



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.494 OF 2022

Smt. Sonali Ashok Patil,
Age: 33 Years, Occu: Service,
R/o Pundliknagar, Galli No.1, Garkheda Area,
Aurangabad Tq. & District
Aurangabad. Petitioner

Versus

- 1] The State of Maharashtra, Through
it's Additional Chief Secretary School
Education Department Mantralaya,
Mumbai-32.
- 2] The Commissioner of Education
Maharashtra State, Central Building,
Pune-1.
- 3] The Director of Education (Primary)
Maharashtra State Directorate Central
Building, Pune-1.
- 4] The Divisional Deputy Director of
Education, Aurangabad Division,
Aurangabad District Aurangabad.
- 5] The Education Officer (Primary),
Zilla Parishad, Aurangabad.
District Aurangabad.
- 6] The President/Secretary,
Sarvodaya Kala Mandal,
C/o Balkrishnagar Vijay Chowk
Garkheda Parisar, Aurangabad.

- 7] The Head Master, Chatrapati
Prathamik Vidyalya, Balkrishna Nagar,
Vijaynagar Chowk, Garkheda Parisar
Aurangabad. Tq & Dist. Aurangabad Respondents.

...

Advocate for the Petitioner : Mr. V. G. Salgare
AGP for Respondent nos.1-4 : Mr. A.M. Phule
Advocate for Respondent no.5 : Mr. S.M. Ganachari
Advocate for Respondent nos.6 & 7 : Mr. S.M. Gunjal

...

CORAM : **SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Reserved on : March 15, 2024

Pronounced on : March 21, 2024

...

FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner impugns the order dated 11.8.2021 passed by Divisional Deputy Director of Education, Aurangabad – Respondent No.4, thereby rejecting the proposal for inclusion of petitioner's name in the school portal. Petitioner further seeks directions against respondents to include her name in the school portal for the purpose of release of salary.

2. The petitioner contend that she is qualified as HS.C. D.Ed. and belong to OBC category. Respondent no.6 runs respondent no.7 School. On 3.8.2008 respondent no.6 appointed petitioner on the post of Primary Teacher on non-grant basis under Respondent No.7. The services of the petitioner was approved by the Education Officer and

she was continued as 'Assistant Teacher' on unaided post. The Education Officer approved her services as assistant Teacher on completion of probation. On 23.8.2013 the Respondent No.6 Management transferred services of the petitioner on aided post. The proposal for transfer of the petitioner from unaided to aided post was forwarded to the Education Officer, which has been granted vide order dated 15.3.2017. The Education Officer, after making necessary inquiry granted approval to the transfer of the petitioner from academic year 2013-2014. The proposal for entering petitioner's name in the School Portal (Shalartha Pranali) was forwarded to the Director of Education (Primary). However, it was kept pending. Petitioner made several communications to include her name in the Shalarth Pranali, however, no steps were taken by Respondent Authorities. Petitioner had therefore approached this court vide writ petition no.1689 of 2021. This Court directed respondent no.2 to decide the proposal on it's own merits within the period of four months.

3. In spite of the aforesaid order dated 29.1.2021, no steps were taken. The petitioner filed Contempt Petition no.412 of 2021. During pendency of Contempt Petition, respondents communicated the impugned decision dated 11.8.2021, by which the proposal came to be rejected. According to the petitioner, the impugned order is arbitrary and contrary to law.

4. Mr. V. G. Salgare, learned advocate appearing for the petitioner vehemently submit that Rule 41 of Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 provides for transfer of teachers. The Management in exercise of such powers issued transfer order dated 23.8.2013 in favour of the petitioner after her service for more than 5 months on unaided post. The appointment of the petitioner is against clear and vacant post. She possess requisite qualification. The Education Officer vide order dated 15.3.2017 approved transfer of the petitioner after examining requisite compliances. The petitioner is discharging her duties on aided post since the date of her transfer. The proposal was forwarded for entering her name in the Shalartha Portal, which is rejected by giving erroneous reasons. He submits that respondent no.4 has no authority to reject the proposal for including name in 'Shalarth Pranali' as long as the approval granted by the Education Officer is intact.

5. Mr. A.M. Phule, learned AGP appearing for respondent nos.1 to 4 submits that respondent no.4 recorded various procedural deficiencies in the transfer of the petitioner. Petitioner's appointment was against the additional post, which was not approved as per staffing pattern. There are directives to accommodate surplus teachers on the additional vacant post. Therefore, approval to the transfer of the petitioner itself was faulty.

Consequently, proposal for entering her name in Shalarth Portal is rejected.

6. We have considered the submissions advanced on behalf of the respective parties. There is no dispute on the factual matrix, particularly, on the point that the petitioner was initially appointed on 3.8.2008 on unaided post in respondent no.7 School. Her services were approved by the Education Officer. On 23.8.2013 she has been transferred by respondent no.6 Management to aided post. On 15.3.2017 the Education Officer approved transfer. Approval granted by the Education Officer is still intact.

7. The computerized system for disbursement of the salary to the teachers working on grant in aid post under the private schools has been introduced by the Government Resolution dated 7.11.2012. School portal namely 'Shalartha Pranali' has been developed. Names of the teaching and non-teaching staff are required to be included in the school portal. The Respondent No.3 was the competent authority process inclusion of name of school employees in the Shalartha System. However, vide Government Resolution dated 20.3.2019 powers have been delegated to the Respondent no.4. In view of the introduction of aforesaid system for payment of salary, the proposal was forwarded to include petitioner's name in the school portal by respondent no.5 to respondent no.3,

which is ultimately decided by respondent no.4 under the impugned order. Perusal of the impugned order depict that procedural objections in the matter of petitioner's transfer from unaided to aided post have been noted and it is observed that approval granted in favour of the petitioner is not in accordance with the procedure. Therefore, the proposal for inclusion her name in Shalarcha ID came to be rejected.

8. The Division Bench of this Court consistently observed in case of **Padmini d/o Sonerao Hande Vs. State of Maharashtra and others** in WP No.5241 of 2021 dated 11.3.2022 and in **Datta s/o Govind Pawar Vs. State of Maharashtra and others** dated 12.04.2022 that the Deputy Director of Education cannot exercise powers akin to the Appellate Authority, when a proposal is forwarded for inclusion of name of employee in the school portal. He cannot interfere in the order passed by the Education Officer even at the stage of considering proposal of Management to enter name of employee in the Shalarcha Pranali for online payment in furtherance of the approval granted by the Education Officer. We are of the opinion that respondent no.4 exceeded his jurisdiction while making adverse comments regarding approval granted by the Education Officer to the transfer of the petitioner as long as approval issued by the competent authority i.e. Education Officer is intact. The respondent no.4 could not

have rejected the proposal for entering the petitioner's name in the School Portal. We find that Rule 41 of MEPS Rules was invoked by the Management at the time of directing petitioner's transfer dated 23.8.2013. Additional guards introduced by amended Rule 41-A with effect from 8.6.2020 would not apply retrospectively to the case of the petitioner. In that view of the matter, we have no hesitation to hold that the impugned order is illegal. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition is allowed.
- ii. The impugned order dated 11.8.2021 passed by respondent no.4 – The Divisional Deputy Director of Education, Aurangabad Division, Aurangabad is quashed and set aside.
- iii. The respondent no.4 shall grant approval to the proposal for inclusion of petitioner's name in the "School Portal" and take necessary steps to release salary to the petitioner in pursuance of her transfer on the aided post as approved by the Education Officer.
- iv. Writ Petition stands disposed off. No costs.

(S. G. CHAPALGAONKAR, J.)
aaa/- (f)

(SMT. VIBHA KANKANWADI, J.)
....