

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

WRIT PETITION NO. 13144 OF 2019

Pragati Sunil Gadling	...Petitioner
vs.	
The State of Maharashtra and Ors.	...Respondents

Mr.N.V. Bandiwadekar i/b. A.N. Bandiwadekar for Petitioners.
Mr.Raj Purohit, AGP for Respondent-State.

**CORAM : S.C. GUPTE &
SURENDRA P. TAVADE, JJ.**

DATE : 21 JANUARY 2021

PC. :

Heard learned Counsel for the Petitioner and learned AGP for the Respondent-State. The private Respondents, i.e. Respondent Nos.3 and 4, though served, are not present. In any event, the lis is between the Petitioner and the Respondent State. Rule. Rule is taken up for hearing forthwith, by consent of Counsel.

2 The Petitioner was appointed on 24 January 2013 as Assistant Teacher in an un-aided post of a school run by Respondent No.4. The Petitioner was appointed with effect from 28 January 2013. On 19 October 2013, Respondent No.2 – Education Officer approved the appointment.

3 Sometime in 2016, when vacancy arose in the aided division of the school of Respondent No.5, by a Resolution passed by the school management on 5 June 2016, the Petitioner was transferred from the un-aided division to the aided division of the school. The transfer was effected

from 15 June 2016. A proposal for approval to this transfer was submitted to the Education Officer, who communicated his approval on 21 September 2016. At the stage of obtaining Shalarnya ID for receipt of payment of salary from the Respondent State, apparently an objection was raised by Respondent No.3 purportedly on the basis of Government Resolution dated 28 August 2013. The subject Government Resolution provides that if, in case, the employee has not rendered five years service in unaided school upon his transfer to the aided school, he should give an undertaking for being treated as Shikshan Sevak on a consolidated salary for three years. The Petitioner refused to give such undertaking. (The Petitioner initially gave undertaking and later on withdrew it.) As a result, there is no payment of salary to him ever since his transfer to the aided division in 2016.

4 The Respondent State has filed an affidavit taking up the same position, relying on the G.R. dated 28 June 2016.

5 In the first place, the G.R. of 28 June 2016 has come after the Petitioner's transfer from unaided to aided division and secondly, and more importantly, by a judgment delivered by Aurangabad Bench of this court on 14 January 2019 in the case of **Pramod s/o. Prabhakar Pokale vs. State of Maharashtra**¹, where this very GR was the subject matter of challenge, a Division Bench of this court has held that in a case where an Assistant Teacher had acquired the status of a regular employee on completion of two years' probation period, and his appointment was in adherence to the provisions of Section 5 of MEPS Act, 1977, and approval was granted to his appointment by the Education Officer on regular basis on the post of

1 2019(4) Mh.L.J. 278

Assistant Teacher on completion of satisfactory probation period; and he is senior most teacher working in the school on unaided basis; then, in that case, the question of invocation under Sub-clause 5(A) of Clause 3 of the Government Resolution would not arise. Incidentally, as in the case before the Aurangabad Bench, even here the Petitioner is the senior most teacher working in the school on unaided basis. It is not in dispute that he had acquired the status of regular employment on completion of two years probation period in unaided division. His appointment was in keeping with Section 5 of MEPS Act; his appointment had the approval of the Education Officer on regular basis, thereafter, on completion of a probation period; and he is the senior-most teacher working in the school on an unaided post. If that is so, on the basis of the law declared by Aurangabad Bench in the case of **Pramod s/o. Prabhakar Pokale** (supra), the Respondent State is not justified in applying Sub-clause (5) of Clause 23 of G.R. of 2016 to the Petitioner.

6 In the premises, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned rejection of Shalartha ID and directing the Respondent State to forthwith issue Shalartha ID to the Petitioner and start paying his salary, including arrears of his salary, till date. Shalartha ID must be issued and salary disbursement must start, in any event, within a period of six weeks from today.

(SURENDRA P. TAVADE, J.)

(S.C. GUPTE, J.)