

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

5 WRIT PETITION NO.12943 OF 2022

MAHESH RAOSAHEB DIGHE
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH THE PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioner : Mrs. A. S. Jadhav.
AGP for Respondent Nos.1 & 2 : Mr. S. P. Tiwari.
...

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

DATE : 27th March, 2023.

Per Court:

1. The Petitioner has prayed vide clause 'A' to 'C' as under:-

- "A] This Hon'ble Court may be pleased to direct the Education Officer to approve the transfer of the petitioner as a Peon from unaided to aided post w.e.f. 01.12.2020. Or to hold and declare that the appointment/transfer of the Petitioner to aided post is legal and valid one.
- B] This Hon'ble Court may be pleased to direct the Education Officer to sanction the payment of monthly salary applicable to the said post from 01.12.2020 and onwards.
- C] By issuing writ of mandamus, this Hon'ble Court may be pleased to direct the Respondent no. 2 to include the name of the Petitioner in Service Seniority List with further directions to pay the arrears of and regular salary accordingly within period of six weeks."

2. The Petitioner has approached this Court since his proposal dated 13th July, 2021, is pending before the Education Officer (Secondary). Earlier, the same Education Officer (Secondary), Shri Ashok Kadus, Zilla Parishad, Ahmednagar, had formed a view that there is no provision in law to approve the transfer of a candidate from non-grant-in-aid (unaided) establishment to the grant-in-aid (aided) establishment.

3. Considering a similar order passed by the same Education Officer, this Court had passed an order on 16th September, 2022 in Writ Petition No.125 of 2021 filed by Yogesh Purushottam Bhujbal Vs. The State of Maharashtra and others and had categorically concluded in paragraphs 4 and 5 as under:-

“4. The petitioner had put in almost fifteen years service on unaided post before being transferred to aided post. Of course, the Education Officer is required to consider all other aspects of the matter, such as seniority, roster and qualification. However, could not have rejected the proposal on the ground that there is no provision of transfer of a non teaching employee from unaided to aided post.

5. In the light of the above, the impugned communication/order is quashed and set aside. The Education Officer shall reconsider the proposal of the

petitioner for approval from unaided to aided post as junior clerk on its own merits and may consider all other aspects of the matter and shall take decision afresh, expeditiously and preferably within a period of four (04) months from today.”

4. Since the same Education Officer once again repeated the same order in the case of the same Petitioner Yogesh Purushottam Bhujbal, who preferred a second Writ Petition No.6124 of 2022, this Court vide order dated 19th September, 2022 recorded in paragraph Nos.3 to 7 as under:-

“3. It is apparent that the Education Officer Mr. Ashok Kadus has either not understood the conclusion arrived at by this Court in paragraph Nos.4 and 5 reproduced above, or he does not desire to grant approval to the petitioner. Rule 41 B of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981, is still a draft provision and a draft provision cannot have the effect or impact of law. Unless the provision is introduced by following the due procedure, it would not have any effect.

4. We would have understood if the Education Officer Mr. Ashok Kadus had dealt with this matter without any earlier order of this Court. Once this Court has passed an order on 16/09/2021 concluding that Rule 41 of the M.E.P.S. Rules enables transfer of

a non-teaching employee from unaided to aided category in a different school, the Education Officer had no reason to observe, “वास्तव शिक्षकेतर कर्मचारी यांचे विनाअनुदानित शाळेमधून अनुदानित शाळेमध्ये बदली बाबत अद्याप तरतुद नाही.” The English translation being “actually, there is no provision for transferring the non-teaching staff from an unaided school to a grant-in-aid school.”

5. In view of the above, we deem it appropriate to call for an explanation from Mr. Ashok Kadus as to whether he has failed to understand the order of the High Court or whether he does not desire to obey the same. However, we need not detain the petitioner in litigation in this Court in view of our conclusion considering the earlier order dated 16/09/2021.

6. As such, this petition is partly allowed. The Impugned order dated 05/04/2022 is quashed and set aside. The Education officer Mr. Ashok Kadus shall issue the order of approval to the petitioner, within two weeks from today.

7. Registry to issue show cause notice to Mr. Ashok Kadus, Education Officer, Zilla Parishad, Ahmednagar, to show cause before us as to has he disobeyed our order dated 16/09/2021. Let such reply be filed within three weeks from today and the matter be placed before us on 17/10/2022.”

5. The learned AGP submits that in this case the proposal dated 13th July, 2021 is still pending.

6. In view of the above, this Petition is disposed off with a direction to the Education Officer to decide the pending proposal dated 13th July, 2021 on it's own merits and strictly in accordance with Rule 41 of the M.E.P.S. Rules, 1981.

7. We make it clear that we have not expressed any view or opinion as regards the merits of the pending proposal.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

nga