

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7850 OF 2017

Shri. Sutkar Mahadeo AmbadasPetitioner
vs.
The State of Maharashtra & Ors. ...Respondents

Mr. S.S. Pakale for the Petitioner.
Mr. S.B. Kalel, AGP for the Respondent-State.

CORAM : S. C. GUPTA AND SURENDRA P. TAVADE, JJ.

DATE ON WHICH JUDGMENT IS RESERVED : 11 FEBRUARY 2021

DATE ON WHICH JUDGMENT IS PRONOUNCED : 12 MARCH 2021

JUDGMENT (PER SURENDRA P. TAVADE, J.) :

. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The Petitioner in this petition has approached this Court being aggrieved by the rejection of the proposal for transferring his services from unaided post to aided post in the same institution.

3. The Petitioner seeks direction against Respondent No.2-Education Officer (Secondary) Zilla Parishad to grant approval to the Petitioner on aided post of Assistant Teacher w.e.f.01.12.2015 on 100% grant-in-aid in Respondent Nos.4 and 5 Schools. He also seeks directions to release his arrears of salary.

4. Petitioner was initially appointed as Assistant Teacher on unaided division of Respondent Nos.4 and 5 by following due procedure and

against clear and vacant sanctioned post. The appointment of Petitioner was approved by Respondent No.2.

5. By efflux of time, in the same school where the Petitioner is working, aided posts became vacant on account of superannuation of senior teachers. As such, the Petitioner was transferred on an aided post under the same Management. After the transfer, a proposal for grant of approval to the transfer came to be submitted to the concerned Education Officer. However, the approval was rejected, relying upon the Government Resolution dated 28th June 2016. As such, the Petitioner has approached this Court.

6. It is contended that Respondent No.2 ought to have considered the services rendered by the Petitioner on unaided basis as Assistant Teacher for more than six years and his transfer to aided division of Respondent Nos.4 and 5 on a sanctioned post, which became vacant due to retirement or voluntary retirement of earlier teachers working on the respective aided posts. It is contended that the said posts were already on 100% grant-in-aid basis, and therefore, the Petitioner is entitled to get approval to his transfer on aided division of Respondent Nos.4 and 5 Secondary School on 100% grant-in-aid in regular pay scales. It is contended that the rejection of Respondent No.2 of the proposal for approval to the transfer of Petitioner as Assistant Teacher is wrong and erroneous; the said order be quashed and set aside and Respondent No.2 be directed to grant approval to his transfer from an unaided post to an aided post as Assistant Teacher. He also claims arrears of salary from the date of his transfer as Assistant Teacher.

7. Respondent No.2 has filed an affidavit-in-reply through Suresh Madhav Awari. It is contended that in view of Government Resolution dated 28.06.2016, the Education Officer (Secondary), Zilla Parishad, Alibag (Respondent No.2) rightly rejected the proposal of transfer of the

Petitioner from unaided division to aided division of Respondent No.5 school. It is contended that Clause 3, sub-clauses (1) and (2) of the Government Resolution dated 28.06.2016 have been held to be contrary to the view taken by various Division Benches of this Court, but clause 5 of said GR is still in force and existence. It is contended that Respondent No.2-Education Officer has followed GR dated 28.06.2016 and rejected the proposal for transfer of the Petitioner. It is contended that the Court may pass appropriate orders in the interest of justice.

8. Heard learned counsel for the Petitioner and learned AGP for the Respondent-State. It is an admitted fact that by following due procedure, the Petitioner was initially appointed as Assistant Teacher in Respondent Nos.4 and 5 school and since then he has been in continuous service. After completion of his probation period, the services of the Petitioner came to be confirmed and Respondent No.2 has even granted permanent approval to the services of the Petitioner on unaided basis. It is also admitted that on account of transfer of earlier teachers in Respondent Nos.4 and 5 school, the Petitioner was transferred from unaided division to aided division of Respondent Nos.4 and 5 school. The said proposal for transfer of the Petitioner to the aided post was rejected.

9. This Court has passed an order in the case of other similarly placed teachers in Writ Petition (Stamp) No.93919/2020 wherein this Court has taken into account similar view taken by this Court in a bunch of petitions.

10. Learned counsel on behalf of the Petitioner submits that various Division Benches of this Court have 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 ('MEPS Rules' for short). He further submits that the Division Benches have held that Rule 41, sub-

clause 1 could not be applied to such transfers. Hence, he submits that the impugned order is bad in law.

11. It will be relevant to refer to the judgment of a Division Bench of this Court in the following cases:-

(i) Ms. Sandhya Laxman Ghosalkar V/s. The State of Maharashtra & Ors.) dated 12.09.2012 (Coram : Hon'ble Shri. Dr. D.Y. Chandrachud, J. as his Lordship then was, and Hon'ble Shri. A.A. Sayyed, J.) in Writ Petition No.5258 of 2012.

(ii) Dattu S/o. Bhima Thorat V/s. The State of Maharashtra & Ors. (Coram : Hon'ble Shri. R.M. Borde and Hon'ble S.S. Shinde, JJ) in Writ Petition No.2960 of 2012 (order dated 11th October 2012).

(iii) In Writ Petition No. 5978 of 2014 alongwith companion matters in the case of Sudhir Dnyandeo Gadakh and Ors. V/s. State of Maharashtra and Ors. (Coram : Hon'ble Shri. S.V. Gangapurwala and Hon'ble Shri A.M. Badar, JJ, decided on 9th October, 2014.

(iv) In a bunch of petitions, being Writ Petition No.11065 of 2014 alongwith companion matters in the case of Mrs. Shilprekha Vinayak Joshi & Ors. V/s. The State of Maharashtra and Ors. decided on 14th February, 2017 (Coram : Hon'ble Shantanu Khemkar, J. as his Lordship then was, and Hon'ble Prakash D. Naik, J).

12. In that view of the matter, when the transfer of a teacher from an unaided school to an aided school is permissible, what is supposed to be ascertained is, whether the Education Officer has granted approval to the appointment of such Assistant Teacher / Shikshan Sevak on regular basis on completion of two years & three years probation periods, as contemplated under the provisions of Section 5 of the MEPS Act, 1977. Once such approval is granted in favour of the appointee by the concerned Education Officer on regular basis on completion of satisfactory probation period under Section 5 (2) of the MEPS Act, 1977, it can be safely presumed that the Education Officer has granted such approval

after ascertaining compliance of the mandate of Section 5 of the MEPS Act, 1977. When the Education Officer grants approval on regular basis for appointment on the post of an Assistant Teacher, it presupposes that there were no surplus teachers on his roll, and the concerned Institution, after following the mandate of Section 5 (1) of the MEPS Act, 1977, has made such appointment. Therefore, once an appointment of a teacher is made on unaided basis in the school and approval to such appointment was granted on regular basis on satisfactory completion of two/three years period of probation by the appointee in conformity with the mandate of the provisions of the MEPS Act, 1977, and Rules framed thereunder, there is no question of making a fresh appointment of such candidate, who has already completed probation period satisfactorily, or refusing approval to the transfer of such candidate from unaided school to aided school run by the same institution, or transfer of an Assistant Teacher working on unaided post, whose services have been approved on satisfactory completion of probation period by Education Officer, to a vacant aided post of Assistant Teacher in same school.

13. When there is a vacant post in an aided school, the Institution can transfer the 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. It appears from the perusal of the facts of the case that, the Petitioner was appointed after following due procedure of law and thereafter, on successful completion of probation period, approval was granted to his appointment as Assistant Teacher and he has acquired the status as Assistant Teacher on regular/permanent basis. It appears that, he has rendered more than 5 years of satisfactory services as Assistant Teacher on unaided post. The Respondents have not brought on record contra material to contest the assertions on factual score made by the Petitioner. Therefore, it will have to be concluded that, the petitioner has completed more than 5 years of satisfactory service on the post of Assistant Teacher. In that view of the matter, and if the Petitioner was the senior most teacher in the Institution working on unaided basis at the relevant time, his transfer from unaided post to aided post due to retirement of the incumbent teacher was permissible, and there was no need to make a fresh appointment on the post of Shikshan Sevak, thereby practically denying him the benefits accrued by virtue of rendering more than five years of service as Assistant Teacher on regular basis.

15. In view of the forgoing discussion, we are inclined to allow the petition. Respondent No.2 is directed to grant approval to the Petitioner as 'Assistant Teacher' on 100% grant-in-aid in Respondent Nos.4 and 5-Schools in regular pay scales with effect from his date of transfer within a period of six weeks from today and release arrears of salary accordingly.

16. The petition is disposed of in the above terms. No order as to costs.

(SURENDRA P. TAVADE, J)

Aarti Palkar

(S.C. GUPTE, J.)

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