

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

982 WRIT PETITION NO.7205 OF 2022

MANISHA PRALHADRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

AND
1001 WRIT PETITION NO.7228 OF 2022

RAJESH BHASKARRAO GAUTAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioners : Shri Kolhare S.R.
AGP for the Respondents/ State : Shri S.G. Sangle and Shri S.G.
Karlekar

...

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

DATE :- 14th July, 2022

Per Court :-

1. Similarly situated petitioners have put forth an identical prayer clause B as under :-

“B. By appropriate writ or direction like nature or order, the communication dated 25th March, 2022, passed by the Respondent No.2 i.e. The Education Officer (Sec) Zilha Parishad, Latur, thereby, rejecting the proposal of Petitioner for approving the transfer of petitioner from Non

Aided division to aided Division as an Assistant Teacher w.e.f. 01.02.2022, may kindly be quashed and set aside and the respondent No.2 i.e. The Education Officer (Sec) Zilla Parishad, Latur may kindly be directed to grant approval to the transfer of petitioner from Non aided division to aided division as an Assistant Teacher w.e.f. 1st February, 2022, in the pay scale of Rs.5200-20200 by giving all consequential benefits as expeditious as possible.”

2. We have considered the submissions of the learned advocate for the petitioners and the learned AGP on behalf of respondent Nos.1 and 2. Respondent Nos.3 and 4 are formal parties.

3. The Education Officer has stated that the approval for granting transfers to the petitioners from the unaided category to the aided category cannot be granted since there are surplus teachers available.

4. Rule 41-A of the MEPS Rules, 1981 is the amended provision, which is aimed at taking care of those surplus teachers, who have a right to be absorbed in the aided category since they are permanent teachers. However, their inter-se seniority with the claimants like the petitioners, is to be considered.

5. Rule 41-A reads as under :-

“41A. 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.”*

6. In view of the above, these Writ Petitions are disposed off.

7. As the petitioners allege that there may not be surplus teachers senior to them, who may be available for absorption in the aided division, we direct respondent No.2 to forward the list of surplus teachers to respondent Nos.3 and 4 for absorption. If the petitioners are senior to any of such surplus teachers, they would get first preference. The Education Officer shall accordingly, comply with this direction within six weeks from today.

kps

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)