

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

WRIT PETITION NO. 8187 OF 2021

1. Sonali D/o Bhila Ahire,
Age : 34 years, Occu : Service as
Assistant Teacher, R/o : Mohadi Upnagar,
Dhule Tq. & Dist. Dhule

2. Lilesh S/o Ravindra Patil,
Age : 38 years, Occu : Service as
Assistant Teacher, R/o. Avdhan,
Tq. & Dist. Dhule

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.

2. The Education Officer (Secondary),
Zilla Parishad, Dhule.

3. Satidevi Trust,
Boris, Tq. & Dist. Dhule
through its President/Secretary

4. Yashwant Krushi Secondary School,
Mohadi, Tq. & Dist. Dhule,
through its Head Master

5. Sau. Savitribai Shivajirao Deore
Girls School, Boris, Tq. & Dist. Dhule,
through its Head Master

... RESPONDENTS

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Mr. Vilas S. Panpatte, Advocate for the petitioners
Mrs. V.N. Patil-Jadhav, AGP for the respondent – State
Respondents nos. 3 to 5 served - absent

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

Reserved on : 04.08.2022

Pronounced on : 12.08.2022

JUDGMENT (Mangesh S. Patil, J.) :

Heard. Rule. Rule is made returnable forthwith. The learned AGP waives service for respondent Nos.1 and 2. The respondent Nos.3 to 5 have been served but have not appeared. At the request of the learned advocate for the petitioners and the learned AGP, the matter is heard finally at the stage of admission.

2. Learned advocate Mr. Panpatte would submit that the petitioners were duly appointed on 18.06.2014 by the respondent No.3 Management as Assistant Teachers by following due procedure, after obtaining necessary permission of the respondent No.2 Education Officer and by undertaking a regular recruitment process by publishing advertisement. They successfully completed the probation period and even the respondent No.2 Education Officer granted approval to their appointment. On 20.06.2016 respondent No.3 Management transferred them from unaided divisions to the divisions receiving grant-in-aid from the Government. A proposal was submitted by the respondent No.3 Management to the respondent No.2 Education Officer for approval of the transfers. By communication dated 02.11.2019 though the approval was granted it was made subject to certain terms and conditions by putting their appointment on honorarium basis and release of the grant-in-aid in a phased manner from 20% for the first year to 100% in the 5th year of transfer and it is only thereafter that they were to get the regular pay scale. It is this communication which is being challenged.

3. Mr. Panpatte would submit that the terms and conditions subject to which the approval has been granted are illegal. This Court in several matters of similar nature has consistently held that such transfers from unaided divisions to the aided divisions are not new appointments and consequently are not governed by Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (herein after the M.E.P.S. Act). There was no question of any accommodation of a surplus teacher. Their appointment was approved and it was merely a matter of transfer. Even such transfers from unaided to aided divisions have been held to be permissible in law and the respondent No.2 Education Officer ought not to have put such conditions. He would place reliance on following decisions:

- a. **Ms. Sandhya Laxman Ghosalkar Vs. the State of Maharashtra and Ors.**
(WP No.5258/2012 dated 12.09.2012 with connected matters)
- b. **Dattu Bhima Thorat Vs. the State of Maharashtra and Ors.**
(WP No.2960/2012 dated 11.10.2012)
- c. **Mrs. Shilprekha Vinayak Joshi Vs. the State of Maharashtra and Ors.**
(WP No.11065/2014 dated 14.02.2017 with connected matters)
- d. **Suryakant Janardan Muge Vs. The State of Maharashtra and Ors.**
(WP No.1493/2018 dated 04.07.2019 with connected matter)

4. The learned AGP fairly concedes that this Court in number of matters including the matters cited herein above has consistently held that transfers from unaided divisions to aided divisions is permissible. These are not new appointments and transfers cannot be made subject to availability of surplus teachers.

5. There is no dispute about the fact that the services of the teachers appointed in the schools receiving grant-in-aid from the State Government and the schools which do not receive such grants are regulated by the M.E.P.S. Act.

6. There is no dispute about the fact that the petitioners were appointed in a regular course by obtaining permission as required under Section 5 of the M.E.P.S. Act and even the respondent No.2, the Education Officer has granted approval to their initial appointment on 18.06.2014.

7. Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (herein after the Rules) lays down provision regarding transfers of employees and empowers a management to effect transfers on administrative grounds. Though there was a circular dated 28.06.2016 issued by the Department of Education laying down conditions while effecting such transfer under Rule 41 whenever assistant teachers were to be transferred from unaided posts to aided posts. However, those conditions were akin to the provisions of Section 5 of the M.E.P.S. Act regarding seeking permission and confirmation of availability of surplus teachers and prohibiting such transfer in case those were available. It also laid down the seniority to be followed while effecting transfers from unaided posts to aided posts. There was also a condition regarding release of grants in a phased manner from 20% to 100% making it incumbent for such assistant teachers to work for 5 years on unaided posts and complete the period after such transfer, as a condition for release of the grants. In the

matter of **Miss Devkar Dipali Kisan and Anr. V/s The State of Maharashtra and Anr. (Writ Petition No.5313/2017 with connected Writ Petitions dated 25.04.2019)** and as referred to in the decision of **Suryakant Janardan Muge** (supra) the coordinate benches of this Court have held that circular dated 28.06.2016 that runs contrary to the provisions of Rule 41 of the M.E.P.S. Rules was invalid to the extent of Sub-clauses 1 and 2 of Clause 3 of that Circular. To this extent, therefore, the submission of Mr. Panpatte is unquestionable.

8. Even the circular dated 28.06.2016 will not be applicable to the petitioners' case who were transferred by the order dated 20.06.2016, even before the circular was issued.

9. In view of the above state of affairs, the order passed by the respondent No.2 Education Officer imposing several conditions while granting approval to the petitioners' transfer is not sustainable in law and is liable to be quashed and set aside.

10. The order dated 02.11.2019 issued by the Education Officer is quashed and set aside. He shall reconsider the proposal submitted by the respondent No.3 Management for granting approval to the petitioners' transfer from unaided division to aided division afresh in the light of the above observations and the decisions of this Court (supra) but shall not impose any conditions and refuse approval only on the ground of availability of surplus teachers.

11. The Writ Petition is thus allowed partly.

12. The Rule is made absolute in above terms.
13. The Respondent No.2 the Education Officer shall take the decision as early as possible and in any event within 12 weeks from today.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

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