

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

WRIT PETITION NO.8019 OF 2019

SHAMBHAVI
NILESH
SHIVGAN

Shri Swapnil D. Rajguru & Anr.

..... Petitioners

Vs.

The State of Maharashtra & Anr.

....Respondents

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SHAMBHAVI
NILESH SHIVGAN
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Mr. N.V.Bandiwadekar i/by Mrs. Ashwini Bandiwadekar with Ms. Neha Bandiwadekar for the Petitioners.

Mr. K.S.Thorat , A.G.P. for the State.

Mr. Anand S. Kulkarni for R.No.2.

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : JULY 27, 2022

P.C.

1. Proposal seeking approval to transfer of the petitioner from un-aided post to aided post is rejected.

2. It is submitted that the petitioner was appointed as Assistant Teacher in un-aided post from 28th July, 2015. He was transferred to aided post on 1st March, 2016. The proposal was rejected on the ground that surplus candidates are not absorbed. Rule 41 of the MEPS Rules as existed on the date of the transfer of the Petitioner, gives right to the management to transfer. Even after Government Circular dated 28th June, 2016 was issued, this Court has held that the management is entitled to transfer employees from

un-aided to aided post irrespective of availability of the surplus candidates.

3. Petitioner claims to be transferred on 100% grant-in-aid post. If the Assistant Teacher after rendering three years' service is transferred on 100% grant-in-aid post, he has to be treated as Assistant Teacher. In the present case, petitioner has worked as Shikshan Sevak only for the period of about 7 months. Petitioner will have to work as Shikshan Sevak for the period of two years and five months and thereafter as Assistant Teacher.

4. In the light of above, impugned order is quashed and set aside. The Education Officer shall re-consider the proposal seeking approval to the petitioner afresh in the light of observations made above. Education Officer shall take decision preferably within four months.

5. Respondent-Authority shall consider that. It is not necessary to absorb surplus candidates when the person is transferred from un-aided to aided in the same institution and that too prior to amended Rule 41A of the MEPS Rules.

6. Writ Petition is disposed of. No Costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)