

PSV

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

WRIT PETITION NO. 8734 OF 2022

Shri Mahesh Bajirao Hake

... Petitioner

Vs.

The State of Maharashtra
through its Secretary & Ors.

... Respondents

Mr. Lengare Y. B., for the Petitioner.

Mr. N. C. Walimbe, AGP for the State-Respondent Nos.1 to 3.

**CORAM: NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE: DECEMBER 09, 2022

P.C.:-

1. Heard.

2. The petitioner was appointed as a Peon on 31 July, 2017 with the respondent-management on non grant in aided basis. While transfer order dated 30 December, 2021, services of the petitioner were transferred from non-aided school to aided school for which the respondent-Education Officer has granted approval on 18 February, 2022. Vide impugned order dated 11 May, 2022, the Deputy Director has informed the respondent-Education Officer as regards his act of granting approval to the transfer of the petitioner contrary to the very

provisions of the Rules and has returned the proposal of the petitioner for insertion of his name in the Shalant Pranali.

3. Mr. Lengare, the counsel for the petitioner has drawn our attention to the order passed by the Division Bench of this Court on 08 October, 2020 in Writ Petition No.8643 of 2019 (**Rajaram S. Mandale & Anr. v/s. The State of Maharashtra & Anr.**), so as to claim that pursuant to the interpretation of Rule 41 of Maharashtra Employees of Private Schools Rules, 1981 (for short, “MEPS Rules”), which deals with transfer of employees of the school, there is no embargo as regards the transfer of non-teaching staff as has been read by the Deputy Director in the impugned communication.

4. We would urge that the Deputy Director has exceeded his authority by passing the impugned order contrary to the provisions of Rule 41 of the MEPS Rules and the above referred judgment.

5. Mr. Walimbe, learned AGP has tried to justify the claim based on the Government Resolution dated 06 April, 2021 as according to him, before effecting transfer of a non-teaching employee from non-aided

to aided school, it is necessary to complete the tenure of 5 years.

6. We have appreciated the said submission.

7. The fact remains that the Government Resolution dated 06 April, 2021 which inserts Rule 41B has not taken final step, as can be inferred from the very pleadings in the affidavit in reply of the respondent no.2-Deputy Director of Education. As such, the field is governed by the provisions of Rule 41 of the MEPS Rules, which is already interpreted by this Court in the matter of **Rajaram S. Mandale** (cited supra).

8. In the aforesaid backdrop and having regard to the law laid down by the Division Bench of this Court in its order dated 08 October, 2021 passed in Writ Petition No.11244 of 2019 along with connected matters, it shall be appropriate to quash and set aside the impugned order dated 11 May, 2022.

9. We direct the respondent no.2-Deputy Director of Education to decide the issue afresh after affording an opportunity of hearing to the petitioner. The petitioner assures that he shall appear before the

Deputy Director on 21 December, 2022. We expect the Deputy Director of Education to take decision on the proposal for insertion of name of the petitioner in Shalarth Pranali within a period of six weeks from the date of appearance of the petitioner.

10. Writ petition is disposed of accordingly.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]