

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

300 WRIT PETITION NO.10714 OF 2022

DNYANOBA PANDURANG UBALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Panpatte V.S.
AGP for Respondents 1 and 2: Mr. S.G. Karlekar

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 19th OCTOBER, 2022.**

PER COURT :-

1. The petitioner has put forth prayer clauses "B" and "C" as under:-

- "B) By a writ of mandamus or any other appropriate writ or direction in the like nature, the Respondent No.2- Education Officer (Secondary), Nanded may please be directed to grant approval to the transfer of the petitioners as Assistant Teacher on 100% aided division in the Respondent No.4- School in regular pay scales w.e.f. 03.01.2019 by modifying the approval order dated 08.03.2019 at Exhibit "E" and accordingly release arrears of salary of the petitioner within a period of four weeks.
- C) Pending hearing and final disposal of this writ petition, the Respondent No.2- Education Officer may please be directed to release the regular monthly salary of the petitioner on 100% grant-in-aid i.e. the pay-scale of Rs. 9300-34800 Grade pay 4300."

2. The learned advocate for the petitioner submits that respondent No.3 is a formal party, which supports the cause of the petitioner and, therefore, no notice is necessary. We have therefore, not issued notice to respondent No.3.

3. The issue raised in this petition is no longer res-integra. An Assistant Teacher, who has been appointed on unaided category, is eligible to be transferred to the aided category, after completion of three years, provided there is a vacancy available in the aided category.

4. By the judgment dated 6.7.2021, delivered in writ petition No. 7614 of 2020 (Prakash Dattatraya Bagul vs. State of Maharashtra and others), the petitioner would be entitled for the monetary benefits from 3.1.2019, considering that he has been transferred from unaided category to the aided category, vide order dated 1.2.2019 effected from 3.1.2019. His selection and appointment on 17.4.2013 and the approval to his appointment, dated 6.12.2016, are not disputed.

5. The learned A.G.P. has strenuously supported the impugned order dated 8.3.2019, by which the petitioner has been granted approval w.e.f. 3.1.2019 in phases for grant in aid viz. 20%.

6. It is pointed out that the learned A.G.P. had made a statement in Prakash Dattatraya Bagul (supra), which is recorded in paragraph

No.5 of the judgment dated 6.7.2021, that the condition of progression from 20% to 40%, 60%, 80% and then to 100%, is not applicable, as this Court has set aside the said condition.

7. In view of the above and since the management, which has appointed the petitioner, is presently 100% aided division, the petitioner would be entitled for all monetary benefits w.e.f. 03.01.2019.

8. In view of the above, this petition is partly allowed.

9. The impugned order dated 8.3.2019, to the extent of the petitioner would stand modified and the words '20 टक्के' appearing in the 9th column in the chart at page 2 of the impugned order, shall stand replaced with the words '100 टक्के'. A fresh order be accordingly issued by the Education Officer.

10. Needless to state, the difference in the salary shall be calculated by the management and bills be tendered on or before 30.12.2022. The same shall be cleared by the competent authority within 30 days, thereafter.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)