

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

54 WRIT PETITION NO.658 OF 2023

DATTATRAY SHIVAJIRAO SOLANKE
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH PRINCIPAL SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr. Pralhad D. Bachate.

AGP for Respondent Nos.1 to 5 : Mr. S. G. Sangle.

Advocate for Respondent No.6 : Mr. A. D. Khot.

...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 23rd January, 2023.

Per Court :

1. Issue notice to the respondents. The learned AGP waives service of notice on behalf of respondent Nos.1 to 5. Mr. A. D. Khot, the learned advocate waives service of notice on behalf of respondent No.6. By consent, this matter is heard at admission stage.

2. The petitioner has put forth prayer clauses 'B' and 'C' as under:-

“(B) By way of writ of certiorari or any other appropriate writ, order or directions, this Hon’ble Court may kindly be quashed and set aside the impugned order dated 17.11.2022 passed by respondent No.4 thereby rejecting the proposal of the petitioner from to transfer his services from the post of Assistant Teacher of non

grant basis to the post of Junior Lecturer on grant basis.

(C) By way of writ of mandamus or any other appropriate writ, order or directions, this Hon'ble Court may kindly be direct the respondent Nos. 3 and 4 to grant approval for transfer of the petitioner on the post of Junior Lecturer from the post of Assistant Teacher."

3. In the light of the submissions of the learned advocates for the respective sides and by considering the circular dated 17th December, 2021 issued by the School Education and Sports Department and the judgment dated 30th November, 2018 delivered by this Court in ***Writ Petition No.6952 of 2018 (Vishnu S/o Kanu Surashe Vs. The State of Maharashtra and others)*** and the judgment dated 5th November, 2019 delivered by this Court at the Nagpur Bench in ***Writ Petition No.7030 of 2019 (Akola Education Society and others Vs. State of Maharashtra and others)***, we find that the impugned order is unsustainable. Moreover, a single sentence order has been passed by the Assistant Director of Education from the office of the Divisional Deputy Director's Office, Aurangabad. Apparently, Rule 41(5) of the MEPS Rules, 1981 has not been considered. The law laid down by this Court has also not been considered. The impugned order is without reasons.

4. In view of the above, this petition is partly allowed. The impugned order dated 17th November, 2022 is quashed and set aside. The proceedings are remitted to the office of respondent No.3 in order to be reconsidered in the light of Rule 41(5) of the MEPS Rules, 1981 and the two judgments referred to hereinabove. The due process as applicable, shall be followed by the said authority while reconsidering the said case and a reasoned order be passed, on or before 31st March, 2023.

nga

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]