

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 659 OF 2021

Ajit S/o Anilrao Deshmukh & Ors. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Ramesh I. Wakade for the Petitioners.

Ms. Kavita N. Solunke, AGP for the Respondent Nos. 1 to 3.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 26 August 2021

ORDER :

1. Leave to amend is granted to the Petitioners for deleting Respondent Nos. 4 to 6. Amendment to be carried out within a period of one week from today.

2. Rule. Learned AGP waives service for Respondent Nos. 1 to 3.

3. Heard finally by consent of the parties.

4. By this Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking direction against Respondent No. 3 to modify the approval orders dated 20th July 2019 and 5th August 2017 and to grant approvals to appointment of the Petitioners as “Assistant Teachers” instead of “Shikshan Sevak”.

5. The Petitioners were appointed on the post of Assistant Teachers with effect from 16th June 2014 after following the due selection process and approval to their appointments were granted by the Respondent No. 3-Deputy Director of Education, Kolhapur vide approval order dated 6th June 2016. The Junior College of the Petitioners was unaided at the time of their appointment.

6. The Petitioners were transferred by the Management from unaided post to aided post with effect from 14th February 2019, 13th July 2017 and 1st August 2017 respectively after considering services rendered on unaided posts as Shikshan Sevak for 3 to 4 years. The statement showing the approval as Shikshan Sevak on unaided post with effect from the respective date as well as their transfer date

from unaided to aided post are set out below :-

Sr. No.	Name and Qualification of Employees	Appointment & Approval of "Assistant Teachers" on unaided basis Pay-Scale w.e.f.	How many years worked on unaided basis.	Transfer date w.e.f. unaided in aided	Approval as "Shikshan Sevak" on aided basis w.e.f.
1.	Ajit Anilrao Deshmukh (M.Sc.B.Ed) (Category - Open)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	4 Years 8 Months	14.02.2019 Vide order dt. 13.02.2019	14.02.2019 for 3 years Vide approval dt. 20.07.2019
2.	Pandurang Dnyandeve Lagle (M.Sc.B.Ed) (Category - NTC)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	4 Years 8 Months	14.02.2019 Vide order dt. 13.02.2019	14.02.2019 for 3 years Vide approval dt. 20.07.2019
3.	Sanjay Chandrakant Sonwalkar (M.Sc.B.Ed) (Category - VJNT)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	4 Years 8 Months	14.02.2019 Vide order dt. 13.02.2019	14.02.2019 for 3 years Vide approval dt. 20.07.2019
4.	Surendra Bhanudas Phalke (M.Sc.B.Ed) (Category - Open)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	4 Years 8 Months	14.02.2019 Vide order dt. 13.02.2019	14.02.2019 for 3 years Vide approval dt. 20.07.2019
5.	Poonam Ramesh Fadatre (M.Sc.B.Ed) (Category - Open)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	4 Years 8 Months	14.02.2019 Vide order dt. 13.02.2019	14.02.2019 for 3 years Vide approval dt. 20.07.2019
6.	Randheer Ashok More (M.Sc.B.Ed) (Category - SC)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	4 Years 8 Months	14.02.2019 Vide order dt. 13.02.2019	14.02.2019 for 3 years Vide approval dt. 20.07.2019

7.	Jaydeep Dnyaneshwar Deshpande (M.Sc.B.Ed) (Category - Open)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	3 Years 1 Months	13.07.2017 Vide order dt. 11.07.2017	13.07.2017 for 3 years Vide approval dt. 05.08.2017
8.	Abhijit Mahadev Shinde (M.A.B.Ed) (Category - Open)	16.06.2014 9300-34800 Vide approval order dt. 06.06.2016	3 Years 1 Months	01.08.2017 Vide order dt. 31.07.2017	01.08.2017 for 3 years Vide approval dt. 05.08.2017

7. On 20th July 2019 and 5th August 2017 transfers of all the Petitioners from unaided posts to aided posts have been approved by the Respondent No. 3-Deputy Director of Education, Kolhapur Division, Kolhapur as “Shikshan Sevak” instead of granting approval as “Assistant Teacher” which is contrary to the law. The Petitioner being aggrieved by the impugned orders dated 20th July 2019 and 5th August 2017 have filed the present Petition.

8. Learned Counsel for the Petitioners submits that the issue arising in the present Petition has been squarely covered in several decisions of this Court including the decision of this Court (Aurangabad Bench) in case of **Sachin s/o Sambhaji Patil Vs. The State of Maharashtra & Ors.**¹ along with

¹ Writ Petition No. 15129 of 2019 dtd. 17.12.2019 & connected Petitions

companion matters and the recent decision of this Court in case of **Bhushan S/o Sukdeo Patil Vs. The State of Maharashtra & Ors.**², the decision in case of **Sagar S/o Shravan Gosavi Vs. The State of Maharashtra & others**³ with companion matters. He has also referred to the recent decision of the Bench of this Court in case of **Sandip s/o Dilip Thorat Vs. The State of Maharashtra & Ors.**⁴ with companion matters. He has submitted that this Court has consistently held that the impugned orders in granting approvals to the Petitioners as Shikshan Sevak from the date of transfers to the aided posts, have not taken into account the fact that the Petitioners were working as Assistant Teachers under the same Management on unaided posts at the relevant time and the transfer from unaided posts to aided posts was on account of the sanctioned post having become vacant and hence, there was no need to make fresh appointments on the post of Shikshan Sevak. The impugned orders in the above referred cases were thus modified to grant approval to the Petitioners therein as “Assistant Teachers” instead of “Shikshan Sevak”.

2 Writ Petition No. 6363 of 2020 order dated 18.09.2020

3 Writ Petition No. 6867 of 2020 order dated 14.10.2020

4 Writ Petition No. 168 of 2021 order dated 22nd July 2021

9. It has further been held that in the decision of this Court dated 22nd July 2021 in case of **Sandip s/o Dilip Thorat** (supra) that the issue that had arisen in the Petition along with the companion Petitions was squarely covered by the judgment of this Court in case of **Sagar S/o. Harichandra Bhande & Anr. Vs. The State of Maharashtra & Ors.**⁵. It has been held that the transfer from an unaided post to an aided post is not a fresh appointment. It is a transfer within the meaning of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1977. In view thereof, he submits that in view of the above referred decisions, similar order be passed in the present Petition as the issue is the same.

10. Learned AGP appearing for the Respondent Nos. 1 to 3 has not been able to produce any contrary decision and/or distinguish the decisions referred to and relied upon by the learned Counsel for the Petitioners.

11. Having considered the submissions we are of the clear view that the issues arising in the present Petition is squarely covered by the decisions of this Court which are

⁵ Writ Petition (ST) No. 93919/20 a/w companion matters order dtd 12.03.2021

referred to and relied upon by the learned Counsel for the Petitioners including the recent decision of this Bench in **Sandip s/o Dilip Thorat** (supra).

12. This Court has clearly held that the transfer from unaided to aided post is not a fresh appointment. In the present case, the transfers of the Petitioners were from unaided post to aided post in the same Management and the transfers were approved by the Respondent No. 3-Deputy Director of Education, Kolhapur. However, the impugned order grant approval as “Shikshan Sevak” without taking into account the services already rendered by the Petitioners as Shikshan Sevak in the unaided division of the Respondent Nos. 5 and 6 in the same Management. In view thereof, following order is passed:-

- (i) Writ Petition is allowed in terms of prayer clause (b).
- (ii) Respondent No. 3 shall modify the approval orders dated 20th July 2019 and 5th August 2017 and grant approvals to the Petitioners as “Assistant Teachers”

instead of “Shikshan Sevak” within a period of four weeks from today.

(iii) The Petitioners shall also be granted benefits in view of their appointments as “Assistant Teachers” instead of “Shikshan Sevak” on 100% grant-in-aid in the said Junior Colleges on regular pay-scales with effect from the respective dates of transfers and release the arrears of salary to the respective Teachers within a period of eight weeks from today.

(iv) The Writ Petition is accordingly disposed of in the above terms.

(v) Rule is made absolute.

(vi) There shall be no order as to costs.

(vii) Parties to act on authenticated copy of this order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]