

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2711 OF 2021

Smita Vijay Ghodvinde & Anr.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

Mr.N.V. Bandiwadekar a/w Mr.Vinayak Kumbhar i/by Mr.Ashwini N. Bandiwadekar for the petitioners.

Mr.N.K.Rajpurohit, AGP for the respondents-State.

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

**DATE : 5th AUGUST 2021
(through video conferencing)**

P.C.:-

. Rule. Learned AGP waives service for the respondents-State. Heard finally by consent of parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners is seeking direction against the respondents for partly quashing and setting aside the order dated 7th May 2021 issued by the respondent no.2 thereby granting approval to transfer of the petitioner no.1 as Assistant Teacher from un-aided post to aided post on payment of salary by way of stage-wise grant as mentioned in the said order. Further direction is sought against the respondent no.2 to issue a revised order for approval on payment of full salary in the pay scale from 1st July 2018 and to release the grant-in-aid for payment of full salary to the petitioner no.1 as Assistant Teacher from the said date of transfer.

3. The petitioner no.1 had been appointed by the petitioner no.2 as Assistant Teacher on 21st January 2013 in un-aided Divisions of Secondary School and in pay scale. The respondent no.2 Education Officer granted approval on 9th December 2014 to the said un-aided appointment as Assistant Teacher in pay scale.

4. The petitioner no.1 came to be transferred as Assistant Teacher from un-aided post to aided post in the same school of the petitioner no.2 -management on 1st July 2018. In view thereof, the Headmistress of the said school submitted the proposal on 1st November 2019 to the respondent no.2 for approval to the above transfer. The proposal was thereafter re-submitted on 6th May 2021.

5. The respondent no.2 issued the impugned order dated 7th May 2021 granting approval to the transfer as Assistant Teacher on payment of salary stage-wise instead of full salary. Being aggrieved by the said order, the petitioner has filed this petition.

6. Learned counsel for the petitioners has submitted that the issue in present petition is covered in catena of decisions of this Court including the decision of this Court in **Pramod Prabhakar Pokale Vs. State of Maharashtra & Ors., 2019 (4) Mh.L.J. 278** and recent decision of the Division Bench of this Court in **Dr.Vijay Jayram Ghodvinde & Anr. Vs. The State of Maharashtra & Anr.** decision dated 12th February 2021 in Writ Petition (St.) No.5518 of 2020. He has submitted that the present Division Bench of this Court has also considered this issue in Writ Petition No.3208 of 2021 in **Smt.Jyoti Uttam Shinde Vs. State of Maharashtra & Ors.** decision dated 28th July 2021. It has been

consistently held that Sub-clause 5(B) of Clause 3 of the Government Circular dated 28th June 2016 which has been pressed in service by the respondents in support of the impugned order can only apply where the State Government sanctions new post/posts on aided basis and those are to be filled in afresh by giving fresh appointment/appointments.

7. In the present case, the petitioners were legally transferred as Assistant Teachers from un-aided post to the vacant aided post in the same management w.e.f. 1st July 2018. Hence, Sub-clause 5(B) of Clause 3 of the Government Circular dated 28th June 2016 relied upon in the approval order dated 7th May 2021 does not apply. He has accordingly submitted that the petition be allowed.

8. Learned AGP for the respondents has opposed the petition. He has submitted that the petitioners had given undertaking to accept payment of salary by way of stage-wise grant for being transferred as Assistant Teacher from un-aided post to aided post in the petitioner no.2 school. He has submitted that based on the undertaking, the authority granted approval to the appointment of the petitioners vide impugned order dated 7th May 2021 on payment of salary by way of stage-wise grant as mentioned in the impugned order. He has accordingly submitted that the petition be dismissed.

9. Having considered the submissions, we are of the view that the issue that has arisen in the present petition is no longer res integra. The issue has been settled in several decisions of this Court including the decision in Pramod Prabhakar Pokale (supra) wherein this Court has held that where there is a vacant post in aided school, Institution can

transfer the senior most qualified Assistant Teacher working on unaided post to fill up the said vacancy, and if such senior most teacher is available in same school, the said post on aided basis can be offered to him. There is no prohibition to adopt the aforesaid course. When the management can legally transfer Assistant Teacher serving in the unaided school to aided school, there is no reason to obtain an undertaking from such teacher as stated in sub-clause 5 (B) of clause 3 of the Government Circular dated 28th June 2016. It is only when the State Government sanctions new post/posts on aided basis and those are to be filled in afresh by giving fresh appointment on the post of Shikshan Sevak, the State Government can make applicable the formula/percentage of proportionate salary to be disbursed by the State Government and the concerned educational institution in the manner as stated in sub-clause 5 (B) of clause 3 of the Government Circular dated 28th June 2016.

10. It has been further held by this Court that undertaking which is given by the Assistant Teacher under sub-clause 5 (B) of clause 3 of the Government Circular dated 28th June 2016 is applicable only in respect of new post/posts which are sanctioned by the State Government in an unaided school. This decision has been followed by this Court in Dr.Vijay Jayram Ghodvinde & Anr. (supra) and in recent decision in Smt.Jyoti Uttam Shinde Vs. State of Maharashtra & Ors. (supra).

11. In view of well-settled position of law, the impugned order which places reliance upon sub-clause 5(B) of clause 3 of the Government Circular dated 28th June 2016 is required to be set aside to the extent of payment of salary by stage-wise grant in the said impugned order. Hence, the following order :-

- (i) The respondent no.2 shall issue revised order of approval of the transfer of the petitioner no.1 as Assistant Teacher from un-aided post to aided post on payment of full salary in the pay scale from 1st July 2018 within a period of six weeks from today.
- (ii) The respondent no.2 shall release grant-in-aid for payment of full salary with arrears accordingly within a period of eight weeks from today.
- (iii) Writ petition is disposed of in aforesaid terms.
- (iv) Rule is made absolute accordingly.
- (v) There shall be no order as to costs.
- (vi) Parties to act on the authenticated copy of this order.

R. I. CHAGLA J.

R.D. DHANUKA, J.