

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
969 WRIT PETITION NO.7146 OF 2022

VISHNU SHIVAJIRAO MORE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

Mr. M. P. Tripathi, Advocate h/f Mr. K. J. Ghute
Patil, Advocate for the petitioner
Mr. S. G. Sangle, AGP for the respondents/State

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

DATE : 13th July, 2022

P. C.

1. The petitioner is aggrieved that the Education Officer is forwarding names of the surplus teachers for absorption and defeating the rights of petitioner.

2. We have considered the submissions of the learned advocate for the petitioner and the learned AGP.

3. Rule 41-A of the MEPS Rules, 1981 reads as under:-

41-A] Conditions for transfer of teacher from un-aided to partially aided or aided school or division-

(1) The Management may transfer a teacher from un-aided school or partially aided school to the vacant post in partially aided school or aided school or division only if the following conditions are satisfied, namely:-

(a)(i) the Management and Education Officer or Deputy Director shall, before making such transfer, verify that there is no surplus persons are available as provided in sub-section (1) of section 5 of the Act;

(ii) if the surplus persons are available, the Management shall not make such transfer;

(b) the transfer shall not be made from the teachers of self-financed school of the Management;

(c) before making such transfer, the teacher should have completed minimum five years continuous service in un-aided school or division or partially aided school or division of the

Management;

(d) the transfer shall be made in equal or same cadre. The transfer shall not be made from primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. Schools or vice-versa;

(e) the transfer shall be made only by following the seniority and as per the requirement of the subject;

(f) before making transfer of a teacher, his appointment should have been approved by the Education Officer or Deputy Director, as the case may be;

(g) the transfer shall be made on the vacant post;

(h) the transfer shall be subject to the approval of Education Officer or Deputy Director, as the case may be.

(2) If the post becomes vacant due to transfer, such vacant post shall be filled as per the procedure provided in rule 9.

(3) The transferred teacher shall be eligible for scale of pay and allowances as decided by the Government, from time to time.

4. It is well settled that a surplus teacher who is senior to the teacher who is working in the unaided division, will have a right to be absorbed in the aided division going by his seniority since he is already a permanent approved teacher. In short, Rule 41-A will have to be followed in letters and spirit.

5. If the petitioner has any grievance that a surplus teacher junior to him is being absorbed, he is at liberty to raise the grievance before the Education Officer.

6. In view of the above, this petition is disposed off.

[ANIL L. PANSARE, J.]

[RAVINDRA V. GHUGE, J.]