

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9001 OF 2022

Suresh Jagatrao Shirsath ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

Mr. N. V. Bandiwadekar i/b. Mrs. Ashwini N. Bandiwadekar,
Advocate for the Petitioner.

Mr. N. C. Walimbe, AGP for the Respondents/State.

**CORAM: S.V. GANGAPURWALA &
 A. S. DOCTOR, JJ.**

DATED : AUGUST 1, 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 30th 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 June 2020. 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.

7. The factual matrix does not appear to be disputed. The Petitioner is appointed on the unaided post on 30th April 2011 and after rendering services for nine years was transferred on the aided post on 1st June 2020. 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 Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as, “**MEPS Rules**”).

8. In the present case the petitioner is transferred prior to the amendment of Rule 41A of the MEPS Rules. The said amendment came into force on 8th June 2020.

9. 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.

10. Rule is accordingly made absolute.
11. The writ petition is disposed of. No costs.

(A. S. DOCTOR, J.)

(S.V. GANGAPURWALA, J.)

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