

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

WRIT PETITION NO. 9373 OF 2015

Shri Namdeo Raghunath Ahire

(Since Decd) through LRs & Ors.

...Petitioners

V/s.

The State of Maharashtra through the

Secretary and Ors.

...Respondents

Mr. Narendra V. Bandiwadekar a/w. Mr. Sagar A. Mane, for the
Petitioners.

Mrs. S. S. Bhende, A.G.P. for the Respondent / State.

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**CORAM : A. S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATE : 28 April 2022

P.C.

. Rule. Rule made returnable forthwith. Heard the learned
counsel for the parties.

2. The original petitioner was appointed as a Full Time
Teacher at the school run by the respondent No.4-Society. His
appointment was duly approved by the Education Officer.

During the course of service, he was transferred to an other school run by the respondent No.4 - Society. One of the teacher's at the respondent No.5-College namely, Shri. Ashok Dodhu Zambare retired from service on 30 September 2013. The management therefore on 3 September 2013 passed a Resolution seeking to transfer the services of the petitioner to the respondent No.5-College. The Principal of the said College received the said proposal seeking approval to the transfer / consequential appointment of the petitioner at the said College. On 14 August 2014, the Deputy Director of Education approved the transfer of the petitioner but further refused to grant pay protection in view of Government Resolution dated 15 September 2011. Being aggrieved, the said direction refusing to protect the pay of the petitioner is under challenge.

3. The learned counsel for the petitioners submitted that the Government Resolution dated 15 September 2011 is not applicable to the facts of the present case. By that Government Resolution, it is only when the services of a newly recruited employee are to be made that the benefit of pay protection would not be available. It is submitted that the petitioner was appointed on 13 June 1998 and his appointment was also approved thereafter. It is only on account of retirement of the incumbent that the petitioners' services were transferred at the respondent No.5-College. Since it was not a fresh appointment, there was no

reason to rely upon the Government Resolution dated 15 September 2011. It was thus submitted that the pay that was being received by the original petitioner was liable to be protected.

4. The learned Assistant Government Pleader for the respondent Nos.1 to 3 opposed the aforesaid submissions. She submitted that by relying upon Clause 3 of the Government Resolution dated 15 September 2011, the pay of the petitioner was not protected while approving his transfer.

5. After hearing the learned counsel for the parties, we find that the petitioner was appointed in service on 13 June 1998 and his appointment was duly approved by the Education Officer. On account of retirement of a Junior College teacher, the petitioner's services were transferred to the respondent No.5- College. It was not a case of a fresh appointment being made but only a transfer from the Secondary School to Higher Secondary School. The Government Resolution dated 15 September 2011 takes into consideration the aspect of pay protection to fresh appointment being made for all such employees from Primary, Secondary and Higher Secondary schools. It does not cover the transfer of employees from Secondary school to Higher Secondary school so as to deprive them of benefit of pay protection. Since the present is not the case of a fresh appointment and is merely a case of transfer from the Secondary

school to the Higher Secondary school, the said Government Resolution would not be applicable to the case of the petitioner. Thus, while approving the said transfer the pay of the petitioner was also liable to be protected.

6. In view of aforesaid discussion, the order dated 14 August 2014 to the extent pay protection is refused to the petitioner is set aside. The order of approval stands modified accordingly. The Deputy Director of Education shall take necessary steps to grant benefits arising from such pay protection to the petitioner alongwith the benefit of family pension, within a period of three months from the production of this order. Rule is made absolute in the aforesaid terms. No costs.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)