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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2441 OF 2022

Suparna Sunil Naik

.. Petitioner

v/s.

The State of Maharashtra Through

Secretary & Ors.

.. Respondents

....

Mr. Narendra V. Bandiwadekar, a/w. Mr. Vinayak Kumbhar and Mr. Ajinkya Navale, i/b. Ms. A.N. Bandiwadekar, for the Petitioner.

Mr. V.M. Mali, AGP, for State.

....

CORAM: SUNIL B. SHUKRE &
G.A. SANAP, JJ.

DATE : 7 MARCH 2022

P.C:-

Heard learned Counsel for the Petitioner and learned AGP for Respondent Nos. 1, 2 and 4. There is no need to issue any notice to Respondent No.3, there being no relief claimed against Respondent No.3. It is established on record that transfer of the Petitioner from unaided post to aided post as Assistant Teacher, in the school managed by the same Respondent No.3, has been approved by Respondent No.2 with effect from 1 June 2016 as per his order dated 21 September 2016.

2. Respondent No.4, at the time of inclusion of name of the Petitioner in Shalarth System, passed an order of allotting Shalarth ID to the Petitioner but on the condition that salary to be paid to the Petitioner from out of grant-in-aid shall be only to the extent of 20%. This order was passed by Respondent No.4 on 23 August 2019 and based upon it, Respondent No.2 passed a further order of payment of salary to the Petitioner from out of grant-in-aid on staggered basis on 25 February 2021. Both these orders dated 23 August 2019 and 25 February 2021 are under challenge in the petition. Learned Counsel for the Petitioner submits that granting of Shalarth ID on the condition of payment of salary from out of grant-in-aid on staggered basis is not permissible in law, as the G.R. dated 20 June 2016, clause 3, sub-clause 5(b) would apply only where Government sanctions new posts and new appointments are made on the basis of such sanction and that the provisions made in the said sub-clause (5) (b) of clause 3 do not have any application to the grant of approval to the Assistant Teacher, who has been appointed to aided post on transfer from unaided post. He relied upon the view taken by this Court in the case of *Ananda Dange And Anr. vs. State of Maharashtra*¹, which is followed by the law laid down by the other benches in the case of *Pramod Prabhakar Pokale vs. State of Maharashtra and Ors.*² and *Dr. Vijay Jayram Ghodvinde &*

1 Writ Petition No.3834 of 2021 decided on 2 March 2022.

2 2019 (4) Mh.L.J. 278

*Anr. vs. The State of Maharashtra & Anr.*³.

3. We find that the facts of this case are identical to the facts involved in the case of *Ananda Gundi Dange and Anr.* insofar as applicability of clause 3, sub-clause (5) (b) of the G.R. dated 28 June 2016 to the appointment of the Petitioner is concerned and, therefore, the issue involved in this case is squarely covered by the view taken by the Division Bench in the case of *Ananda Gundi Dange and Anr.*

4. The petition is allowed in terms of prayer clauses (b) and (c). The compliance with these directions shall be made at the earliest and in any case within four weeks from the date of the receipt of the order.

5. Writ petition is disposed of in the above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

³ Writ Petition (ST) No.5518 of 2020.