

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

WRIT PETITION NO. 5657 OF 2021

Satish s/o Venkarrao Yelkar and Anr.

... Petitioners

Versus

The State of Maharashtra and Ors.

... Respondents

Mr. D. S. Bagul h/for Mr. V. S. Panpatte for the Petitioners.

Ms. S S. Bhende, AGP for the State-Respondent Nos. 1 and 2.

Mr. Narendra V. Bandiwadekar i/by Mr. Vinayak R. Kumbhar for the Respondent No.3-Management.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 26th NOVEMBER, 2021.

P.C. :-

. Rule. Learned AGP for the Respondent nos. 1 and 2 waives service. Learned counsel for the respondent no.3 waives service. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek an order and direction against the Deputy Director of Education, Pune to grant approval to the transfers of the petitioners as Assistant Teachers on 100% aided division in the respondent no.3-Jr. College in the regular pay scales w.e.f. 1st April, 2019 by modifying the approvals order dated 17th June, 2019 at Exhibit 'D' collectively and to release arrears of salary of the petitioners within a period of six weeks.

3. It is the case of the petitioners that the petitioners possesses requisite qualification and are eligible for appointment as Assistant Teacher in any Junior College. The petitioners were appointed as Assistant Teachers in respondent no.3-Jr. College on 10th September, 2013 and since then were continued in service. After completion of probation period, the services of the petitioners came to be confirmed on 10th November, 2015. The Deputy Director of Education granted approval to the services of the petitioners on unaided basis.

4. On account of retirement and promotion of earlier assistant teachers in respondent no.3-Jr. College, the petitioners were transferred from unaided division to aided division of respondent no.3-Jr. College. The proposal for getting approvals to the said transfers order of the petitioners was submitted by the Management to the Deputy Director of Education.

5. On 7th June, 2019, the Deputy Director of Education granted further approvals to the transfers of the petitioners as per Clause 5 (B) (1)(2)(3)(4) and (5) of the Government Circular dated 28th June, 2016 stating that the petitioners will get honorarium on the basis on 20% grant-in-aid out of their regular pay instead of granting such approval on 100% grant-in-aid from the date of their transfers on aided division in the pay scale.

6. On 8th August, 2019, the Deputy Director of Education laid down the said condition in the impugned order. The petitioners thus filed this petition.

7. Learned counsel for the petitioners invited our attention to various exhibits to the petitions and also relied upon the judgments annexed to the petition as Exhibits 'B' and 'F' collectively.

8. Mr. Bandiwadekar, learned counsel for the Management confirms that each of these petitioners have requisite qualifications and are eligible for appointment of Assistant Teacher in any Junior College. He submits that the respondent nos. 1 and 2 could not have imposed the condition of payment of 20% grant-in-aid when the respondent no.3 was entitled to 100% grant-in-aid on transfer of the petitioners to the respondent no.3-Jr. College from unaided to aided section.

9. Ms. Bhende, learned AGP for the State Government could not distinguish the judgment of this Court in case of ***Sandhya d/o Balkrushna Teli & Ors. v/s. The State of Maharashtra & Ors.*** in Writ Petition (Stamp) No. 93919 of 2020. A perusal of the said judgment would indicate that after referring to the earlier judgments of this Court and more particularly in case of ***Suryakant s/o Janardan Muge*** in Writ Petition No. 1493 of 2018 and after construing Rule 41 and 41A of the MEPS Rules, it is held that the petitioners who had completed more than five years of satisfactory service of Assistant Teachers on unaided basis are entitled to be transferred from unaided post to aided post by the Management due to retirement of incumbent teachers. Such transfer was permissible under the said provisions. There was no need to make fresh appointments on the basis of Shikshan Sevak which was the subject matter of that petition, thereby practically denying them the

benefits accrued by virtue of rendering more than five years of service as Assistant Teachers on regular basis.

10. The Division Bench of this Court in the said judgment more particularly in paragraph 17 after construing sub-clause 5(B) of Clause 3 of the Circular dated 28th June, 2016 has held that in case the State Government sanctions new post/posts on aided basis and those are to be filled up in afresh by giving fresh appointment/appointments, the State Government could 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 the Clause 3 of the said circular. It is held that if there is a vacant post in an aided school, institution can transfer most senior qualified Assistant Teacher working on an unaided post to fill up the said vacancy, and if such most senior teacher is available in the same school, such post on aided basis can be offered to him. There is no prohibition to adopt the said course under the said sub-clause 5(B) of the Clause 3 of the said Circular.

11. In our view, the said judgments squarely apply to the facts of this case. The petitioners in this petition have completed about six years as Assistant Teachers on unaided post in the college run by the respondent no.3 and were entitled to be transferred to the aided post under the provisions referred to aforesaid. In our view, the Deputy Director of Education thus could not have refused to grant 100% grant-in-aid while approving the transfers of those petitioners.

12. We accordingly pass the following order :-

- (a) Writ Petition is made absolute in terms of prayer clause
- (b). Impugned order dated 17th February, 2019 shall be modified by the Deputy Director of Education within two weeks from today by providing 100% grant-in-aid from the date of transfer and shall communicate such decision to the petitioners as well as the respondent no.3 within one week from the date of taking such decision.
- (b) Rule is made absolute in aforesaid terms. There shall be no order as to costs.
- (c) Parties to act on an authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]

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