

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

WRIT PETITION NO. 2201/2021

Devendra Shamrao Dhunde,
Aged-41 years, Occupation-Service,
R/o. C/o Jijamata Junior College,
Khapa, Tahsil-Saoner, District Nagpur.

..... **PETITIONER**

...V E R S U S...

- 1] State of Maharashtra,
through its Secretary,
Department of Education, Mantralaya,
Mumbai.
- 2] Deputy Director of Education,
Nagpur Division, Nagpur.
- 3] Jijamata Vidyalaya & Junior College,
Khapa, Tahsil-Saoner, District Nagpur.
Through its Principal.

..... **RESPONDENTS**

Shri P.N.Shende, Advocate for petitioner.
Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 & 2.
None for respondent no.3.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.
DATE : 4th March, 2022.

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

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

2. In this petition, the petitioner seeks directions to the respondent No.2 to release the salary of the petitioner from 10.07.2018 which is the date of

his transfer on a 100% grant-in-aid post and continue to pay him regular salary.

3. It is the case of the petitioner that initially he was appointed as “Assistant Teacher’ by order dated 31.08.2010 in the respondent no.3 school on an un-aided post with effect from 01.09.2010. By the communication dated 18.05.2018 the appointment of the petitioner on the un-aided post as ‘Assistant Teacher’ was duly approved by the respondent No.2. The petitioner was then transferred on an aided post from 10.07.2018. It is stated that the approval has been granted to the transfer of the petitioner on aided post, however, it was in a phase-wise grant-in-aid manner. According to the petitioner, this action on the part of respondent nos. 1 and 2 is illegal and therefore, cannot be sustained.

4. We find from the record that the approval has been granted in phase-wise manner by relying upon Government Circular dated 28.06.2016. It is pertinent to note that a similar question fell for consideration in *Sandhya D/o. Balkrushna Teli and Ors .v/s. State of Maharashtra and Ors. 2021 (4) Mh.L.J 465* and *Sandip S/o. Dilip Thorat .v/s. The State of Maharashtra and Ors. 2022 (1) All MR 322*. In these cases the Circular dated 28.06.2016 was relied upon. Both the petitions were allowed by holding that approval in a phase-wise manner cannot be granted.

5. In this case transfer of the petitioner from the un-aided post to aided post has been approved by the Deputy Director of Education. It is

indicative of the fact that the Deputy Director of Education had no doubt about the qualification of the petitioner, roster and the seniority. Despite being satisfied, the Deputy Director of Education granted the approval on a grant-in-aid post in a phase-wise manner. The legal position in favour of the petitioner is clear from the decisions referred to above. The petitioner has already worked on un-aided post for than five years. In our view, therefore, order passed by the Deputy Director of Education granting approval on 20% grant-in post in phase-wise manner dated 21.06.2019 is required to be quashed and set aside. Hence, we pass the following order.

- i] The order of approval dated 21.06.2019 is directed to be corrected by the Deputy Director of Education so as to indicate that the petitioner's transfer on an aided post is admissible to 100% grant-in-aid.
- ii] As a consequence, necessary corrections be made in 'Shalarth Pranali'. The entire exercise be completed within a period of eight weeks from production of the aforesaid order.
- iii] As a consequence of aforesaid order, the difference in the amount of salary payable to the petitioner shall be accordingly released in his favour within a period of three months from the aforesaid corrections being carried out.

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

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

Andurkar..