

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

WRIT PETITION NO.7061 OF 2019

Ms. Varsha Anandrao Patil & Anr. ..Petitioners

V/s.
The State of Maharashtra through
Secretary, School Edu. Dept. & Ors. ..Respondents

Mr. N. V. Bandiwadekar a/w. Mr. Vinayak Kumbhar i/b A. N. Bandiwadekar for the Petitioners.

Mr. N. K. Rajpurohit, AGP for the Respondent-State.

Mr. Vivek B. Rane i/b Ashwinikumar Kapadnis for Respondent No.2.

**CORAM : SUNIL B. SHUKRE AND
AMIT BORKAR, JJ.**

DATE : 15 FEBRUARY 2022.

P. C.

Heard. Rule. Learned AGP waives service. By consent, the Rule is made returnable forthwith. The writ petition is taken up for hearing and final disposal, by consent and on the request of learned counsel.

2. The issue involved in this petition is about grant of approval to the transfer of the Petitioner No.1, Assistant Teacher

appointed way back on 11/6/2007 from unaided post in the school run by Petitioner No.2 to aided post of the school run by same Management- Petitioner No.2.

3. Approval to the said transfer of the Petitioner No.1 has been granted by the Education officer but while doing so, it has been granted with effect from 25/11/2016 and not from 2/5/2014, the date of the transfer and the same has been granted subject to the condition that the Government shall pay 20% of the salary for the first year, 40 % for the second year, 60% for the third year, 80% for the fourth year and 100% from and onwards 5th year, while remaining percentage of salary shall be paid by Petitioner No.2

4. The Petitioner is aggrieved by the date from which the approval has been granted and also condition subject to which the approval has been granted.

5. As regards the effective date of approval, we are of the view that just because, according to the Education Officer, the proposal seeking his approval is received on 25/11/2016, there could have been no justification for making approval effective from 25/11/2016, when there is no dispute about the date on which the Petitioner was transferred i.e. 2/5/2014.

6. The date of transfer, as stated earlier of Petitioner No.1 is 2/5/2014 and therefore the approval ought to have been made effective from 2/5/2014. We find that the impugned order is erroneous and to that extent it needs to be modified.

7. As regards the condition imposed in the impugned order regarding payment of salary from out of grants made available to Petitioner No.2-School, we will say that clause 5(b) of the Government Circular dated 28/6/2016, is held to be not operating retrospectively but having prospective effect by another Co-ordinate Bench of this Court in final order delivered in *Rajashri Shahu Shikshan Sanstha Sillod through its Secretary and Ors. vs. The State of Maharashtra & Anr.*¹ As such the condition in question cannot be upheld by us. Thus, as regards imposition of the condition about graded payment of salary to the Petitioner, we find that the impugned order cannot be sustained in the eye of law.

8. Learned counsel for the Petitioner has also placed reliance upon a view taken by another Division Bench of this Court in the case of *Pramod Prabhakar Pokale vs. State of Maharashtra & Ors.*² As we have already found that the impugned order is bad in law for the reasons noted above, we do

¹ Writ Petition No.11719/2016 decided on 9/11/2017

² 2019(4) Mh. L. J. 278

not think that there is any need for us to also advert to the view taken by the other Bench of this Court in the case of *Pramod Prabhakar Pokale (supra)*.

9. In the result, the Petition is allowed. The impugned order is quashed and set aside to the extent that it makes approval granted to Petitioner No.1 effective from 25/11/2016 and also to the extent it imposes condition on payment of salary to the Petitioner from out of grant-in-aid received by Petitioner No.2. We direct Respondent No.2 to modify the effective date of approval to 2/5/2014 and we further direct that the salary to the Petitioner shall be paid entirely out of grant-in-aid by Petitioner No.2 from the date of 2/5/2014. We direct that compliance with the above referred directions shall be made by Respondent No.2 within a period of two weeks from the date of receipt of this order.

10. Rule is made absolute in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)

(SUNIL B. SHUKRE, J.)