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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7523 OF 2022

Nita Nitin Mande ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. N.V. Bandiwadekar i/b Ms. Ashwini Bandiwadekar for the Petitioner.
Mr. V.M. Mali AGP for the Respondent-State.

**CORAM : S. V. GANGAPURWALA &
S. M. MODAK, JJ.**

DATED : 29TH JUNE 2022

P.C. :

1. Heard learned counsel for the Petitioner and learned AGP for the Respondents.
2. Rule.
3. Rule made returnable forthwith. By consent of the parties the Writ Petition is heard finally.
4. The contention of the Petitioner is that the Petitioner was appointed as the Assistant Teacher on the unaided post on 15th April 2011. The Education Officer granted approval to the un-aided appointment of the Petitioner under the order dated 9th May 2011. The Petitioner was transferred to the aided post on 1st July 2018. The Education Officer has

approved the transfer of the Petitioner to aided post but in phase wise manner. The learned counsel for the Petitioner submits that the same is erroneous.

5. The learned AGP submits that in view of circular dated 28/06/2016 and 24/08/2018, the order has been rightly passed.

6. We have considered the submissions of learned counsel for the Petitioner and learned AGP for the Respondent-State. The factual matrix does not appear to be disputed. The Petitioner is appointed on the unaided post on 15th April 2011 and after rendering services for seven years was transferred on the aided post on 1st July 2018. This Court in the judgment and order dated 4th July 2019 passed in Writ Petition No.1493 of 2018 and connected Writ Petitions has held that some of the clauses of circular dated 28/06/2016 are erroneous. It has been held that if the candidate has worked for more than three years on the unaided post and transferred to 100% grant-in-aid post then approval is to be granted on 100% grant-in-aid. Of course the transfer being prior to the amendment of June 2020 to Rule 41A of the M.E.P.S. Rules.

7. In the present case the Petitioner is transferred to the aided post on 1st July 2018. In view of that even circular dated 24/08/2018 would also not apply.

8. In the result, we pass the following order :

(i) The impugned order to the extent of granting approval to the

Petitioner's transfer in phase wise manner is quashed and set aside.

(ii) The Respondent - Education Officer shall reconsider the transfer of Petitioner to 100% grant-in-aid and if the Education Officer comes to the conclusion that the post on which the Petitioner is transferred is 100% grant-in-aid then shall grant approval to transfer of the Petitioner to the aided posts on 100% grant-in-aid from the date of transfer. The said exercise shall be carried out expeditiously and preferably within four months depending upon the order passed, the consequence shall follow.

9. Rule is accordingly made absolute. No costs.

(S. M. MODAK, J.)

(S. V. GANGAPURWALA, J.)