

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3581 OF 2019

Yuvraj Laxman Banpatte

....Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Mr. Satish S. Raut for the Petitioner.

Mr. N.K. Rajpurohit, AGP for Respondent No.1.

Mr. Rajdeep S. Khadapkar for Respondent No.3.

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

DATE : 9 FEBRUARY 2021

P.C.

1. Heard learned counsel for the Petitioner, learned counsel for Respondent No.3 and learned AGP for the Respondent-State. Rule. Rule taken up for final hearing by consent of counsel.

2. The subject matter of the present petition is want of approval to the Petitioner's transfer as Assistant Teacher from unaided school to aided school of the same institution. It is not in dispute that the requisitions made by Respondent No.3 in relation to the proposal for approval have already been complied with by Respondent No.4-Management. What is alleged against the Petitioner is the Government Resolution of 28.06.2016 and in particular sub-clause 1, 3 and 4 of Clause 3 thereof. This Court by its order dated 25.04.2019 in the case of **Miss. Devkar Dipali Kisan vs. The State of Maharashtra & Ors. in Writ Petition No.5313 of 2017** and other

connected petitions held that these clauses of the GR do not have statutory force. The subject matter is governed by Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (MEPS Rules for short) and administrative decisions of the State which run contrary to subordinate legislation such as MEPS Rules are not valid. A number of petitions have been accordingly disposed of by allowing transfers of Teachers from unaided posts to aided posted under the same management and directing the concerned Education Officers to grant approvals to such transfers in response to the proposals submitted in that behalf by the respective school managements. It is not in dispute that the facts of the present case are clearly covered by the judgment delivered in ***Miss. Devkar Dipali Kisan's (supra)*** case.

3. We accordingly make rule absolute and allow the petition by quashing and setting aside the impugned communication dated 13.10.2017 issued by Respondent No.3 and direct Respondent No.3 to grant approval to the transfer of the Petitioner as an Assistant Teacher from an unaided school to the aided school of Respondent No.4-Management and direct Respondent No.2 to release grant-in-aid for payment of his salary as per the pay scale applicable to the post of Assistant Teacher together with arrears with effect from 15.06.2017.

4. The petition is disposed of in the above terms.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)