

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

59 WRIT PETITION NO.1211 OF 2022

MOHAMMAD AZHARUDDIN NOORUDDIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.S.B. Bakhriya h/f. Mr. S.S. Kazi, Advocate for the petitioner.
Mr.A.R. Kale, AGP for respondent Nos.1 and 2.

CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.
DATED : 11.07.2022

PC :-

01. The petitioner has put forth prayer clauses “B” and “C” as under :-

“(B) By issuing writ of mandamus or any other writ or direction, the impugned order dated 05.04.2021 issued by the respondent no.2 be quashed.

(C) By issuing writ of mandamus or any other writ or direction, the respondents be directed to grant approval on aided post as Assistant Teacher with effect from 10.07.2021.”

02. We have considered the submissions of the learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos.1 and 2. Despite service of notice, none appears for respondent No.3.

03. The issue, as regards the transfer of an employee from an unaided

category to the aided category is no longer *res-integra*.

04. The facts of the case are that the petitioner – Mohammad Azharuddin joined as an Assistant Teacher on 10.07.2018 in the un-aided division. Mandatorily he has to complete three years on a consolidated stipend. On 09.07.2021, he completed three years. Thereafter, he is eligible to be appointed as an Assistant Teacher and can be transferred to the aided division only with effect from 10.07.2021. The learned AGP submits that probably the Education Officer mistook his appointment as a Shikshan Sevak with effect from 01.03.2021 and granted approval as a Shikshan Sevak though he was an Assistant Teacher, on a stipend of Rs.8000/- available for teaching category for a period of three years until 29.02.2024.

05. We find from the record that though the petitioner was appointed as a Shikshan Sevak on 10.07.2018, the management shifted him to the aided division before he could complete three years, vide resolution dated 18.02.2021 with effect from 01.03.2020.

06. The petitioner has already been transferred to the aided division,

but the approval is granted in a phase-wise manner. There is no dispute that the post on which the petitioner has been transferred in the aided category, is 100% grant-in-aid. The consequential impugned order would be rendered unsustainable, since there is no propriety or logic in transferring the petitioner from the unaided category to the aided category and yet granting transfer in a phase-wise manner. Had the post been partly grant-in-aid in the nature of 20% or 40%, 60% or 80%, the petitioner would have accordingly derived benefit commensurate to the grants. When the post is 100% grant-in-aid, the approval to the service of the petitioner cannot be in a phase-wise manner.

07. In view of the above, this petition is allowed.

08. The impugned order dated 05.04.2021 passed by respondent No.2 is quashed and set aside. We direct respondent No.2 to issue a proper approval order with effect from 10.07.2021, when the petitioner has been transferred to the aided category, keeping in view that the post on which he has been transferred is 100% grant-in-aid. Let such order be issued on or before 10.08.2022.

09. As such, the petitioner would be entitled for the salary-scale available to an Assistant Teacher after completing three years, in the aided division, with effect from 10.07.2021 with all monetary benefits.

[ANIL L. PANSARE,J.]

[RAVINDRA V. GHUGE,J.]