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wp 1210.23 (1).odt

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

WRIT PETITION NO. 1210 OF 2023

Bhagyashri d/o. Shivajirao Narwate,
Age 31 years, Oc. Service as Assistant Teacher,
r/o. Chatrapati Chowk, Bajaj City,
Flat No. 207, Nanded Tq. And Dist. Nanded.

.. Petitioner.

VERSUS

1. The State of Maharashtra
through its Secretary
Education Department,
Mantralaya, Mumbai-32
2. The Deputy Director of Education
Latur Division, Latur,
3. The Education Officer (Secondary),
Zilla Parishad, Nanded.
4. The Superintendent,
Pay Unit and Provident Fund Department,
(Secondary), Zilla Parishad, Nanded.
5. Janta Shikshan Prasarak Mandal,
Umardari, Tq. Mukhed, Dist. Nanded
through its President/Secretary.
6. Shivaji Vidyalaya, CIDCO,
New Nanded, Tq. & Dist. Nanded,
through Head Master.

.. Respondents.

Mr. V.S. Panpatte, Advocate for the petitioner,
Ms. R.P. Gaur, AGP for respondent Nos. 1 and 2
Mr. S.B. Pulkundwar, Advocate for respondent No.3.
Mr. R.C. Brahmhankar, Advocate for respondent Nos. 5 and 6

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

DATE : 30TH APRIL, 2024

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

The petitioner has approached this Court, under Article 226 of the Constitution of India seeking declaration that the petitioners transfer effected vide order dated 13.8.2022, on aided post of Assistant Teacher in respondent No.6 school is legal and valid. The petitioner further impugns the order dated 9.11.2022 passed by the respondent No.2 - Education Officer declining to grant approval to said transfer.

2. Mr. V.S. Panpatte, learned counsel for the petitioner submits that the respondent No.5 society runs respondent No.6 school. An advertisement dated 11.7.2019, was issued by them inviting applications from eligible candidates for appointment on the post of Assistant Teacher. The petitioner possesses the requisite qualification (B.A. B.Ed. (Maths)). Therefore, she responded to the advertisement and after going through the selection process, she has been selected and appointed vide order dated 19.7.2019. The respondent No.3 Education Officer granted approval to her appointment vide order dated 31.12.2020. The services of the petitioner have been confirmed on completion of probation period w.e.f. 19.7.2021. The appointment of the petitioner was on unaided post. However, on vacancy on aided division, respondent management passed a resolution dated 24.4.2022 and transferred the petitioner w.e.f. 30.7.2022. The respondent No.5 and 6 forwarded the proposal seeking

approval to the transfer of the petitioner from unaided to aided post. However, the respondent No.3 vide impugned order dated 9.11.2022 rejected the proposal only on the ground that the petitioner had not completed 5 years of service on unaided post.

3. Mr. Panpatte, learned counsel for the petitioner submits that the respondent No.3 has placed reliance on G.R. dated 1.4.2021 and notification dated 8.6.2020 to turn down the proposal. However, the notification/ordinance dated 8.6.2020 introduced Rule 41A of the MEPS rules de-hors procedure prescribed under clause (a) of sub clause (2) of Article 213 of the Constitution of India as it has not been approved by both the houses of Assembly. He would further submit that this Court in W.P. No. 1497 of 2018 had interpreted the provision of Rule 41 of the MEPS Rules and upheld the powers of management to transfer employee from unaided to aided post. He would make reference to para.23 of the aforesaid judgment to contend that condition of 4 years service on unaided division is not mandatory for transfer on aided post.

4. Mrs. R.P. Gaur, learned AGP for respondent State and Mr. S.B. Pulkundwar, learned Advocate for respondent No.3 supports the impugned order contending that Rule 41A has been brought in vogue since 8.6.2020, which specifically deals with conditions of transfer of teachers from unaided to aided post or division and submits that the impugned order is in consonance with the amended provision, since the transfer of the petitioner is after introduction of Rule 41-A. According to them petitioner cannot seek exception to conditions in said Rule.

5. We have considered the submissions advance on behalf of

learned advocates appearing for the respective parties. It is not in dispute that the petitioner has been appointed as Assistant Teacher on 19.7.2019 on unaided post with respondent No.6 school. After rendering services for almost 3 years, respondent No.5 passed a resolution to transfer the petitioner on aided post. Accordingly, a transfer order dated 13.8.2022 has been issued by the management. The proposal dated 17.8.2022 was forwarded to the Education Officer seeking approval to the transfer of the petitioner, however, vide the impugned order dated 8.11.2022, the proposal came to be rejected giving the reason that the petitioner is not eligible for transfer on aided post as she has rendered services less than 5 years on unaided post.

6. Before we proceed further to consider the contentions of the parties, it would be apposite to refer to Rule 41-A of the MEPS Rules, which has been given effect to, vide notification dated 8.6.2020 and reads as under :-

“41A. Conditions for transfer of teacher from unaided to partially aided or aided school or division. -

1) The management may transfer a teacher from un-aided school or partially aided school to the vacant post in partially aided school or aided school or division only if the following conditions are satisfied, namely : -

a) i) the Management and Education Officer or Deputy Director shall, before making such transfer, verify that there is no surplus persons are available as provided in sub-section (1) of section 5 of the Act;

ii) if the surplus persons are available, the Management shall not make such transfer;

- b) the transfer shall not be made from the teachers of self-financed school of the Management;
 - c) before making such transfer, the teacher should have completed minimum five years continuous service in unaided school or division or partially aided school or division of the Management;
 - d) the transfer shall be made in equal or same cadre. The transfer shall not be made from primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. schools or vice-versa;
 - e) the transfer shall be made only by following the seniority and as per the requirement of the subject;
 - f) before making transfer of a teacher, his appointment should have been approved by the Education Officer or Deputy Director, as the case may be;
 - g) the transfer shall be made on the vacant post;
 - h) the transfer shall be subject to the approval of Education Officer or Deputy Director, as the case may be.
- 2) If the post becomes vacant due to transfer, such vacant post shall be filled as per the procedure provided in Rule 9.
- 3) The transferred teacher shall be eligible for scale of pay and allowances as decided by the Government, from time to time.”

7. A plain reading of the aforesaid provision would depict that the transfer from unaided to aided school or division is permissible subject to compliance of the conditions stipulated in the Rules. Sub-

clause (c) of clause (A) of Rule 41-A stipulates that before making transfer, the teacher should have completed minimum five years of continuous services in unaided division or divisions or partially aided schools or divisions of the management.

8. Indisputably, the petitioner has hardly completed 3 years, as on the date of transfer from unaided to aided division, which violates eligibility criteria of five years service on unaided division. Self same reason is incorporated in the impugned order. Therefore, no fault can be found with the impugned order in the light of statutory mandate, as referred to above, laying down the conditions of transfer of a teacher from unaided to aided division. So far as, another submission advanced by Mr. Panpatte, relying upon the observations of this Court in ***W.P. No. 1493 of 2019 in the case of Surykant Janardan Muge Vs. The State of Maharashtra***, we observe that the said judgment is delivered on 4.7.2019 in terms of Rule 41 of the MEPS Rules i.e. position before the introduction of Rule 41A which is subject matter of consideration in the present case. Therefore, the observations of this Court in the matter *Suryakant Muge* (supra) would not advance the cause of the petitioner.

9. Another submission advanced to assail applicability of Rule 41-A is that amendment is not approved by houses of the legislature, as contemplated under clause(a) of Sub-Section (2) of Article 213 of the Constitution of India. However, in support of such submission, no material is placed before us. We find that the rule has been inserted vide notification No. SANKIRNA/2019/CR- 341/TNT dated 8.6.2020. In absence of any specific material in support of the said contention, we are not inclined to entertain the same. Pertinently, Rule making power of the

State can be found in Section 16 of the MEPS Act, 1977. Sub-clause (e) of clause (2) of Section 16, states as under :-

“that every rule made under this Act shall be laid, as soon as may be, after it is made before each House of the State Legislature, while it is in Session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before expiry of the session immediately following the session, or successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that rule should not be made and, notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done, or omitted to be done under that rule.”

10. If language of the aforesaid rule is considered, it merely mandates that every rule made in this Act shall be laid before each House of the State legislature and only in case, where both Houses agree in making any modification in the rule or that rule should not be made, the decision of both the Houses needs to be notified in the official gazette. It is, therefore, clear that the rules so made does not require approval from both the houses. It only stipulates the powers of both Houses either to modify the rule or refuse approval for publication of the Rules. Therefore, the submission that in absence of approval by both the Houses, the rules cannot be given full effect, does not stand to the scrutiny. It is not the

case of the petitioner that either any modification was suggested or publication was prevented by decision of both the Houses.

11. Resultantly, there is no merit in the writ petition. Same stands dismissed.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-