsel further submits that, upon the aided post becoming vacant, the petitioner was transferred to the aided post as junior clerk on 01.01.2020. According to the learned counsel, there is no prohibition to transfer to the aided post of non teaching staff. The learned counsel submits that, amendment and introduction

of Rule 41-B of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules (for short “said Rules”) would not affect the right of the petitioner as said amendment came into effect on 30.04.2021. The petitioner was transferred to aided post on 01.01.2020.

2. Mr. Kale, the learned Assistant Government Pleader for respondents/State submits that, there is no rule prescribing transfer of non teaching staff from unaided to aided post. Rule 41-B of the said Rules at the relevant time was not in existence. There was no provision for transfer.

3. In fact, Rule 41-B appears to be draft Rule. Rule 41 of the said Rules does not make distinction between a teaching and non teaching employee. Holding that Rule 41 of the said Rules would not apply to a non teaching employee would be incorporating something in the rule not provided for. The rule will have to be read literally, as the same does not admit of any ambiguity.

4. The petitioner had put in almost fifteen years service on unaided post before being transferred to aided post. Of course, the Education Officer is required to consider all other aspects of the matter, such as seniority, roster and qualification. However, could not have rejected the proposal on the ground that there is no provision of transfer of an non teaching employee from unaided to aided post.

5. In the light of the above, the impugned communication/order is quashed and set aside. The Education Officer shall reconsider the proposal of the petitioner for approval from unaided to aided post as junior clerk on its own merits and may consider all other aspects of the matter and shall take decision afresh, expeditiously and preferably within a period of four (04) months from today.

6. The writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Sept.21