

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 430 of 2021

1. Jagadamba Education Society,
through its President, Koradi, Tah. Kamptee,
District Nagpur.
2. Ashwini Madhyamik Vidyalaya,
through its Headmaster, Bina,
Tah. Kamptee, District Nagpur.
3. Ku.Manisha Kishor Parwate,
Aged 33 years, Occ. Service,
R/o. C/o. Ashwini Madhymik Vidyalaya, Bina,
Tah. Kamptee, District Nagpur.

.. **PETITIONERS**

...VERSUS...

1. State of Maharashtra through its
Secretary, Department of School Education and
Sports, Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Nagpur Division, Nagpur.
3. The Education Officer (Secondary),
Zilla Parishad, Nagpur.

.. **RESPONDENTS**

Shri Anand Parchure, Advocate for petitioners.

Ms K. R. Deshpande, Assistant Government Pleader for respondents.

CORAM : A.S.CHANDURKAR and URMILA S.JOSHI-PHALKE, JJ.
DATE : 13th JUNE, 2022

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner no.3 came to be appointed as 'Assistant Teacher' at Tejaswini Madhyamik School run by the petitioner no. 1 on 31.12.2012. The post on which the petitioner no.3 was appointed was an unaided post. The said appointment of the petitioner no.3 was approved on 23.01.2015 for the period of probation. On 01.10.2020 one Assistant Teacher at the petitioner no.2-School retired and therefore the services of the petitioner no.3 came to be transferred at the said school. While approving the transfer of the petitioner no.3, the Education Officer (Secondary) granted such approval from 01.10.2020 on the aided section to the extent of 20% grant. Being aggrieved the petitioners have challenged the same in this writ petition.

3. After hearing the learned counsel for the parties, we find that it is undisputed that the initial appointment of the petitioner no.3 had been approved from 01.09.2014 for probation period on unaided post. On her transfer from 01.10.2020 such approval was liable to be granted at 100% grant basis since the said post was an aided post. This position has been considered by the Division Bench in *Pramod s/o Prabhakar Pokale vs. State of*

Maharashtra and others (2019) 4 Mh L J 278. In paragraph 17 of the said decision, it has been observed as under :

“17.When there is vacant post in the aided school, the Institution can transfer senior most qualified Assistant Teacher working on unaided post to fill up the said vacancy, and if such senior most teacher is available in same school said post on aided basis can be offered to him. There is no prohibition to adopt the aforesaid course. When the management can legally transfer Assistant Teacher serving in the unaided school to aided school, there is no reason to obtain an undertaking from such teacher as stated in sub- clause 5 (B) of clause 3 of the aforesaid Circular. However, in case the State Government sanctions new post/posts on aided basis, and those are to be filled in afresh by giving fresh appointment/appointments on the post of Shikshan Sevak, the State Government can make applicable the formula/percentage of proportionate salary to be disbursed by the State Government and the concerned Institutions in the manner stated in sub-clause 5 (B) of Clause 3 of the said Circular.

5. It can thus be seen that merely because the petitioner was transferred from an unaided post to an aided post, it was not necessary to approve the same on 20% grant basis by relying upon the Government Resolution dated 28.06.2016. This position has been clarified in the aforesaid decision and Clause 5(B) of that Government Resolution could not be applicable to a teacher who is transferred from the unaided section to the aided section.

6. In that view of the matter, the order dated 06.10.2020 passed by the Education Officer (Secondary) approving the appointment/transfer of the petitioner no.3 on 20% grant is set aside. The Education Officer (Secondary) is directed to pass a fresh order of approval in the light of the observations made hereinabove and after considering the judgment referred to therein.

Needless to state that such approval shall be granted from 01.10.2020 and it shall not be made dependent on inclusion of the name of the petitioner no.3 in the Shalarth list. The petitioner no.3 would be entitled for all consequential monetary benefits on grant of such approval. The Education Officer (Secondary) shall take necessary consequential steps within a period of four weeks from the receipt of the copy of this order.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA S JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..