

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

59 WRIT PETITION NO. 9781 OF 2022

SACHIN S/O SHIVAJI RAHANE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Petitioners : Mr. Shivaji T. Shelke
AGP for Respondent-State : Mr. S. G. Sangle
Advocate for Respondent No.4 : Mr. S. S. Wagh

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**CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.**

DATED : 26 SEPTEMBER 2022

PER COURT :-

1. By this petition, the petitioner has put forth prayer clauses (B) and (C) as under :

“(B) Quash & set aside the rejection order dt. 27.07.2022 at Exh. D of Education Officer, Ahmednagar with a further direction to grant approval to the transfers of the petitioners and for that purpose issue necessary writ or order.

(C) Direct the Education Officer, to grant approval to the transfers of the petitioners at Exh.-B during the pendency of the writ petition.”

2. On 19.09.2022, in an identical situation, involving the same Education Officer Mr. Ashok Kadus, we had passed the following order in **Writ Petition No. 6124 of 2022** filed by **Yogesh Purushottam**

Bhujbal v. The State of Maharashtra and others :-

“1. The petitioner was before this Court in Writ Petition No.125 of 2021 since the Education Officer was not granting approval to his transfer from the unaided non-teaching category, from one school to the aided category in the non-teaching category, in an another school. By order dated 16/09/2021, this Court categorically concluded in paragraphs No.4 and 5 as under :-

“4. The petitioner had put in almost fifteen years service on unaided post before being transferred to aided post. Of course, the Education Officer is required to consider all other aspects of the matter, such as seniority, roster and qualification. However, could not have rejected the proposal on the ground that there is no provision of transfer of an non teaching employee from unaided to aided post.

5. In the light of the above, the impugned communication/order is quashed and set aside. The Education Officer shall reconsider the proposal of the petitioner for approval from unaided to aided post as junior clerk on its own merits and may consider all other aspects of the matter and shall take decision afresh, expeditiously and preferably within a period of four (04) months from today.”

2. The petitioner is now before us for the reason that the Education Officer Mr. Ashok Kadus has rejected the proposal for approval on the ground that there is no provision by which a non-teaching employee from the unaided category in one school, can be transferred to an

aided category in another school in the same non-teaching category.

3. *It is apparent that the Education Officer Mr. Ashok Kadus has either not understood the conclusion arrived at by this Court in paragraph Nos.4 and 5 reproduced above, or he does not desire to grant approval to the petitioner. Rule 41 B of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981, is still a draft provision and a draft provision cannot have the effect or impact of law. Unless the provision is introduced by following the due procedure, it would not have any effect.*

4. *We would have understood if the Education Officer Mr. Ashok Kadus had dealt with this matter without any earlier order of this Court. Once this Court has passed an order on 16/09/2021 concluding that Rule 41 of the M.E.P.S. Rules enables transfer of a non-teaching employee from unaided to aided category in a different school, the Education Officer had no reason to observe, “वास्तव शिक्षकेस्तर कर्मचारी यांचे विनाअनुदानित शाळेमधून अनुदानित शाळेमध्ये बदली बाबत अद्याप तरतुद नाही.” The English translation being “actually, there is no provision for transferring the non-teaching staff from an unaided school to a grant-in-aid school.”*

5. *In view of the above, we deem it appropriate to call for an explanation from Mr. Ashok Kadus as to whether he has failed to understand the order of the High Court or whether he does not desire to obey the same. However, we*

need not detain the petitioner in litigation in this Court in view of our conclusion considering the earlier order dated 16/09/2021.”

6. *As such, this petition is partly allowed. The impugned order dated 05/04/2022 is quashed and set aside. The Education officer Mr. Ashok Kadus shall issue the order of approval to the petitioner, within two weeks from today.*

7. *Registry to issue show cause notice to Mr. Ashok Kadus, Education Officer, Zilla Parishad, Ahmednagar, to show cause before us as to has he disobeyed our order dated 16/09/2021. Let such reply be filed within three weeks from today and the matter be placed before us on 17/10/2022.”*

3. Considering the above order, this petition is partly allowed. The impugned order dated 27.07.2022 is quashed and set aside. The Education Officer Mr. Ashok Kadus shall issue the order of approval to the petitioner within two weeks from today.

4. The Registry shall place this disposed off petition before this Court on 17.10.2022 along with Writ Petition No. 6124 of 2022.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]