

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.404 OF 2022

1. Shri. Dinesh Ambaji Temkar
Aged-45 Yrs. Occupation : Service,
R/o. At Sukhdar, Post Khed,
Tal. Khed, Dist.Ratnagiri – 415 710.
2. Kunbi Shikshan Prasarak Sanstha,
Khed-Mumbai,
A/P/T/Khed, Dist. Ratnagiri,
Through its Chairman/Secretary. .. Petitioners

Vs.

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.
 2. The Education Officer (Secondary),
Zilla Parishad, Ratnagiri. .. Respondents
- Mr. N.V. Bandiwadekar, Senior Advocate a/w. Mr. Vinayak Kumbhar
i/b. Ms. Ashwini N. Bandiwadekar, for the Petitioners.
 - Mr. S.B. Kalel, AGP for Respondent Nos.1 & 2-State.

**CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ**

DATE : 31st AUGUST, 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. By consent of learned counsel for the respective parties heard finally.

3. It is the contention of learned counsel for the petitioners that Petitioner No.1, who was working as Head Master of an unaided school has been transferred to the aided school of Petitioner No.2 and such transfer is permissible in law and so it is valid. Learned counsel is right on this count, and therefore, there should be no difficulty in granting approval to the transfer of Petitioner No.1 as Head Master in another school. But the approval to such transfer of Petitioner No.1 has been rejected not on the said count, but on three different grounds namely; (1) Seniority list of all the Assistant Teachers in the aided and unaided schools for the year 2020-21 is required and it has not been considered by Petitioner No.2, (2) consent of all Senior Assistant Teachers, being necessary, has not been taken and (3) the post of Headmaster has lapsed on account of reduction of strength of the students in the school, where Petitioner No.1 has been transferred.

4. In our view, the above referred grounds are devoid of any merit for the reason that Petitioner No.1 is already working as Headmaster in one school and has been transferred again as Headmaster to another school. In such a case, there would not be any need to examine the seniority list of the Assistant Teacher or to obtain no objection or consent of the other senior Assistant Teacher. As regards the reduction of strength of the students of the school to a number below 100, the document at Page No.48, which is posted on the School Portal managed by School Education Department of the State, shows that for the academic year 2021-22, the strength of the school in Devi Padmavati High School, Shirwali, where Petitioner No.1 has been transferred as Headmaster, was of 104 students, a number which was above the minimum required number of 100 students. Therefore, even the third ground taken by the Education Officer to refuse approval to the transfer of Petitioner No.1 from one school to another school is

without any basis.

5. In the result, we find that the impugned order refusing approval to the transfer of Petitioner No.1 is illegal and it deserves to be quashed and set aside with following directions:-

- (i) Petition is allowed.
- (ii) Impugned order dated 21.10.2021 passed by Respondent No.2 is hereby quashed and set aside.
- (iii) Respondent No.2 is directed to grant approval to the transfer of Petitioner No.1 as Headmaster to Devi Padmavati High School, Shirwali, Tal. Khed, Dist. Ratnagiri with effect from the date on which the transfer of Petitioner No.1 has been made effective i.e. on 16.06.2021, within a period of two weeks from the date of receipt of writ of this Court.
- (iv) We also direct that name of Petitioner No.1 be included in Shalarth ID system for the purpose of online payment of salary within a period of two weeks from today. Needless to say that all arrears of payment of salary shall be paid to Petitioner No.1 as per rules.

6. Rule is made absolute in the above terms. No costs.

7. Writ Petition is disposed of.

[FIRDOSH P. POONIWALLA, J.]

[SUNIL B. SHUKRE, J.]