

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 168 OF 2021

Sandip s/o Dilip Thorat,
Age : 36 years, Occu : Service as
Assistant Teacher, R/o. Khutbav,
Tq. Daund, Dist. Pune

...Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai - 32.
2. The Education Officer (Secondary),
Zilla Parishad, Pune.
3. Bhairavnath Shikshan Mandal,
Khutbav, Tq. Daund, Dist. Pune
Through its President/Secretary
4. Bhairavnath Secondary and Higher
Secondary School, Khutbav,
Tq. Daund, Dist. Pune
Through its Head Master.

...Respondents

WITH

WRIT PETITION NO. 169 OF 2021

Surekha d/o Anant Kumbhar
Age : 46 years, Occup : Service as
Assistant Teacher,
R/o. At Post Marul - Haweli,
Tq. Patan, Dist. Satara

...Petitioner

Versus

1. The State of Maharashtra

Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.

2. The Education Officer (Secondary)
Zilla Parishad, Satara.
3. Yashwant Shikshan Prasarak Mandal
Khatade, Tq. Karad, Dist. Satara,
Through its President/Secretary
4. New English School
Kharade, Tq. Karad, Dist. Satara,
Through its Head Master.

...Respondents

Mr. Vilas S. Panpatte for the Petitioners in both WPs.

Mr. N.C. Walimbe, Asst. GP. for the Respondent No. 1-State in
both WPs.

Mr. Vaibhav Sugdhare for Respondent No. 4 in both WPs.

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

DATE : 22 July 2021

JUDGMENT : *(Per R.I. Chagla, J)*

1. Rule. Rule is made returnable forthwith.

2. The learned Counsel and learned AGP appearing for
the parties have agreed that an identical issue arises in both
these Petitions and that the outcome of the Writ Petition No.
168 of 2021 will apply to Writ Petition No. 169 of 2021.

Statement is accepted. By consent of parties, these Petitions are heard together finally.

3. Petitioners in these two Petitions have sought directions against the respective Respondent No. 2-Education Officer (Secondary), Zilla Parishad to grant approval to the transfer of the Petitioners as Assistant Teachers on 100% aided division in the Respondent No. 4-School in the regular pay-scales from the respective dates of their transfers by modifying the approval orders and releasing the arrears of salary of the Petitioners.

4. For the sake of convenience, the facts in Writ Petition No. 168 of 2021 are being adverted to.

5. The Petitioner initially came to be appointed as Assistant Teacher on unaided division in the Respondent No. 4-School on 2nd November 2012.

6. The appointment of the Petitioner was made on a clear vacant and sanctioned post from open category. The Petitioner from the date of his joining was in continuous service

in the unaided division of Respondent No. 4-School.

7. The Petitioner had forwarded proposal dated 11th July 2014 for getting approval to the said appointment of the Petitioner and pursuant to which the Respondent No. 2-Education Officer (Secondary), Zilla Parishad by an order dated 14th July 2014 granted approval to the said appointment of the Petitioner. The approval was on no grant basis on probation period with effect from 2nd November 2012 and upon completion of the probation period by the Petitioner, Respondent No. 2-Education Officer granted permanent approval in favour of the Petitioner as Assistant Teacher on no grant basis.

8. One post of Assistant Teacher of 100% aided basis in the Respondent No. 4-School had become vacant on account of the death of Shri. Kale R.J. on 1st May 2017 and considering the seniority of the Petitioner on unaided post, the Respondent Nos. 3 and 4 transferred the Petitioner on the 100% aided vacant post of Assistant Teacher in the Respondent No. 4-School.

9. The Managing Committee of the Respondent No. 4-School passed a Resolution dated 3rd October 2017 for effecting such transfer of the Petitioner from unaided division to aided division and pursuant to which the Petitioner came to be transferred from unaided division to aided division by an order dated 30th October 2017 with effect from 1st November 2017. The Petitioner has thereafter joined on the said grant-in-aid post on 1st November 2017 and has been rendering services on the said aided post.

10. Respondent No. 4-School on 14th January 2018 forwarded proposal for getting approval to the said transfer order of the Petitioner to the Respondent No. 2-Education Officer. The Respondent No. 2 by an order dated 5th November 2018 granted approval to the transfer of the Petitioner from 1st November 2017 on 20% grant-in-aid by placing reliance on the Government Circular dated 28th June 2016 instead of granting such approval on 100% grant-in-aid in regular pay-scales. Being aggrieved by the impugned order dated 5th November 2018, this Petition has been filed.

11. Learned Counsel for the Petitioner has

submitted that the issue arising in these Petitions is no longer *res integra*. He has placed reliance upon the decisions of this Court which have also been annexed to the Petitions and are as follows :-

- (i) The decision of the Aurangabad Bench of this Court in **Nagnath Harishchandra Chavan Vs. The State of Maharashtra & Ors.¹**;
- (ii) The decision of the Aurangabad Bench of this Court in **Dilip Venkatrao Boienar Vs. The State of Maharashtra & Ors.²**;
- (iii) The decision of the Principal Bench of this Court in **Mrs. Rajabai Baba Shinde Vs. The State of Maharashtra & Ors.³**;
- (iv) The decision of the Principal Bench of this Court in **Bajrang Sopan Jadhav & Anr. Vs. The State of**

1 Writ Petition No. 13676 of 2018

2 Writ Petition No. 7841 of 2019

3 Writ Petition No. 3979 of 2015 along with other WP.

Maharashtra⁴;

(v) The decision of the Principal Bench of this Court in
**Miss Devkar Dipali Kisan Vs. The State of
Maharashtra & Ors⁵**

12. He has submitted that in a recent decision of this Court in the case of **Sagar S/o. Harichandra Bhande & Anr. Vs. The State of Maharashtra & Ors.⁶** the issue arising in these Petitions have been conclusively decided. By the judgment and order dated 12th March 2021, this Court directed the authorities to grant approval to all the Petitioners as Assistant Teachers from unaided to aided division of the concerned schools on 100% grant-in-aid in regular pay-scales with effect from respective dates of their transfers and to release the arrears of salary. He has submitted that the Government Circular dated 28th June 2016 which has been relied upon in the impugned orders, was considered by the Division Bench of this Court in the said judgment. It was held that when management can legally transfer an Assistant

4 Writ Petition (ST) No. 4692 of 2020 along with other WP.

5 Writ Petition No. 5313 of 2017 along with companion matters

6 Writ Petition (ST) No. 93919 of 2020 along with companion matters

Teacher serving in an unaided school under the same management to aided school, Sub-Clause 5(B) of Clause 3 of the said Government Circular which provides for the condition that the Petitioner shall get 20% grant-in-aid in the first year, 40% in the second year, 60% in third year, 80% in fourth year and 100% in fifth year, out of their regular pay instead of granting such approval on 100% grant-in-aid from the date of their transfer in aided division will be inapplicable.

13. It has been held by the Division Bench of this Court in the said judgment that it is only in cases where the State Government sanctions new post/posts on aided basis, and those are to be filled in afresh on giving fresh appointment/appointments, the State Government can make applicable the formula/percentage of proportionate salary to be disbursed by the State Government and the concerned Institutions in the manner stated in Sub-clause 5(B) of Clause 3 of the said Government Circular.

14. He has submitted that Respondent No. 2-Education Officer by granting approval vide order dated 5th November 2018 impugned in Writ Petition No. 168 of 2021 and

order dated 6th June 2019 impugned in Writ Petition No. 169 of 2021, only on 20% grant-in-aid and as Shikshan Sevak to the transfer of the Petitioner from unaided division to aided division in the same school, failed to consider that the Petitioners had already rendered services on unaided basis as Assistant Teacher for well over three years. The Petitioner's transfer to the aided division of the respective Schools are on the sanctioned post which became vacant and the said post was already on 100% grant-in-aid basis. The Petitioners were therefore, entitled to get approval to his transfer on aided division of Respondent No. 4-School on 100% grant-in-aid in regular pay-scales.

15. The learned Counsel for the Petitioners has submitted that the Division Bench of this Court in **Sagar S/o. Harichandra Bhande & Anr.** (supra) has held that as the Assistant Teacher had already completed three years' period in the unaided post in the same school, there is no justifiable reason to ask him to work again as Shikshan Sevak on consolidated pay for three years. It has been made clear by the Division Bench of this Court by the said judgment that Sub-Clause 5(A) of Clause 3 of the said Government Circular can be

made applicable only when a teacher has not completed five years in service after his appointment in the school on unaided post and he has not received approval to his services as an Assistant Teacher on regular basis. It is only then that the management who wishes to transfer such teacher from unaided school to aided school, should obtain an undertaking from the teacher to work as Shikshan Sevak on consolidated pay. He has accordingly by placing reliance on the said judgment submitted that Sub-Clause 5(A) of Clause 3 of the said Government Circular is inapplicable to the case of the Petitioners who have completed well over the five years period on unaided post and the Education Officers have granted permanent approval to the services of the Petitioners on unaided basis. Thus, the impugned orders passed by the Respondent No. 2-Education Officers which rely upon the said Government Circular require to be appropriately modified and upon which the arrears of salary of the Petitioner require to be released.

16. The learned AGP appearing for the Respondent-State and the learned Counsel for the Respondent No. 4 have not brought on record contra material to contest the factual assertions as well as legal submissions of the

Petitioners. There are no Affidavit in Reply filed by the Respondents.

17. We have considered the submissions and we find that the issue arising in both the Petitions have been squarely covered by the judgment of this Court in **Sagar S/o. Harichandra Bhande & Anr.** (supra). The said judgment has referred to decisions of various Division Benches of this Court where it has been clearly held that a 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. The Division Bench of this Court in paragraphs 13 and 14 of the said judgment has held as under :-

“13. When there is a vacant post in an aided school, the Institution can transfer senior most qualified Assistant Teacher working on an unaided post to fill up the said vacancy, and if such senior most teacher is available in the same school, such post on aided basis can be offered to him. When the management can legally transfer an Assistant Teacher serving in an unaided school under the same management to aided school, there is no reason to obtain an undertaking for

such transfer as stated in sub clause 5(B) of clause 3 of the aforesaid Circular. However, in case the State Government sanctions new post/posts on aided basis, and those are to be filled in afresh by giving fresh appointment/appointments, the State Government can make applicable the formula / percentage of proportionate salary to be disbursed by the State Government and the concerned Institutions in the manner stated in sub clause 5 (B) of Clause 3 of the said Circular.

- 14 *Upon perusal of sub clause 5 (A) of clause 3 of the said Circular, which provides that, if a teacher appointed on unaided basis, has rendered less than 5 years on service, in case the management wishes to transfer such teacher from unaided school to aided school, in that case, an undertaking should be obtained from such teacher to work as Shikshan Sevak on consolidated pay, prima facie such provision appears to be attractive. However, in case the candidate is appointed on the post of Assistant Teacher after following the mandate of Section 5 of the MEPS Act, 1977, and on completion of probation period, if the Education Officer has granted approval to his appointment on regular basis, and in case he is the senior most teacher serving on unaided basis in a school run by the same Institution, he requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he*

has already completed 3 years' period, there is no justifiable reason to ask him to work again as Shikshan Sevak on a consolidated pay for three years. Sub-clause 5 (A) of clause 3 of the said Circular can be invoked when a teacher has not completed three years period after his appointment in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis."

18. It is thus, clear from the said judgment that Sub-Clause 5 (B) of Clause 3 of the said Government Circular can apply only in a case where the Government sanctions new post/posts on aided basis, which are to be filled in afresh by giving fresh appointment/appointments. It is only then that the State Government can make applicable the formula/percentage of proportionate salary to be disbursed by the State Government and the concerned institutions in the manner stated in Sub-Clause 5(B) of Clause 3 of the said Circular.

19. It is clear from these Petitions that the respective Petitioners had rendered service on unaided basis as Assistant Teacher in the respective Secondary Schools and were transferred to the aided division of the respective Secondary Schools on the basic sanctioned post which had

become vacant on the said aided division and the said post was already on 100% grant-in-aid basis. It has been clearly held by the Division Bench of this Court in the case of **Sagar S/o. Harichandra Bhande & Anr.** (supra), where the Assistant Teacher had already completed three years period, there is no justifiable reason to ask the Assistant Teacher to work again as Shikshan Sevak on consolidated pay for three years. Sub-Clause 5(A) of Clause 3 of the said Government Circular can be invoked only where the Assistant teacher has not completed three years period after his appointment in the school on unaided basis and that he has not received approval to his services as an Assistant Teacher on regular basis.

20. From the facts arising in these Petitions, the Respondent No. 2-Education Officer had confirmed the Petitioners as Assistant Teachers after completion of probation period and the Respondent No. 2-Education Officer granted permanent approval to the services of the Petitioner on unaided basis. The Petitioners rendered services on unaided basis as Assistant Teachers for well over the five year period. It was only then that the Petitioner was transferred from unaided division to aided division of the Respondent No. 4-School. Since

the Petitioners were working as Assistant Teachers under the same Management on unaided basis at the relevant time and their transfer was from unaided post to aided post due to the post having become vacant, there was no need to make fresh appointments on the post of Shikshan Sevak.

21. We are of the considered view that as the issue arising in the present Petitions is squarely covered by the judgment of the Division Bench of this Court in **Sagar S/o. Harichandra Bhande & Anr.** (supra), the Petitions are required to be allowed. Hence, the following order.

- (i) Respondent No. 2-Education Officer (Secondary), Zilla Parishad, Pune in Writ Petition No. 168 of 2021 and Respondent No. 2-Education Officer (Secondary), Zilla Parishad, Satara in Writ Petition No. 169 of 2021 are directed to grant approval to the respective Petitioner in both the Writ Petitions as “Assistant Teacher” on 100% grant-in-aid in Respondent No. 4-Schools in regular pay-scales with effect from the respective dates of their transfers within a period of six weeks from today and release the arrears of salary of the

respective Petitioners within a period of eight weeks from today.

- (ii) The approval orders dated 5th November 2018 in Writ Petition No. 168 of 2021 and 6th June 2019 in Writ Petition No. 169 of 2021 shall be withdrawn by the Respondent No. 2-Education Officers in the respective Petitions in view of directions issued in (i) above.
- (iii) Both Writ Petitions are disposed of in the above terms.
- (iv) Rule is made absolute.
- (v) There shall be no order as to costs.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]