

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2811 OF 2023

**KISHOR NARAYAN BHAGAT
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS**

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Advocate for the Petitioner : Shri Dambe Santosh S.
AGP for Respondents 1 to 3/State : Shri V.M. Kagne
Advocate for Respondents 4 and 5 : Shri N.T. Tribhuwan

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

DATE :- 13th March, 2023

Per Court :-

1. The petitioner is aggrieved by the order dated 11.01.2022, by which, the approval to transfer his service from the unaided to grant in aid establishment, has been rejected.

2. We have heard the learned Advocates for the respective sides. The Petitioner's appointment as an Assistant Teacher has received permanent approval vide the order dated 25.09.2017. Therefore, it cannot be said that the Petitioner's appointment is not in tune with the reservation policy. The other reason for not approving his transfer is that there are surplus

teachers.

3. The Petitioner is M.Sc. in Chemistry with B.Ed.. His probation period was completed successfully. He was given permanent approval w.e.f. his date of joining, which is 17.07.2014, by the Deputy Director of Education, Aurangabad Division. In this backdrop, it cannot be said that his appointment is illegal or irregular or in violation of the reservation policy. Once permanent approval is granted and unless permissible under the statute, such approval cannot be withdrawn, except in the face of fraud being discovered. The Education Department is not well placed in contending that his appointment is against the reservation policy.

4. In view of the above, **this Writ Petition is partly allowed**. The impugned order dated 11.01.2022 is set aside only to the extent of the objection that the Petitioner's appointment is illegal. Having been granted permanent approval, this ground would not be open for the Education Department to be raised anytime in future.

5. Insofar as the surplus teachers are concerned, taking into account Rule 41A of the MEPS Rules, 1981, surplus teachers who are senior to the Petitioner, can be accommodated,

first. Thereafter, considering the seniority of the Petitioner vis-a-vis the co-employees, his case should be considered for transfer from the unaided to the aided establishment, strictly in accordance with the rules applicable. Hence, let the Deputy Director of Education consider the case of the Petitioner only after senior eligible teachers are absorbed.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)