

(1)

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

WRIT PETITION NO.14703 OF 2021

Mahendra s/o Karbahari Thite,
age : 45 years, occu. Service,
R/o Plot No.73, Gulab Nagar,
Pipeline Road, Vasant Tekdi,
Savedi, Taluka and District :
Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai - 400032

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

..RESPONDENTS

**WITH
WRIT PETITION NO.14717 OF 2021**

Surekha Vitthal Navale,
age : 43 years, occu. Service,
R/o "Shabdashree", 12,
Lekha Nagar, Pipeline Road,
Near Datta Mandir, Savedi Road,
Ahmednagar, Tal. And Dist. Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai - 400032

2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

..RESPONDENTS

(2)

Mr. N.K. Chaudhari, Advocate for petitioners;
Mr. S.B. Pulkundwar, A.G.P. for respondents in W.P.
No.14703 of 2021;
Mr. P.K. Lakhotiya, A.G.P. for respondents in W.P. No.14717
of 2021

**CORAM : A.S. GADKARI
AND
S. G. MEHARE, JJ.**

DATE : 4th January, 2022

P.C (Per S.G. MEHARE,J.).

1. Petitioners in W.P. No.14703 of 2021 and Writ Petition No.14717 of 2021 have impugned Order dated 06.11.2019 granting phase-wise grant-in-aid approval to the transfer of petitioners from unaided division to aided division. Petitioner in W.P. No. 14717 of 2021 has, also assailed the Order dated 9.12.2021 approving the appointment of the petitioner from 08.04.2020.

In both the petitions, a common question is raised. Hence, taken up for disposal together.

2. All the petitioners have rendered services on the unaided post from 22.07.2013. The school management transferred the petitioners from unaided post to the 100% aided post on 17. 03.2018. Respondent No. 2 by the impugned order dated 06.11.2019 granted approval to the

(3)

transfer of the petitioners. However, respondent No. 2 approved the transfer in a phase-wise grant-in-aid manner. Respondent No. 2 has passed the said impugned Orders considering the Government Resolution dated 28.06.2016.

3. The learned Counsel for the petitioners vehemently argued that, the Government Resolution dated 8.06.2016, has been dealt with by this Court in various petitions. He submitted that, the period of service rendered on an unaided post should be considered while posting on the aided post. Granting the grant-in-aid in a phase-wise manner has been declared illegal by this Court. He also argued that, the approval to the appointment shall be given effect from the date of the transfer on the grant-in-aid post. However, Respondent No. 2 in defiance of earlier judicial pronouncements, followed again the same Government Resolution dated 08.06.2016 and is causing harassment to the litigants. The impugned orders therefore are illegal and hence, the petitions deserve to be allowed.

4. The learned A.G.P. for the Respondents has conceded to the settled provisions of law that, the services rendered on the unaided post cannot be ignored. He also conceded that, the approval shall be granted on the same grant in aid post on which the person is transferred. In other words, he

(4)

conceded that the approval to the transfer of petitioners ought to have been granted on 100% grant-in-aid post. He also fairly conceded that, approval to the appointment of the petitioners should have been granted from the date of the transfer of the petitioners on a grant-in-aid post.

5. The circular dated 28.06.2016, restricting the rights of the management to transfer the assistant teachers from unaided post to aided post was impugned before this Court in W.P.No. 1493 of 2018 with connected writ petitions which were decided on 04.07.2019. The Division Bench of this Court considered the provisions of Rule 41 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The Division Bench had referred to the judgment of this Court delivered at principal seat at Bombay passed in Writ petition No. 5313 of 2017 with connected writ petitions decided on 25.04.2019, in which the Government Resolution dated 28.06.2016 is dealt with. The observations made in paragraph 17 therein are as follows:-

“The circular dated to 8.06.2016 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 decision which runs 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 subordinate legislation as

(5)

found in Rule 41, the same would not be valid in law”.

6. The Division Bench of this Court in Writ Petition No. 2278 of 2021 along with other connected petitions, decided on 4th February 2021, has dealt with the issue of the date of granting approval to the appointment of Assistant teachers from the date of transfer to the aided post from unaided post. The Division Bench of this Court has observed in paragraph No. 5 as follows:-

“5. In case the petitioners are transferred on 100% grant-in-aid posts since the date of completion of three years, they shall be considered on 100% grant in aid post. In case the petitioners are transferred on grant-in-aid posts, for example on 60%, then from the date of transfer, they would be on 60% grant-in-aid posts, but if the petitioners, after having completed three years on an unaided posts and are transferred on 100% grant in aid posts, their services will have to be considered on 100% grant-in-aid posts. This aspect has been ignored by the director of education/ Dy. Director of Education/Education Officer.”

7. A clear mandate of law has been given by the Division Bench of this Court in the above pronouncement with an example as to how to deal with the transfer of a teacher from an unaided post to the aided post. Once again, after the above judgment, the Division Bench has passed similar Order in Writ Petition No. 13289 of 2021 on 2nd December 2021. In all the above Writ Petitions the State of

(6)

Maharashtra through its Secretary, Education Department, Mantralaya, Mumbai and the Education Officers of the concerned Zilla Parishads were the parties.

8. It is really unfortunate that even after having repeated authoritative pronouncements, with examples of, how to deal with the transfer of the teachers from an unaided division to aided division and setting aside the clauses of Government Resolution dated 28.06.2016 on the issue involved in the case, the respondents still adhere to the same. Such repeated acts of the respondents do not only appear to be ignorance but deliberate turning of blind eye to the Orders of this Court. The judicial pronouncement on the subject before this Courts is the answer to the confusion as regards the interpretation of the law and its implementation. Every pronouncement of the High Court on the issues involved before it is binding on the parties thereto. The State is supposed to be more cautious of the judicial pronouncements and is bound to implement the same in its letter and spirit, unless the same are set aside or modified by the higher court. Such pronouncements are having the binding effect. The Executives should implement such judicial pronouncements not only to bring uniformity but to ease the life of the citizens as well as to avoid unwanted

(7)

litigations. Defying the judicial pronouncement by the executive is nothing but harassment to the litigants and putting unnecessary burden on the State Exchequer due to the litigations filed against it. Passing orders as impugned herein, in defiance of the judicial pronouncement on the subject is nothing but disrespect to the judicial system. We are also of the opinion that, not following the judicial pronouncement by the responsible public servants is total non-assistance to the administration of justice. Such an officer or the public servant should not be excused on any count and stringent action should be taken against such public servants/executives. Committing the said repeated acts by the Department of Education and its Officer cannot be held unintentional but leads to draw adverse inference of deliberate defiance of law and must be looked seriously.

9. In view of the above observations, we feel it appropriate to request the Secretary, Education Department, State of Maharashtra to take serious note of defying judicial pronouncements on the subject and consider to adopt suitable legal action against all such erring officers in the State. The Secretary is requested to take regular review of the implementation of the judicial pronouncements in its letter and spirit to avoid unwarranted litigation and

(8)

harassment to the teachers.

10. In view of the settled law on the issue involved in this case, we set aside the impugned orders granting approval in a phase-wise grant-in-aid manner and direct respondent no.3 to grant the approval on 100% grant-in-post if the petitioners are transferred on 100% grant-in-aid posts as the case may be, from the date of their transfer to the aided post and consequently issue approval to their appointments from the date of their transfer to the aided posts.

11. Petitions are allowed in the aforesaid terms.

(S. G. MEHARE, J.)

(A.S. GADKARI, J.)

amj