

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7068 OF 2023

Ajay Digambarrao Kulkarni,
Age : 46 years, Occu : Service,
Asst. Teacher, Sanskar Vidyalaya,
Beed, Tq. Dist. Beed

.. Petitioner

Versus

1] The State of Maharashtra
Through Secretary,
Education Department,
Mantralaya, Mumbai – 32

2] Education Officer (Secondary)
Zilla Parishad, Beed,
Dist. Beed

3] Head Master,
Sanskar Vidyalaya, Beed,
Dist. Beed

.. Respondents

...
Advocate for petitioner : Mr. G.K. Naik Thigle h/f. Mr. Pradip L. Andhale
AGP for the respondent – State : Mr. S.K. Tambe
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 27 JUNE 2023

ORDER (MANGESH S. PATIL, J.) :

By the present petition, the petitioner who is serving as Assistant Teacher in Secondary school, is seeking approval of the respondent no. 2 – Education Officer (Secondary), Zilla Parishad, Beed to his transfer from un-aided division to a division / section receiving grant-in-aid.

2. We have heard the learned counsel for both the sides finally, by consent.

3. By the impugned communication / order dated 24-05-2023, respondent no. 2 has refused to grant approval to the transfer of the petitioner from unaided to grant-in-aid division only on the ground of availability of surplus teachers and by referring to Government circular dated 01-04-2021.

4. Learned advocate for the petitioner would rely upon a Division Bench decision of this Court in the matter of ***Patekar Someshwar Rohidas Vs. The State of Maharashtra and others*** (writ petition no. 3336 of 2021 with connected writ petitions, dated 2 May 2022) and would submit that in similar set of facts, this Court has allowed those writ petitions and issued various directions to the respondent – Education Officer to reconsider the cases of the petitioners. Both the sides, therefore, request unanimously that same directions can be issued even in this matter.

5. In view of the above, the writ petition is partly allowed.

6. The impugned communication / order is quashed and set aside.

7. We remit the proposal of the present petitioner for reconsideration by the respondent no. 2 – Education Officer on the following conditions :-

(a) If the management / respondent in this petition has not intimated to the Education Officer as regards the available vacancies in its institution, then the management shall forthwith issue communication to the Education Officer within four weeks setting forth the details of the vacancies available with the institution.

(b) While considering the above, all such communications which may have already been forwarded to the Education Officer by the management, 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 the institution for absorption, would be considered by the Education Officer,

(c) While approving transfers from unaided to aided category as per the proposal forwarded by the respondent / management, the Education Officer shall consider surplus teachers available and while approving such transfer, would also consider whether, an imbalance in reservation is likely to be created in the aided category owing to such transfer.

(d) As far as possible, the Education Officer shall ensure that an imbalance is not created in reservation while approving such transfer 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 as expeditiously as possible and preferably on or before 31-08-2023.

(f) Needless to state, the petitioner, if his proposal would be approved for transfer from the unaided to aided category, would be entitled to all consequential benefits from the date on which the transfer is approved.

(g) In the event of any grievance of the petitioner, persisting or cropping up on account of reservation / backlog while approving his transfer it will be open for him to challenge the order.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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