

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

WRIT PETITION (WP) 3678/2022

1. Sunil S/o Namdeo Chavhan
Age : 38 Years, Occu.: Service,
R/o Janta Shikshan Prasarak Mandal,
Vidyalaya, Pusad,
Tal. Pusad, Dist. Yavatmal.
2. Varsha Shamrao Ingale
Age : 35 Years, Occu. : Service,
R/o Janta Shikshan Prasarak Mandal,
Vidyalaya, Pusad,
Tal. Pusad, Dist. Yavatmal.
3. Janta Shikshan Prasarak Mandal
Vidyalaya, Banshi, Tah. Pusad,
District – Yavatmal,
Through its Headmaster.
4. Janta Shikshan Prasarak Mandal
Vidyalaya, Pusad, Tah. Pusad,
District – Yavatmal,
Through its Headmaster.

..... PETITIONER(S)

// 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, Banshi,~~

Amended as
per Court's
order dt.
18.01.2023

~~Tal. Pusad, Dist. Yavatmal~~
~~Through its Headmaster.~~

5. ~~Janta Shikshan Prasarak Mandal,~~
~~Vidyalaya, Pusad,~~
~~Tal. Pusad, Dist. Yavatmal~~
~~Through its Headmaster.~~

.... RESPONDENT(S)

 Mr. R.I. Wakade, Advocate for petitioners 1 and 2
 Mr. V.B. Patil, Advocate for petitioners 3 and 4
 Mr. S.M. Ukey, AGP for the respondents

**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 matter is heard finally at the stage of admission.

2. We accept the oral motion made by the learned Counsel for the petitioners, Mr. Wakade, and direct that respondents 4 and 5 be transposed as petitioners 3 and 4. The learned Counsel for the petitioners submitted that the petitioners 1 and 2 are initially appointed as Assistant Teachers on no grant basis w.e.f. 01.07.2013 and 01.02.2013 respectively and respondent 3 – Education Officer (Secondary), Z.P., Yavatmal granted approval vide orders dated 19.06.2014 and 23.12.2015. Both, the petitioners 1 and 2 continuously rendered six years service on unaided posts. On 03.12.2018, petitioner 3 -

Management transferred them from unaided to aided posts. The petitioner 4 – School is 100% grant-in-aid. On 03.12.2018, respondent 3 - Education Officer granted approval to the appointments of petitioners 1 and 2 as Assistant Teachers w.e.f. 03.12.2018 on 20%, 40%, 60% and 80% instead of 100% as per Government Resolution dated 08.06.2016. On 03.12.2018 respondent 3 – Education Officer passed the impugned order holding that petitioners 1 and 2 would entitle for grant of 20% for first year, 40% for second year etc..

3. The learned Counsel for the petitioners submitted that similar situation is considered in Writ Petition 2278/2021 (***Suvarnamala D/o Prakash Dudhate Vs. The State of Maharashtra and ors.***) and other connected writ petitions, wherein it is held that the petitioners' who have completed three years service on unaided posts and are transferred on 100% grant-in-aid posts will have to be considered on 100% grant-in-aid posts. The co-ordinate Bench of this Court in paragraphs 4 and 5 observed thus:-

“4. We have in our judgment dated 4.7.2019 in Writ Petition No. 1493 of 2018 with connected Writ Petitions held that some of the clauses of the Circular dated 28.06.2016 do not apply. It appears that the Education Officer, while granting approval to the appointment of petitioners as an Assistant Teacher from the date of transfer to the aided posts had granted approval on grant-in-aid in phase-wise manner to the effect that after five years, the petitioners would be granted

approval on 20% grant-in-aid. The same would not be in tune with the order passed by this Court from time to time at this Bench and also at principal seat.

5. *In case the petitioners are transferred on 100% grant-in-aid posts since the date of completion of three years, they shall be considered on 100% grant-in-aid posts. In case the petitioners are transferred on grant-in-aid posts, for example on 60%, then from the date of transfer, they would be on 60% grant-in-aid posts, but if the petitioners, after having completed three years on unaided posts and are transferred on 100% grant-in-aid posts, their services will have to be considered on 100% grant-in-posts. This aspect has been ignored by the Director of Education/ Dy. Director of Education / Education Officer.”*

4. The learned Counsel for the petitioners further relied on the judgment passed in Writ Petition 5657/2021 (***Satish s/o Venkarrao Yelkar and anr. Vs. The State of Maharashtra and ors.***) dated 26.11.2021, judgments passed by the co-ordinate Bench of this Court in Writ Petition (ST) 93916/2020 (***Sandhya Balkrushna Teli and ors. Vs. The State of Maharashtra and ors.***) and in Writ Petition 1493/2018 (***Suryakant S/o Janardan Muge Vs. The State of Maharashtra and ors.***). It is held that the petitioners who had completed more than five 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 was permissible under the said provisions.

5. The petitioners have placed on record the chart showing the dates of initial appointments on unaided posts, the date of approvals to the appointments on unaided posts, the date of transfer to the aided posts, the approvals granted to the transfer on the unaided posts and period of service rendered by them on unaided posts. 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 on 20% grant-in-aid basis instead of 100% w.e.f.
1	Shri Sunil S/o Namdeo Chavhan	01.07.2013 Vide approval order dtd. 19.06.2014 Page No. 34	More than 06 years	03.12.2018	03.12.2018 vide approval dtd. 03.12.2018 Page No. 40
2	Varsha Shamrao Ingale	01.02.2013 Vide approval order dtd. 23.12.2015 Page No. 37	More than 06 years	03.12.2018	03.12.2018 vide approval dtd. 03.12.2018 Page No. 43

6. In the present matter, petitioners 1 and 2 have worked on unaided posts for more than five years, therefore, their services are required to be considered 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 in phase-wise manner is 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 petitioners 1 and 2 as “Assistant Teacher” instead of “Shikshan Sevak” within a period of four weeks from today.

9. The petitioners 1 and 2 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 and shall release the arrears of salary of petitioners 1 and 2/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
SANDIP MAHADEV GATE
Date: 2023.04.24
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