

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

1004 WRIT PETITION NO.10985 OF 2021

MACCHINDRA LAXMAN BHUMKAR

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Vithal H. Dighe, Advocate for the Petitioner.

Mr. K. N. Lokhande, AGP for Respondents-State.

Mr. S. S. Wagh, Advocate for Respondent No.4.

...

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

DATED : 01st OCTOBER, 2021.

PER COURT:-

1. The proposal seeking approval to the transfer of the petitioner from unaided to aided division as Lab Attendant is rejected on the ground that no provision exists for transferring the non-teaching employees.

2. This Court in Writ Petition No.125/2021 under order dated 16.09.2021 has held and observed that, Rule 41 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules (for short 'said Rules') does not make any distinction between teaching and non-teaching employee. More over, Rule 41(B) of the said Rules that was relied upon by learned A.G.P. are only draft Rules. They have not yet seen the light of the day.

3. The petitioner was appointed on unaided post on 16.06.2013. His appointed as Lab Attendant on unaided post is approved and upon the post becoming vacant is transferred to the aided division on 18.06.2018.

4. The petitioner had put in almost five years service on unaided post before being transferred to aided post. Of course, the Deputy Director of Education is required to consider all other aspect 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 Deputy Director of Education 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. Writ Petition is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE