

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

78 WRIT PETITION NO.5684 OF 2023

SOPAN TUKARAM BABAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH IT'S SECRETARY
AND OTHERS

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Advocate for Petitioner : Mr. Sushant Baburao Choudhari
AGP for Respondents: Mr. P S Patil

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CORAM : MANGESH S. PATIL & S. G. CHAPALGAONKAR, JJ.
Dated: June 05, 2023

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PER COURT :-

. Heard learned advocate for the petitioner as also the learned AGP.

2. The petitioner is aggrieved by the fact that his proposal for transfer from unaided Division to the Aided Division has been turned down by the impugned order by the Education Officer Secondary, Zilla Parishad, Parbhani only on the ground that provisions contained in Rule 41-A of the MEPS (Condition of Service) Rules, 1981 was stayed by the Government Circular dated 1.12.2022.

3. We have heard the learned Advocate for the petitioner as also the learned AGP.

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4. In similar such matters, this Court has quashed and set aside the similar orders with detail directions to the respondent Education Officer (Secondary) to reconsider and decide the proposals afresh, but not to reject the proposal on the ground of Government circular dated 1.12.2022. We follow the same course.

5. Writ Petition is partly allowed. The impugned order dated 18.4.2023 passed by the Respondent no.2 Education Officer (Secondary), Zilla Parishad, Parbhani is quashed and set aside. He is directed to re-consider the proposal and pass fresh order in the light of the directions issued in writ petition no.4431 of 2023 with other connected writ petitions. We are in respectful agreement with the observations and conclusions.

6. In view of the above, this petition is partly allowed by quashing and setting aside the impugned order and remitting the proposal of the Petitioner to the Education Officer, we are issuing similar directions as under :-

- (a) Wherever the Management/Respondent in this Petition has not intimated to the Education Officer, Secondary as regards the available vacancies in it's Institution, such

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Management shall forthwith issue communication to the Education Officer, on or before 28.6.2023 setting forth details of the vacancies available with the said Institution.

- (b) While considering the above, if such communication has already been forwarded to the Education Officer by some of the Management, the issue of surplus teachers vis-a-vis available vacancies in Parbhani district, based on their seniority and eligibility, will be considered and recommendation of surplus teachers to particular Institutions for absorption, would be considered by the Education Officer.
- (c) While approving transfers from unaided to aided category as per the proposals forwarded by the Respondents/Management, the Education Officer shall consider surplus teachers available and while approving such transfers, would also consider whether, an imbalance in reservation is likely to be created in the aided category owing to such transfers.
- (d) As far as possible, the Education Officer shall ensure that an imbalance is not created in

reservation while approving such transfers to the aided category vis-a-vis vacancies that have occurred from the reserved category on account of the teachers, who are exiting employment on account of their superannuation or voluntary retirement, etc..

- (e) After considering the above aspects, the Education Officer shall pass a reasoned order in the case before him, as expeditiously as possible and preferably on or before 31.7.2023.
- (f) Needless to state, those teachers, whose proposals would be approved for transfer from the unaided to aided category, would be entitled for all consequential benefits from the dates on which the transfers are approved.
- (g) The above guidelines would apply squarely to the cases wherein, the transfers are effected from unaided to partially aided or fully aided or from partially aided to fully aided category, etc..
- (h) In the event of any grievance of the Petitioner or any other teacher, persisting or cropping up on account of

reservation/backlog while approving transfers of teachers from unaided to aided or partially aided or from partially aided to fully aided category, the said issue will be left open if there is specific challenge to that extent.”

7. Writ Petition is disposed of.

(S. G. CHAPALGAONKAR, J.) (MANGESH S. PATIL, J.)

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