

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

WRIT PETITION NO. 8985 OF 2021

Ms. Manisha Amogsidh Kasture & Anr.

... Petitioners.

V/s.

The State of Maharashtra & Anr.

... Respondents.

WITH

WRIT PETITION NO. 8986 OF 2021

Shubhangi Dnyaneshwar Mane & Anr.

... Petitioners.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Narendra V. Bandiwadekar, Advocate a/with Vinayak R. Kumbhar
i/by Mrs. Ashwini Navjyot Bandiwadekar, Advocate for the Petitioners
in both the Petitions.

Mr. N. K. Rajpurohit, AGP for the State/ Respondent Nos. 1 and 2 in
both the Petitions.

CORAM : R.D. DHANUKA & R.N. LADDHA, JJ.

DATE : DECEMBER 22, 2021.

P.C. :

1 Rule. In both the petitions, Mr. Rajpurohit, learned AGP
waives service of Rule on behalf of the State / Respondent Nos. 1 & 2.

2 By consent of the parties, both the Petitions are finally
heard together and disposed of by this common order.

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3 By these Petitions filed under Article 226 of the Constitution of India, the Petitioners seek orders or directions to quash and set aside the impugned orders dated 26.07.2021 issued by the Respondent No. 2, refusing to grant approval to the transfer of the Petitioner No. 1 in both the petitions, from un-aided post to aided post in the School of the Petitioner No. 2 -Management with effect from 01st June, 2020 and to release the grant in-aid for payment of monthly honorarium to the Petitioner No. 1 in both the Petitions from the date of transfer together with all arrears.

4 Mr Bandiwadekar, learned counsel appearing for the Petitioners in both the Petitions invited our attention to respective impugned orders dated 26.07.2021, rejecting the proposal of the Petitioners on the ground that both the respective Petitioner No.1 in the Petitions have not completed five years of service on un-aided posts to be transferred them to the aided posts in the School. He invited our attention to Rule 41-A inserted in the Maharashtra Employees Private Schools (Conditions of Service) (Amendment) Rules, 2020 (hereinafter referred to as the “amended Rules” for short) published in the Maharashtra Government Gazette on 8th June, 2020 and submits that both the Petitioners were transferred prior to the said amended Rules came into effect. He relied upon the Judgment of this Court delivered on 7th October, 2021 in the case of Sudhakar s/o Shripati Gandhale & Ors. vs. State of Maharashtra in Writ Petition No. 6447 of 2021 alongwith Writ Petition No. 6450 of 2021. He submits that the said Rule 41-A inserted with effect from 8th June, 2020 would not apply to the transfer of the Petitioners already effected on 01st June, 2020

from unaided posts to the aided posts. This Court in the said order/ judgment dated 7th October, 2021, after construing the amended Rules 41-A & B of the MEPS Rules, held that the Government Notification did not apply with retrospective effect. In our view, the said Government Notification will apply with prospective effect and not retrospective effect. The impugned orders of the Respondent No. 2 are contrary to the principles of law laid down by this Court in the said case of Sudhakar, cited supra, and deserve to be quashed and set aside.

5 Learned AGP for the State could not distinguish the said judgment in the said case of Sudhakar (supra), relied on by the Petitioners. The ratio of the said judgment applies to the facts of the present Petitions. We do not propose to take a different view in the matter. We accordingly pass the following order :

ORDER

(i) Both the Writ Petitions are allowed in terms of prayer clause (b).

(ii) Respondent No. 2 shall grant approval to the transfer of the Petitioners from the unaided post to the aided post with effect from the date of the transfers and release grant - in-aid to the Management within six weeks from today.

(iii) Name of the Petitioner No.1 (in both Petitions) shall be included by the School in grant-in-aid within two weeks from the date of grant-in-aid order by the Respondent No. 2.

(iv) Rule is made absolute in the aforesaid terms in both the Petitions.

Parties concerned to act on an authenticated copy of this order duly issued by the Registry of this Court.

(R.N. LADDHA, J.)

(R.D. DHANUKA, J.)

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