

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

WRIT PETITION NO.5417 OF 2021

Pradeep s/o Devendra Munde
a/a 42 years, occ. Service
Permanent r/o Brahman wada,
Post Kamargaon, Tq. Karanja (Lad),
District Washim

... Petitioner

-vs-

1. State of Maharashtra,
Through the Secretary,
Education Department,
Mantralay, Mumbai-32
2. Education Officer, Secondary,
Zilla Parishad, Akola,
Tq. And Dist. Akola,
(Office situated near Santoshi Mata
Mandir, Akola)
3. Gram Sudhar Shikshan Prasarak Mandal,
Ghota, Tq. Barshitakali, Distt. Akola
4. Pradhyapak Madhukarrao Mendhe,
Madhyamik Vidyalay, Borta,
Tq. Murtizapur, Distt. Akola
Through its Headmaster

... Respondents

Shri C. A. Joshi, Advocate for petitioner.

Smt S. S. Jachak, Assistant Government Pleader for respondent Nos.1 and 2.

Shri N. A. Gaikwad, Advocate for respondent Nos.3 and 4.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE : October 12, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

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

The petitioner came to be appointed as Assistant Teacher on an un-aided post at the respondent No.4-School. His appointment was duly approved on 30/12/2011. On retirement of one teacher who was serving on an aided post, the services of the petitioner were sought to be transferred from the un-aided post on the vacant aided post. The Management thereafter sought approval to such transfer. By the impugned order the Education Officer (Secondary) has refused to grant such approval on the ground that the seniority list was not annexed, there were surplus teachers in the list who were not absorbed and that such transfer was not permissible in view of the Government Resolution dated 04/05/2020. Being aggrieved the petitioner has challenged the aforesaid order.

2. On hearing the learned counsel for the parties and after perusing the documents on record, it is clear that the issue with regard to permissibility of transfer of an employee from an unaided post to aided post has been decided in several cases and it has been held that such transfer is not in the nature of fresh appointment. Reference in this regard can be made to the judgment in Writ Petition No.5313/2017 (*Miss Devkar Dipali Kisan and ors. vs. The State of Maharashtra and ors. with connected writ petitions.*) decided on 25/04/2019 at the Principal Seat. The Government Resolution dated 04/05/2020 only

restrains filling up of new posts and same has also been held to be not applicable in such situation. Insofar as absorption of surplus teachers is concerned, that cannot be a reason to refuse approval to the transfer from an un-aided post to an aided post. Surplus teachers can be duly absorbed on other vacant posts. We find therefore the reasons assigned in the impugned order are not sustainable. It is also informed that the seniority list has been furnished by the Management to the Education Officer.

3. In view of aforesaid, the order dated 12/03/2021 passed by the Education Officer (Secondary) is set aside.

The Education Officer shall re-consider the aforesaid proposal in the light of aforesaid observations and take a decision on the proposal for grant of approval to the transfer of the petitioner within a period of four weeks of receiving copy of this judgment. If the approval is granted, the petitioner would be entitled for all consequential benefits in that regard.

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

(M. S. Chandwani, J.)

(A. S. Chandurkar, J.)