

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

WRIT PETITION NO. 8500 OF 2022

SAMBHAJI SAHADEV KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Sandeep B. Sontakke, Advocate for the petitioner,
Mr. S.G. Karlekar, AGP for the respondent Nos. 1 to 3.

CORAM : RAVINDRA V. GHUGE, &
ARUN R. PEDNEKER, JJ.

DATE : 24th August, 2022

ORDER:

1. The contesting respondent in this matter is the Education Officer (Secondary), Zilla Parishad, Nanded (respondent No.3). The learned AGP appears on behalf of respondent Nos. 1, 2 and 3. Respondent Nos. 4 and 5 comprise of the management and the School, who are not the contesting respondents.

2. The petitioner has put forth prayer clauses (B) and (C) as under:

"(B) By issuing appropriate writ or direction in the like nature, to direct the respondent No.3 to modify the approval order dated 21.03.2019 and grant the 100% salary to the petitioner on the post of Assistant Teacher w.e.f. 1.07.2017 for that purpose issue necessary orders;

(C) Pending hearing and final disposal of this Writ Petition, direct the respondent No.3 to modify the approval order dated

21.03.2019 and grant the 100% salary to the petitioner on the post of Assistant Teacher w.e.f. 1.07.2017 for that purpose issue necessary orders."

3. We have considered the lengthy arguments of all the sides. We find from the order of the Education Officer (Primary), Zilla Parishad, Nanded dated 2nd December, 2017 that the petitioner had joined service on 20.06.2005 as a Shikshan Sevak. After completing three years service, he has been regularized in employment and he has already received an approval for his appointment with effect from 20.06.2005. A co-employee Shri V. B. Kalyankar passed away on 23.06.2017, thereby creating a vacancy. The said post was within 100% grant-in-aid category. The deceased employee was receiving 100% salary through grants. It is equally undisputed that the petitioner was absorbed in the vacancy created on account of the demise of Shri Kalyankar. In this backdrop, the Education Officer issued an order dated 02.12.2017 transferring the petitioner from the un-aided category to the 100% aided category since he was inducted in the vacant post after the demise of Shri Kalyankar.

4. It is on 21.03.2019, that a new Education Officer, while dealing with the salary bills of the petitioner, reversed the order dated 02.12.2017. He does not have the powers to review the earlier order passed by the Education Officer. Moreover, this Court has delivered an

order on 4th February, 2021 in Writ Petition No. 2278 of 2021 (12 petitions) filed by Suvarnamala d/o Prakash Dudhate Vs. the State of Maharashtra and others, concluding in paragraph Nos. 3 to 8 as under:

"3. It is submitted that in all these matters, the petitioners have worked on unaided posts for four years and more.

4. We have in our judgment dated 4.7.2019 in Writ Petition No. 1493 of 2018 with connected Writ Petitions held that some of the clauses of the Circular dated 28.6.2016 do not apply. It appears that the Education Officer, while granting approval to the appointment of petitioners as an Assistant Teacher from the date of transfer to the aided posts had granted approval on grant-in-aid in phase-wise manner to the effect that after five years, the petitioners would be granted approval on 20% grant-in-aid. The same would not be in tune with the order passed by this Court from time to time at this Bench and also at principal seat.

5. In case the petitioners are transferred on 100% grant-in-aid posts since the date of completion of three years, they shall be considered on 100% grant-in-aid posts. In case the petitioners are transferred on grant-in-aid posts, for example on 60%, then from the date of transfer, they would be on 60% grant-in-aid posts, but if the petitioners, after having completed three years on unaided posts and are transferred on 100% grant-in-aid posts, their services

will have to be considered on 100% grant-in-posts. This aspect has been ignored by the Director of Education/Dy. Director of Education/Education Officer.

6. In light of above, the impugned order of granting approval in phase-wise manner is quashed and set aside and modified.

7. In case the Director of Education / Dy. Director of Education /Education Officer are satisfied about approval to the transfer of the petitioners on aided posts and if the petitioners have completed three years and more on unaided posts before they are transferred to aided posts on 100% grant-in-aid posts, then respondents - Director of Education / Dy. Director of Education / Education Officer shall consider grant of approval to the transfer of the petitioners on 100% grant-in-aid posts within a period of six months.

8. Writ Petitions disposed of. No costs."

5. In the above backdrop, though the learned AGP has vehemently opposed this petition, we do not find that the stand taken by the Education Officer is supported, either on facts or on law. Once the Education officer has passed the order dated 2nd December, 2017, the new Education Officer, merely because the person occupying the said chair has changed, would not be empowered to reverse the earlier

decision of the Education Officer, which we do not find to be illegal or unsustainable.

6. In view of the above, the impugned order dated 21.03.2019, stands quashed and set aside. The order dated 2nd December, 2017 stands restored. The present Education Officer (Secondary), Zilla Parishad, Nanded shall clear the pending bills of the petitioner with reference to the unpaid monthly salary, within four weeks

7. This Writ petition is allowed in the aforesaid terms.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

JPC