

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

WRIT PETITION NO.8786 OF 2022

Niyati Nilesh Thamake

.....Petitioner

Vs.

State of Maharashtra & Ors.

.....Respondent

Mr. Prashant Bhavake for the Petitioner

Mr. S. B. Kalel, AGP for the State

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : JULY 26, 2022

P.C.

1 The proposal seeking approval to the transfer of the Petitioner from the unaided to aided post is approved but in phase-wise grant-in-aid manner.

2 The Petitioner was appointed on unaided post in the year 2011 from OBC category. His appointment on unaided post is approved. He is transferred to the aided division on 4th November 2019.

3 It is submitted that the Petitioner has worked on unaided post for seven years.

4 We have in our judgment dated 4th July 2019 in Writ Petition

No.1493 of 2018 with connected Writ Petitions held that some of the clauses of the Circular dated 28th June 2016 do not apply. It appears that the Education Officer, while granting approval to the appointment of Petitioner as an Assistant Teacher from the date of transfer to the aided post had granted approval on grant-in-aid in phase-wise manner to the effect that after five years, the Petitioner would be granted approval on 20% grant-in-aid. The same would not be in tune with the order passed by this Court and also by the Bench at Aurangabad, from time to time.

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

6 In light of above, the impugned order of granting approval in phase-wise manner is quashed and set aside and modified.

7 In case the Director of Education / Dy. Director of Education /

Education Officer is satisfied about approval to the transfer of the Petitioner on aided post and if the Petitioner has completed three years and more on unaided post before he is transferred to aided post on 100% grant-in-aid post, then Respondent Director of Education / Dy. Director of Education / Education Officer shall consider grant of approval to the transfer of the Petitioner on 100% grant-in-aid post within a period of six months.

8 The Writ Petition is disposed of. No costs.

(MADHAV J. JAMDAR,J.)

(S.V. GANGAPURWALA, J.)