

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

WRIT PETITION NO.8232 OF 2021

**NAVNATH EKNATH WARE
VERSUS
THE STATE OF MAHARASHTRA THR ITS PRINCIPAL
SECRETARY AND OTHERS**

...
Advocate for the Petitioner : Ms.Akshara Madake i/by Shri S.S.
Thombre

AGP for Respondents 1 and 2/State : Shri S.P. Tiwari
Advocate for Respondents 3 and 4 : Shri Murlidhar S. Karad

...

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

DATE :- 27th April, 2023

Per Court :-

1. The Petitioner is aggrieved on account of the impugned order passed by the Education Officer, thereby rejecting the proposal for grant of approval to his transfer from the unaided post to the aided post in terms of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981. The State Government has stayed Rule 41A and this aspect is sub-judice before this Court at the Nagpur Bench.

2. The learned Advocate for the Petitioner and the learned AGP submit that the case of the present Petitioner is covered by the order dated 02.05.2022, passed by this Court, in Writ Petition No. 3336 of 2021 and group of cases (***Someshwar Rohidas Patekar vs. The State of Maharashtra and others***), in terms of the directions set out in paragraph No.15, which read as under:-

- “15. *In view of the above, these Writ Petitions are partly allowed. We are quashing and setting aside the impugned orders and remitting the proposals of these petitioners to the Education Officer on the following conditions :-*
- (a) *Wherever the Managements/ respondents in these petitions have not intimated to the Education Officer as regards the available vacancies in their Institutions, such Managements shall forthwith issue communications to the Education Officer, on or before 25.05.2022 setting forth details of the vacancies available with such Institutions.*
 - (b) *While considering the above, all such communications which may have already been forwarded to the Education Officer by some of the Managements, the issue of surplus teachers vis-a-vis available vacancies in Beed 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/ Managements, 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 reasoned orders in the cases before him, as expeditiously as possible and preferably on or before 15.07.2022.*
- (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 any of these petitioners 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.”*

3. In view of the above, **this Writ 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) If the Management/ Respondent in this Petition has not intimated the Education Officer as regards the available vacancies in it's Institution, the Management shall forthwith issue a communication to the Education Officer, on or before 15.05.2023 setting forth details of the vacancies available with the said Institution.

(b) While considering the above, such communication which may have already been forwarded to the Education Officer by some of the Managements, the issue of surplus teachers vis-a-vis available vacancies in Beed 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 30.06.2023.

(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.

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