



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

WRIT PETITION NO.3105 OF 2021

Kharate Sandip Balshiram,
Age-38 years, Occu:Service,
R/o-Gunjalwadi, Taluka-Sangamner,
District-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Principal Secretary
to School Education Department,
Mantralaya, Mumbai-32,
- 2) The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
- 3) Shivalay Sarva Sevabhavi Sanstha,
Gunjalwadi, Taluka-Sangamner,
District-Ahmednagar,
Through its Secretary.

...RESPONDENTS

...
Mr. Shivaji T. Shelke Advocate for Petitioner.
Mr. S.K. Shirse, A.G.P. for Respondent Nos. 1 and 2.
Mr. S.S. Wagh Advocate for Respondent No.3.

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

DATE : 30th JANUARY, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. By invoking the constitutional powers of this Court under Article 226 of the Constitution of India, the petitioner, who is an assistant teacher, has prayed for following relief:-

“(A) Quash & set aside the order dt. 24.12.2020 of Education Officer at Exh.D thereby rejecting the proposal for approval to the transfer of the petitioner as the Asst. Teacher with a further direction to the Education Officer to grant approval to the transfer of the petitioner. ”

3. The petitioner has come with the case that he possesses M.A. B.Ed. Degree and he belongs to O.B.C. category. He was initially appointed as an assistant teacher on D.Ed. pay-scale by respondent No.3 by order dated 7th July 2003 on unaided post. Approval to his services was granted by the Education Officer by order dated 21st November 2011 from the date of his joining. Respondent No.3, the educational institution wherein he is working, runs the secondary school, namely *Dnyandip Madhyamik Vidyalaya* having 5th to 10th standards at village

Gunjalwadi, Taluka-Sangamner, District-Ahmednagar. One Shri Pramod Maruti Gunjal, who was working as assistant teacher in the said school retired on 31st May 2019, on superannuation and therefore, the petitioner became eligible for transfer to the said vacant post and accordingly, he was transferred by order dated 28th November 2020. The management submitted the proposal to the Education Officer seeking approval to the transfer of the petitioner on 14th December 2020, however, it came to be rejected by order dated 24th December 2020. The ground for rejection of the proposal was that as per the letter given by the Commissioner of Education, Pune on 31st March 2017, process of absorption of surplus teachers was going on and therefore the approval cannot be granted. Further, it says that there is no provision for transfer in 100% pay-scale as well as there is no provision of promotion from D.Ed. pay-scale to B.Ed. pay-scale. The third ground for rejection was that the finance department, by Government Resolution dated 4th May 2020, has given instructions for not to grant approval. All the reasons stated are illegal and therefore the impugned order deserves to be set aside. Hence this Petition.

4. Mr. Ashok Nanasaheb Kadus, the Education Officer (Secondary), Zilla Parishad, Ahmednagar has filed affidavit-in-reply on behalf of respondent No.2. According to him, by notification dated 8th June 2020 vide amendment to the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (for short "the MEPS Rules"), Rule 41A, the Government has completely banned the transfers of teachers from primary to higher primary, higher primary to secondary and secondary to higher secondary. Further, ban is also imposed by the School Education and Sports Department, Mumbai by issuing Government Resolution dated 1st April 2021 in respect of transfer of teachers on unequal posts. He, thus justifies the rejection of the proposal.

5. The petitioner has filed rejoinder, wherein by taking recourse to the decision of this Court, he says that the Government Circulars, which are contrary to the provisions of the MEPS Rules, cannot be the ground for rejection of the proposal. He has submitted that he came to be appointed as an assistant teacher on unaided post in D.Ed. pay-scale but in the meantime he has acquired B.Ed. Degree and he is the senior-

most teacher in unaided category and therefore, he was eligible for transfer.

6. Heard learned Advocate Mr. Shelke for the petitioner, learned AGP Mr. Shirse for respondent Nos.1 and 2 and learned Advocate Mr. Wagh for respondent No.3. Perused the Government Resolutions and other documents produced by the petitioner as well as the respondents.

7. The fact which is not in dispute is that the petitioner came to be appointed as assistant teacher on D.Ed. pay-scale on 7th July 2003 and now he has been transferred to the post of B.Ed. pay-scale. This Court in ***Writ Petition No.11648 of 2019 (Sarjerao Dattatray Wagh vs. the State of Maharashtra and others)***, decided on 23rd September 2019, relied on the decision in ***Writ Petition No. 1493 of 2018 (Suryakant S/o Janardan Muge vs. the State of Maharashtra and others)***, with connected writ petitions, by this Court, dated 4th July 2019, laying down the guidelines for considering the proposal seeking approval to the transfer of the assistant teachers from unaided to aided divisions and then disposed of the ***Writ Petition No.11648 of 2019*** by

setting aside the impugned order therein with direction to decide the proposal afresh in view of those guidelines. Herein this case, from the impugned order dated 24th December 2020, we are unable to get whether those guidelines have been followed or not. The guidelines in ***Writ Petition No.1493 of 2018*** are given in Paragraph No.23, which runs thus:-

"23. Upon confirming about the adherence to the seniority list that is those who are transferred to aided post are senior most amongst those working on unaided post and that the roster is maintained, so also their appointments are approved on unaided post, the Education Officer shall grant approvals to their appointments. If the assistant teachers who have been transferred from unaided to aided posts had not completed three years while working on unaided post, they they will be granted approvals as Shikshan Sevaks for a period they would complete three years from the date of their initial appointments and thereafter as assistant teachers. Of course, upon satisfying about the seniority and roster. However, the Education Officer shall not reject the proposal on the ground of circular dated 28.06.2016 and that there is availability of surplus teachers. The Education Officer will have to consider that services of these petitioners are approved on unaided posts."

8. Further, it appears that certain Circulars have been relied upon by the Education Officer while deciding the issue i.e. transfer of an employee from unaided post to aided post, to another school run by the same management. In ***Ajay***

Vishwanath Kharade vs. State of Maharashtra and others, 2022(2) ***Mh.L.J. 649***, the Co-ordinate Bench at Principal Seat, has held that, the Government Resolution dated 1st April 2021 cannot apply retrospectively to the transfer of the petitioner therein as assistant teacher from unaided to aided school, which was the transfer prior to the date of Government Resolution. Herein this case also the transfer is dated 28th November 2020 and the Government Resolution dated 1st April 2021 has also been relied in Paragraph No.7 of the affidavit-in-reply filed by respondent No.2, contending that it imposes ban on transfer of teachers on unequal post. Therefore, we are also of the opinion that the said Government Resolution dated 1st April 2021 has no application to the transfer of the present petitioner which was prior to that date. Further it has been held in ***Ajay Vishwanath Kharade vs. State of Maharashtra and others*** (supra) that the transfer of an employee from unaided post to an aided post in another school run by same management is permissible in terms of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and any Government Circular contrary to the provision under the said Rule cannot override the Rule. Therefore, the said transfer of the present petitioner ought

to have been looked at from the said angle. Of course, this decision in *Ajay Vishwanath Kharade vs. State of Maharashtra and others* (supra) was pronounced on 24th August 2021 i.e. after the impugned order. Thus, on account of two grounds, that the impugned order does not reflect that the guidelines issued in the decision in *Writ Petition No. 1493 of 2018*, dated 4th July 2019 were followed and also that the Government Resolution dated 1st April 2021 cannot be made applicable retrospectively, the impugned order deserves to be set aside.

9. Another fact which is also required to be noted is, as per the record with respondent No.2 it is not clear to the department that the petitioner has acquired B.Ed. Qualification. Therefore, while deciding the proposal if respondent No.2 was in need of any documents, then he was empowered to call for those documents, which course has not been adopted. All these things are prompting us to allow the Petition partly and to remand the proposal to respondent No.2, for its fresh consideration.

10. For the above said reasons, we pass following order:-

ORDER

(I) Writ Petition stands partly allowed.

(II) The impugned order dated 24th December 2020 passed by respondent No.2 rejecting the proposal for approval to the transfer of the petitioner as assistant teacher from unaided post to aided post, stands quashed and set aside.

(III) Respondent No.2 to consider the said proposal afresh. Respondent No.2 can call for the documents, if needed, from respondent Nos.3 and 4, in view of the statement by the petitioner that he has acquired B.Ed. Degree.

(IV) While considering the proposal, respondent No.2 to follow the guidelines laid down in Paragraph No.23 of the decision in ***Writ Petition No.1493 of 2018*** dated 4th July 2019 and the decision in ***Ajay Vishwanath Kharade vs. State of Maharashtra and others*** (supra).

(V) Respondent No.2 to decide the said proposal expeditiously and preferably within a period of FOUR MONTHS from today.

(VI) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE