

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

WRIT PETITION (WP) 3680/2022

Rajesh S/o Bansi Rathod
Age : 35 Years, Occu. : Service,
R/o Bansi Rathod, Banjara Colony Pusad,
Pusad, Yavatmal,
Tal. Pusad, Dist. Yavatmal.

..... PETITIONER

// VERSUS //

1. The State of Maharashtra,
Through it's Principal Secretary,
Sports and Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education
Amravati Region, Amravati.
3. The Education Officer (Secondary)
Zilla Parishad, Yavatmal
4. Janta Shikshan Prasarak Mandal,
Vidyalaya, Pusad,
Tal. Pusad, Dist. Yavatmal.
Through its Head Master.
5. Janta Shikshan Prasarak Mandal,
Madhyamik Vidhyaly Gaoul (Kh.)
Tal. Pusad, Dist. Yavatmal.
Through its Head Master.

.... RESPONDENT(S)

AND
WRIT PETITION (WP) 3668/2022

Shrinivas S/o Sudhakar Chavhan
Age : 29 Years, Occu. : Service,
R/o Janta Shikshan Prasarak Mandal,
Vidyalaya, Banshi,
Tal. Pusad, Dist. Yavatmal.

..... PETITIONER

// VERSUS //

1. The State of Maharashtra,
Through it's Principal Secretary,
Sports and Education Department,
Mantralaya, Mumbai-32.
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 4. Janta Shikshan Prasarak Mandal,
Vidyalaya, Banshi,
Tal. Pusad, Dist. Yavatmal.
Through its Head Master.
 5. Janta Shikshan Prasarak Mandal,
Madhyamik Vidyalaya, Pimpalgaon (Ka),
Tal. Mahagaon, Dist. Yavatmal.
Through its Head Master.
- RESPONDENT(S)

Mr. R.I. Wakade, Advocate for petitioners
Mr. S.M. Ukey, AGP for the respondents 1 to 3
Mr. V.B. Patil, Advocate for respondents 4 and 5

**CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.**

DATED : 18/01/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Rule. Rule made returnable forthwith. With the consent of both the sides the matters are heard finally at the stage of admission.

2. The learned Counsel for the petitioners submitted that in both these petitions, the petitioners are initially appointed as Assistant

Teachers on no grant basis w.e.f. 01.07.2015 and 01.08.2015 respectively and respondent 3 – Education Officer (Secondary), Z.P, Yavatmal granted approval vide order dated 30.12.2016. Both, the petitioners continuously rendered more than three years service on unaided posts. On 03.12.2018, the respondent - Management transferred both the petitioners from unaided to aided posts. On 03.12.2018, respondent 3 – Education Officer (Secondary) granted approval for transfer of the petitioners from unaided to aided posts. On 03.12.2018, respondent 3 – Education Officer (Secondary) granted approval to the appointments of the petitioners as Shikshan Sevak w.e.f. 03.12.2018 as per Government Resolution dated 28.06.2016, however, on 08.08.2019 in Writ Petition 7841/2019 (*Dilip Venkatrao Boienar Vs. The State of Maharashtra and ors.*), the Division Bench of this Court held that, all clauses of Government Resolution dated 28.06.2016 would not apply in case, however, on 03.12.2018 respondent 3 – Education Officer passed the impugned order illegally holding that the petitioners as “Shikshan Sevak”.

3. The learned Counsel for the petitioners submitted that similar issue is considered by various decisions of this Court at the Principal Seat at Bombay and Bench at Aurangabad. In Writ Petition 1493/2018 (*Suryakant S/o Janardhan Muge Vs. The State of Maharashtra and ors.*) and other connected writ petitions, wherein it is SM Gate

held that if the newly appointed teacher completes three years of service either on unaided post or aided post after his transfer from unaided post to aided post, it would be in conformity with the scheme of Shikshan Sevak framed by the State. The co-ordinate Bench of this Court in paragraphs 20 and 21 observed thus:-

“20. One anomalous situation that requires to be considered is that if a person is appointed on grant-in-aid post for three years, he is required to work as Shikshan Sevak on honorarium basis, whereas, on an unaided post a person is directly appointed as assistant teacher. For example, if a person has worked as assistant teacher for one year on unaided post and is transferred on grant-in-aid post, he would claim that he was working as assistant teacher and should be considered as assistant teacher that would not be in tune with the scheme of Shikshan Sevak as framed by the Government under the Government Resolutions.

21. If the assistant teacher on unaided post has worked for less than three years and is transferred to aided post, he will have to work as Shikshan Sevak till he completes three years of service from the date of his initial appointment on an unaided post. That would be in conformity with the scheme of Shikshan Sevak framed by the State.”

4. The learned Counsel for the petitioners further relied on the judgments in Writ Petition 6363/2020 (**Bhushan S/o. Sukdeo Patil Vs. The State of Maharashtra and ors.**), Writ Petition 8565/2021 (**Sharda Tryambak Umbarkar Vs. The State of Maharashtra and ors.**) and Writ Petition 1272/2022 (**Rekha Gokul Ghaudhari Vs. The State of**

Maharashtra and ors.). It is held that the petitioners who had completed more than three years of satisfactory service as Assistant Teachers on unaided basis are entitled to be transferred from unaided post to aided post by the Management. Such transfer is permissible under the Rules and their services shall be approved as Assistant Teacher instead of Shikshan Sevak after three years of continuous service.

5. The petitioners have placed on record the chart showing the dates of initial appointments on unaided posts, the dates of approvals to the appointments on unaided posts, period of service rendered by them on unaided posts, the date of transfer to the aided posts and the date of approvals as “Shikshan Sevak” instead of “Assistant Teacher”. The same is reproduced hereunder:-

Sr. No.	Name of Employee	Appointment & Approval of on unaided basis w.e.f.	How many years worked on unaided basis	Transfer date w.e.f. unaided to aided	Approval as Shikshan Sevak instead of Assistant Teacher w.e.f.
1	Rajesh S/o Bansi Rathod WP 3680/2022	01.07.2015 Vide approval order dtd. 30.12.2016	03 years, 05 Months & 2 Days	03.12.2018	03.12.2018 vide approval dtd. 03.12.2018
2	Shrinivas S/o Sudhakar Chavhan WP 3668/2022	01.08.2015 Vide approval order dtd. 30.12.2016 Page No. 21	03 years, 04 Months & 2 Days	03.12.2018	03.12.2018 Vide approval dtd. 03.12.2018 Page No. 30

6. On the face record, it appears that in the present petitions, the petitioners have worked on unaided posts for more than years, SM Gate

therefore, their services are required to be considered as “Assistant Teacher” instead of “Shikshan Sevak” on 100% grant-in-aid posts as per the ratio laid down in case laws cited supra.

7. In the light of above, the impugned orders of granting approvals are quashed and set aside and modified.

8. Upon satisfying about the seniority and roster, respondent 3 – Education Officer shall modify the approval orders and grant approvals to the petitioners as “Assistant Teacher” instead of “Shikshan Sevak” within a period of four weeks from today.

9. The petitioners shall also be granted benefits in view of their appointments as “Assistant Teachers” instead of “Shikshan Sevak” on 100% grant-in-aid in the respective schools on regular pay-scales with effect from the respective dates of transfers of the petitioners and shall release the arrears of salary of the petitioners/Teachers within a period of eight weeks from today.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)

SANDIP
MAHADEV
GATE

Personal Assistant to the
Hon'ble Judge
Digitally signed by
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Date: 2023.02.24
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