

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

KANCHAN
VINOD
MAYEKAR

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WRIT PETITION NO. 2556 OF 2016

Vilas Pralhad Talekar

..... Petitioner

VERSUS

Kurduwadi Municipal Council & Ors.

..... Respondents

ALONGWITH
WRIT PETITION NO. 2611 OF 2016

Rahul Suresh Rikibe

..... Petitioner

VERSUS

Kurduwadi Municipal Council & Ors.

..... Respondents

Mr.Narendra V.Bandi Wadekar, a/w. Mr.Vinayak R.Kumbhar,
Mr.Ajinkya Navale, i/b. Mr.S.A.Mane for the Petitioners in both the
writ petitions.

Mr.A.H.Fatangare for the Respondent nos. 1 and 2 in both writ
petitions.

Mr.V.M.Mali, A.G.P. for the Respondent nos. 3 to 5 in Writ Petition
No.2556 of 2016.

Ms.K.N.Solunke, A.G.P. for the Respondent nos. 3 and 4 in Writ
Petition No.2611 of 2016.

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

DATE : 27th OCTOBER, 2021

P.C:-

Rule. Mr.Fatangare, learned counsel for the respondent nos. 1
and 2 waives service in both the writ petitions. Mr.Mali, learned
A.G.P. waives service for the respondent nos. 3 to 5 in Writ Petition

No.2556 of 2016 and Ms.Solunke, learned A.G.P. waives service for the respondent nos. 3 and 4 in Writ Petition No.2611 of 2016.

2. By consent of parties, both the petitions were heard finally and are being disposed of by a common order.

3. The petitioners have filed these two writ petitions on 29th September, 2015 *inter alia* praying for an order and direction against the respondents to appoint the petitioners on full time teachers for Geography in Writ Petition No.2556 of 2016 and for English in Writ Petition No. 2611 of 2016 in the respondent no.2 junior college on aided basis which became vacant on 1st June, 2007 in Writ Petition No.2556 of 2016 and vacant on 1st June, 2015 in Writ Petition No. 2611 of 2016 and transfer the petitioners to the said post from the full time teacher for geography (Unaided) and English (unaided) in the respondent no.2 junior college.

4. The parties before this Court have not disputed that the petitioners were already appointed as assistant teachers on unaided post which appointments are duly approved by the Deputy Director of Education. It is the case of the petitioners that since the aided post is

available, the petitioners should be transferred from unaided post to the aided post.

5. In view of the petitioners seeking transfer, the management sought guidance for advice from the Deputy Director of Education vide letter dated 18th April, 2016. The Deputy Director of Education by letter dated 16th April, 2018 informed the management that such transfer is permissible from unaided post to the aided post as per the Government Circular dated 28th June, 2016. A copy of such letter is annexed at page 133 of the writ petition.

6. In our view, since the management had sought guidance from the Deputy Director of Education which is responded by the Deputy Director of Education opining the management that such transfer would be permissible by virtue of Government Circular dated 28th June, 2016, we direct the management to apply for transfer of the petitioners from unaided post to the aided post to the Deputy Director of Education within four weeks from today.

7. In our view, the right was vested in the petitioner for such transfer from unaided post to aided post prior to 16th April, 2018.

8. We accordingly direct the management to submit the proposal for transfer of the petitioners from unaided post to the aided post w.e.f. 16th April, 2018 to the Deputy Director of Education within four weeks from today.

9. The Deputy Director of Education is directed to consider the said proposal w.e.f. the date 16th April, 2018 within six weeks from the date of receipt of such proposal from the management and shall pass appropriate order on the said proposal in accordance with law after giving hearing to the petitioners. The petitioners shall be issued seven days clear notice before granting hearing to the petitioners by the Deputy Director of Education. The order that would be passed by the Deputy Director of Education shall be conveyed to the petitioners as well as to the management within seven days from the date of passing such order.

10. It is made clear that if the proposal that would be submitted by the management to the Deputy Director of Education, the Deputy Director of Education is allowed, the Deputy Director of Education shall grant all consequential benefits to the petitioners including the

payment w.e.f. 16th April, 2018 within six weeks from the date of grant of such proposal and to enter the name of the petitioners in Shalarth Pranali within four weeks thereafter.

11. If the proposal is rejected, the management shall not take any coercive steps against the petitioners by re-transferring the petitioners from aided post to the unaided post which is held by the petitioners.

12. Both the writ petitions are disposed of accordingly in the aforesaid terms. No order as to costs. Rule is made absolute accordingly.

13. The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]