

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1603 OF 2020

Vikas Sampatrao Gawade & Ors. ...Petitioners

Versus

The State of Maharashtra Through The ...Respondents
Secretary, School Education Dept. & Ors.

Laxman S. Deshmukh - Advocate for the Petitioners.
Shri V. M. Mali – AGP for the Respondent/State Sachin Thorat -
Advocate for the Respondent No. 4.

CORAM : S. C. GUPTE AND
SURENDRA P. TAVADE, JJ.
DATE : 25 FEBRUARY 2021.

P.C. :

1. Heard learned counsel for the Petitioners and the learned AGP for the Respondent-State and learned Counsel for Respondent No. 4.
2. The subject matter of the present petition concerns approval to the Petitioners' transfer from un-aided post to aided post in the same institution. The proposal for transfer was rejected on the ground of availability of surplus teachers. This Court has, in a number of cases including the case of *Devkar Dipali Kisan & Ors. Vs. The State of Maharashtra* (Order dated 25.04.2019), made it clear that so far as transfers of teachers or

non-teaching staff from un-aided posts to aided posts in the same institution are concerned, Government Resolution dated 20.06.2016 does not apply. This Court has held that the Government Resolution has no statutory force, considering that the matter is governed by Rule 41 of Maharashtra Employees Private Schools Rules, 1977. Availability of surplus teachers cannot come in the way of granting approval for transfers of existing teachers or non-teaching staff from un-aided posts to aided posts.

3. The learned AGP is not in a position to distinguish the facts of the present case from the facts of the case of *Devkar Dipali Kisan*.

4. Rule is accordingly made absolute and the petition is allowed, by directing Respondent No. 3- Education Officer to grant approval to the transfer of Petitioners as 'Assistant teacher' from un-aided post w.e.f. the date of the transfer from un-aided division/post to aided division/post and release all grant-in-aid for payment of salary, accordingly. Such decision shall be taken as expeditiously as possible and, in any event, within a period of six weeks from today.

5. The petition is accordingly disposed of.

[SURENDRA P. TAVADE, J.]

[S. C. GUPTE, J.]