

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

WRIT PETITION NO.59 OF 2019

Meer Nawid Ali s/o Meer Basharat Ali,
Age : 33 years, Occu.: Service,
R/o.: Masum Wadhi,
Tq. & Dist.: Jalgaon

... PETITIONER

Versus

1. The State of Maharashtra,
Through Principal Secretary,
School Education Department,
Maharashtra State,
Mantralaya, Mumbai-32
2. Education Director Office (Primary),
Zilla Parishad, Jalgaon.
3. The Deputy Director of Education,
Zilla Parishad, Jalgaon.
4. Anjuman Farog-e-Talim Trust Nasirabad
Through Secretary :
Abdul Razzak Abdul Quadar Maniyar,
Age : 64 years, occu.: Business,
R/o.: Near Amina Masgil,
Opp. Ekta Multipurpose Hall,
Jalgaon.

..... RESPONDENTS

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Advocate for Petitioner : Mr. S. S. Kazi
AGP for Respondent Nos.1 to 3 : Ms. V. N. Patil-Jadhav

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**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 19 JULY 2022.

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ORAL JUDGMENT : (PER SANDIPKUMAR C. MORE, J.) :

Rule. Rule made returnable forthwith. Learned AGP for the respondents-State waives service. Heard finally by consent of the parties.

2. By way of this writ petition, the petitioner is seeking quashing of letter dated 10 April 2017, issued by present respondent No.2 i.e. Education Officer (Primary), Zilla Parishad, Jalgaon along with government circular dated 30 March 2017 and Government Resolution dated 28 June 2016. The petitioner has also sought direction to respondent No.2 to grant him approval on aided post with effect from his appointment dated 1 January 2016.

3. The petitioner has claimed that he was selected as an Assistant Teacher at K.S.T. Urdu High School, Nasirabad, which is being run by respondent No.4 - Trust and consequently appointed from 2 January 2013. Respondent No.2 was also pleased to grant him approval on 26 April 2013 on non-grant basis. Thereafter, on 31 May 2015 one Assistant Teacher of the said school namely Smt. Jamila Shaikh Abdul Gani retired on account of superannuation and therefore, the Chairman of respondent No.4 - Trust decided to appoint the petitioner on her vacant post from 1 January 2016 by making necessary resolution. As such, the petitioner was appointed in the aforesaid school from 1 January 2016 on

100 percent grant-in-aid post from his earlier posting on non-grant basis. Accordingly, the petitioner joined the said post on 100 percent grant-in-post. Respondent No.4 - Trust then forwarded a proposal for approval of such appointment of the petitioner to respondent No.2. However, the proposal was not approved and therefore, the petitioner had to file Writ Petition No.11684 of 2016 before this Court for seeking direction to respondent No.2 for taking decision on his proposal expeditiously. This court vide order dated 25 November 2016 disposed of the aforesaid petition by directing respondent No. 2 to take decision on the said proposal of the petitioner as expeditiously as possible and preferably within a period of three months from the date of order. Thereafter, the petitioner repeatedly made correspondence to respondent No.2 for grant of his approval as per the order of this court as mentioned above. However, under the communication dated 10 April 2017, respondent No.2 rejected the proposal of the petitioner for approval of his appointment on 100% grant-in-aid post from his earlier posting on non-grant basis by placing reliance on Government Circular dated 31 March 2017 and Government Regulation dated 28 June 2016. Hence, this petition.

4. We have heard rival contentions and also perused the record.

5. The learned counsel for the petitioner submits that the issue of transfer of teachers serving on unaided post on 100% grant-in-aid post, is no longer *res integra* and it is covered by the judgment dated 4 July 2019 passed by this court in a bunch of writ petitions bearing Writ Petition No.1493 of 2018 and others. According to the learned counsel

for the petitioner this court has already in its pronouncement in the aforesaid writ petitions, has observed that the Government Regulation dated 28 June 2016 along with the Government Circular dated 31 March 2017, is no more applicable when it comes to transfer of a teacher from non-aided post to aided post.

6. The learned AGP, however, disputed the said fact and supported the impugned communication dated 10 April 2017 issued by respondent no.2. He vehemently submitted the aforesaid Government Circular as well as the Government Regulation are squarely applicable in the case of the petitioner and therefore, prayed for dismissal of the petition.

7. It is significant to note that respondent No.2 under the impugned communication dated 10 April 2017, has relied upon the aforesaid Government Regulation dated 28 June 2016 and thereby stated that unless all the surplus teachers in the State are not absorbed, no teacher from non-granted post can be appointed on 100% grant-in-aid post. However, this court under judgment dated 4 April 2019 in a bunch of aforesaid writ petitions, has already observed as to how the Government Regulation dated 28 June 2016 cannot be applied in respect of the grievance of the petitioner in the instant case. In the said judgment, this court has observed that the MEPS Act applies uniformly and equally to the Assistant Teachers working on aided posts so also on unaided posts and no distinction can be made in the service conditions of the Assistant Teachers working on aided and unaided post. This court has also referred Rule 41 under the aforesaid Act and has further observed that this Rule gives powers to the management of the institution to

effectuate transfers for better administration of the school and also considering the administrative exigency for convenience of better administration of the school. It has been observed by this court in the aforesaid judgment dated 4 July 2019 in para No.15 as follows:

"15. Rule 41 gives powers to the management of the institution to effectuate transfers for the better administration of the school and also considering the administrative exigency for convenience of the better administration of the school. The impugned circular dated 28 June 2016 lays down certain conditions for the transfer of assistant teachers from unaided to aided posts. Some of the salient features of the said circular is that management shall confirm that there are no surplus teachers are available for filling in the posts becoming vacant on aided basis. For the said purpose, the circular makes reference to Section 5(1) of the MEPS Act and that if the surplus teachers are available, the approval should not be given to the teachers transferred from unaided to aided post. The senior most teacher on unaided post shall be entitled for transfer to aided post and that the said assistant teacher who was working on unaided post, his appointment is required to be approved. The further embargo is that the assistant teachers should have worked atleast five years on unaided post and if he has worked for less than five years, then an option should be taken from him that he would work for three years as Shikshan Sevak on honorarium basis if transferred to grant-in-aid post and if the assistant teacher to be transferred has worked for five years or more on an unaided post, then the teacher who has completed five years on unaided posts and upon

transfer to the aided post will be entitled for 20% grant from the Government and 80% will have to be borne by the institution. For the second year he would be entitled for 40% Government grant and 60% will be borne by the institution. For the third year 60% grant would be given by the Government and 40% will be borne by the institution. After four years of transfer, 80% will be borne by the Government and 20% by the institution and after five years of the transfer of the teacher who had already worked for five years on unaided post, he will receive 100% grant from the Government."

8. This court while making the aforesaid observation, has also placed reliance on the judgment dated 25 April 2019 in Writ Petition No. 5313 of 2017 (decided by the Division Bench of this court at Principal Seat at Bombay), wherein following observation in respect of aforesaid Government Regulation dated 28 June 2016 is made.

"The circular dated 28 June 2016 can hardly be said to be Government instructions. It has no statutory force in law. Rule 41 of the MEPS Act which is the subordinate legislation, the administrative decisions which run contrary to them cannot be held to be valid in law. We find that, since Clauses 1 and 2 of the said circular, run contrary to the provisions of the subordinate legislation as found in Rule 41, the same would not be valid in law."

9. On going through the aforesaid observations it has been made clear that an Assistant Teacher working on unaided post can be transferred to aided post despite the issuance of Government Regulation dated 28 June 2016.

10. Further, it is also observed by this court under the judgment dated 4 July 2019 that if an Assistant Teacher on unaided post has worked for less than three years and is transferred to aided post, then he will have to work as a Shikshan Sevak till he completes three years of service from the date of his initial appointment on an unaided post which would be inconfirmity with the scheme of the Shikshan Sevak framed by the State.

11. In the instant matter, the petitioner is seeking direction to respondent No.2 to grant him approval on aided post with effect from 1 January 2016 on 100% grant-in-aid basis. The record shows that the initial appointment of the petitioner on non-granted post in the school run by respondent No.4 is 2 January 2013 and therefore, the claim of the petitioner for approval of his appointment on aided post with effect from 1 January 2016 appears inconsonance with the scheme of Shikshan Sevak framed by the State as he has completed his three year service on 1 January 2016 on non-granted post. Further, transfer of the petitioner to aided post, appears as per the roaster maintained by respondent No.4. Further, his appointment on unaided post, is already granted by respondent No.2 i.e. Office of the Education Officer. Therefore, considering all these facts and in the light of aforesaid observations of this court in earlier similar writ petitions, we are of the opinion that respondent No.2 under the impugned communication dated 10 April 2017, has definitely erred in rejecting the proposal of the petitioner on the ground of Government Circular dated 31 March 2017 and Government Regulation dated 28 June 2016 on the ground that

there was availability of surplus teachers. Considering all these aspects, we proceed to pass following order :

O R D E R

- I) Writ petition is hereby partly allowed and the communication dated 10 April 2017 issued by respondent No.2 is hereby quashed and set aside.
- II) Respondent No.2 is hereby directed to consider the proposal of the petitioner for granting him approval on aided post from non-aided post afresh, on its own merits and in the light of applicable provisions of law, expeditiously within a period of three months from the date of this order. However, respondent No.2 shall not reject the proposal of the petitioner on the ground of Government Resolution dated 28 June 2016 and Government Circular dated 31 March 2017 on account of availability of surplus teachers.
- III) Rule is made absolute in aforesaid terms.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.