

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.5528/2019

Milind S/o Sheshrao Wankhede,
age 32 Yrs., Occ. Service as Assistant
Teacher at the P.E.S. Vidyalaya Pimpalkhuta,
Patur, Tq. Patur, Dist. Akola.

..Petitioner.

..Vs..

1. The State of Maharashtra,
through it's Secretary, Education
Department, Mantralaya, Mumbai - 32.
2. The Education Officer (Secondary),
Zilla Parishad, Akola.
3. The Pimpalkhuta Education Society
Pimpalkhuta, Tq. Patur, Dist. Akola,
through it's Secretary.
4. The P.E.S. Vidyalaya Pimpalkhuta,
Tq. Patur, Dist. Akola, through
it's Headmaster.

..Respondents.

Mr. N.B. Kalwaghe, Advocate for the petitioner.
Mr. N.R. Patil, A.G.P for respondent Nos.1 and 2.

CORAM :- SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED :- 27.10.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties present before the Court.

2. The case of the petitioner is that he was transferred from unaided school to aided school by the management which schools are run by the same management and although such transfer was within the parameters of law, respondent No.2 on the ground that surplus teachers are available, illegally refused to grant approval to such transfer of the petitioner.

3. Shri Kalwaghe, learned counsel for the petitioner submits that the case of petitioner is squarely covered by the view taken by this Court in group matters starting with Writ Petition No.8556/2019 decided on 5th October, 2021 wherein it has been held that approval to such transfer cannot be refused on the ground that first the vacant post must must be attempted to be filled from amongst lot of surplus teachers available. This view was taken by this Court on the same lines as decisions taken in several writ petitions decided at principal seat at Mumbai being writ petitions started with Writ Petition No.5313/2017 decided on 25th April, 2019. In the instant case, the petitioner was transferred on 2.1.2017 and refusal from respondent No.2 came on 16.12.2019. On either of these dates, no amendments were introduced to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short “MEPS Rules, 1981”) and, therefore, we are of the opinion that the issue

involved in this petition is squarely covered by the decisions in the aforestated writ petitions.

4. Speaking about the amendments incorporated in the MEPS Rules, 1981 in particular introduction of Rule 41A, we must say that this amendment having come into force w.e.f. 8.6.2020 would not apply retrospectively to the facts of the present case especially when the amendment has not been expressly made to be retrospective in operation. This is also the view expressed in the case of Sandhya D/o Balkrushna Teli & Ors. V/s. The State of Maharashtra & Ors., Writ Petition Stamp No.93919/2020, decided on 12.3.2021 by Division Bench at Mumbai and Rekha Ashok Khandare V/s. Bahuuddeshiya Shikshan Prasarsak Mandal and others, Writ Petition No.4753/2019, decided on 9.4.2021 by Division Bench at Aurangabad.

5. In view of the above, we allow the petition in terms of prayer clause (B-i) and (C). Rule accordingly. There shall be no orders as to costs.

JUDGE

JUDGE