

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4526 OF 2022

Kailash Digambar Nakate

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. V. S. Panpatte, Advocate for the Petitioner.

Mr. S. G. Sangle, AGP for Respondents-State.

Mr. B. P. Gonare, Advocate for Respondent Nos. 3 and 4.

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

DATED : 13th JULY, 2022.

PER COURT:-

1. The petitioner has put forth prayer clause (B) as under :-

“(B) By a writ of mandamus or any other appropriate writ or direction in the like nature, the Respondent No. 2 – Deputy Director of Education, Latur may please be directed to grant approval to the transfer of the petitioner as Assistant Teachers on 100% aided division in the Respondent No. 4 – Jr. College in the regular pay scales w.e.f. 19.06.2018 by modifying the approval order dated 06.08.2020 and accordingly release arrears of salary of the petitioner within a period of six weeks.”

2. The learned A.G.P. appears on behalf of respondent Nos. 1 and 2.

3. Our attention is drawn to several orders passed at the Aurangabad Bench and at the Principal Seat at Bombay to indicate that the law is crystallized.

4. The petitioner was working as an Assistant Teacher on unaided post from 19.06.2014. On 19.06.2018, he has been transferred to the 100% grant in aid division by respondent No. 4. The first approval received by the petitioner indicates that he was appointed as an Assistant Teacher on 19.06.2014. He has to complete two years probation period till 19.06.2016. He received permanent approval after completing his probation period and was posted as an Assistant Teacher with sanctioned pay grade on unaided basis from 19.06.2016. After completion of four years on unaided basis, he would be entitled to an approval on 100% aided basis from 19.06.2018, after reckoning his first date of appointment as 19.06.2014.

5. By the impugned order dated 06.08.2020, though the transfer of the petitioner from the unaided division to the aided division with effect from 19.06.2018 is rightly approved, respondent No. 2 erroneously granted approval as a Shikshan Sevak for a period of three years, instead of as an Assistant Teacher.

6. Though the learned A.G.P. has opposed the petition, he submits that he cannot argue against the settled position of law.

7. In the case of **Ms. Sandhya Laxman Ghosalkar Vs. The State of Maharashtra** (Writ Petition No. 5258 of 2012) and connected matters, this Court delivered an order on 12.09.2012, paragraph Nos. 4 and 5 being applicable, the conclusions drawn which reads as under :-

“4. In our view, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three petitioners. If the petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is especially so having due regard to the fact that they were similarly circumstanced with other Teachers in whose case approval was granted as Assistant Teachers.

5. In the circumstances, we quash and set aside the order of the Second Respondent dated 29 March 2012 and direct the Second Respondent to grant approval to the appointments of the Petitioners as Assistant Teachers with effect from 1 August 2011 (the date as mentioned in the approval order dated 29 March 2011). The Education Officer (Secondary) shall pass consequential orders within a period of two weeks from the date on which an authenticated copy of this order is produced on his record.”

8. There are several orders passed by this Court at the Principal Seat as well as at the Aurangabad and Nagpur Benches. This would indicate that the impugned order is apparently erroneous.

9. In view of the above, this petition is partly allowed. The respondent No. 2 shall correct the order of approval dated 06.08.2020 so as to grant approval to the petitioner as an Assistant Teacher on 100% grant in aid with effect from 19.06.2018. Needless to state, the petitioner would be entitled for all consequential benefits.

(ANIL L. PANSARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

PS.B.