

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 512 OF 2022

(1) Anil s/o Janardhan Sarkate
Age : 40 years, Occu : Service as
Assistant Teacher,
R/o. Dhamangaon Badhe,
Tq. Motala, Dist. Buldhana

(2) Jeevan s/o Shenfad Patil,
Age : 38 years, Occu : Service as
Assistant Teacher,
R/o. Dhamangao Badhe,
Tq. Motala, Dist. Buldhana

(3) Sandip s/o Madhukar Lokhande,
Age : 33 years, Occu : Service as
Assistant Teacher,
R/o. Motala, Tq. Motala,
Dist. Buldhana

.....PETITIONERS

...V E R S U S...

(1) The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.

(2) The Education Officer (Secondary),
Zilla Parishad, Buldhana.

(3) Malkapur Shikshan Samiti,
Malkapur, Tq. Malkapur, Dist. Buldhana
Through its Principal/Secretary

(4) M.E.S. High School,
Dhamangaon Badhe, Tq. Motala,
Dist. Buldhana
Through its Head Master.

(5) Late Babanrao Deshpande
Vidyalaya, Motala, Tq. Motala,
Dist. Buldhana,
Through its Head Master

.....**RESPONDENTS**

Mr. N. B. Kalwaghe, Advocate for the petitioners
Mr. M. K. Pathan, A.G.P. for the State/respondents 1 and 2
None for respondents 3 to 5

CORAM : ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 25-04-2023

ORAL JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

3. The petitioners were appointed as Assistant Teachers in unaided section in respondents 4 and 5 – schools, which are managed by respondent 3 – institution, on 1-10-2013, and their appointments as Assistant Teachers (unaided section) were approved by the Education Officer on 26-12-2013.

4. It is not in dispute that on 1-7-2018, the petitioners were transferred to 100% aided posts. The Education Officer has approved the appointment of the petitioners on the 100% aided posts as Shikshan Sevaks. The limited grievance of the petitioners is that having completed nearly 5 years of service as unaided post

holders, in as much as, the petitioners are transferred to 100% aided posts, the petitioners ought to have been granted approval not as Shikshan Sevaks, but as Assistant Teachers.

5. Facts are not in dispute nor is the law fluid.

6. Consistent view is taken by several decisions of the coordinate Benches upholding the right of similarly situated employees to approval as Assistant Teachers. We may refer to the decision in *Writ Petition 12512 of 2021 (Arun Suryabahan Dhanak Vs. The State of Maharashtra and others) dated 16-11-2021*. The relevant observations reads thus :

"5] The Education Officer shall confirm that if the transfer of the petitioner is on 100% grant-in-aid post and if he is convinced that the post is 100% grant-in-aid post, then he shall grant approval to the transfer of the petitioner on 100% grant-in-aid post as Assistant Teacher from the date of his transfer."

7. In the interest of avoiding any confusion, it may be noted that while Rule 41(A) is introduced with effect from 8-6-2020, as is observed by the coordinate Bench in paragraph 21 of *Writ Petition (Stamp) 93919 of 2020 (Sandhya D/o. Balkrushna Teli & Ors. Vs. The State of Maharashtra & Ors.) dated 12-3-2021*, the amendment does not have retrospective

effect and is, therefore, of no relevance to the present matter, since the petitioners have been transferred to 100% aided posts prior to coming into force of Rule 41(A). We therefore, hold that the petitioners are entitled to approval as Assistant Teachers with effect from the date of transfer to the aided posts and allow the petition in terms of the following order.

(a) Writ petition is made absolute in terms of prayer clause (B). Impugned order dated 7-3-2019 shall be modified by the respondent 2 - Education Officer within two weeks from the date of uploading of this order on the High Court website by providing 100% grant-in-aid from the date of transfer and shall communicate such decision to the petitioners as well as respondent 3 within one week from the date of taking such decision.

(b) Rule is made absolute in aforesaid terms. There shall be no order as to costs.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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