



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

913 WRIT PETITION NO. 1342 OF 2023

Shaikh Seema Tabbassum Shaikh Osman
VERSUS

The State Of Maharashtra Through Its Secretary And Another
...

WITH
WRIT PETITION NO. 1351 OF 2023

Chaya Rangnath Somwase
VERSUS

The State Of Maharashtra Through Its Secretary And Another
...

WITH
WRIT PETITION NO. 1347 OF 2023

Pradnya Sudam Khose
VERSUS

The State Of Maharashtra Through Its Secretary And Another
...

WITH
WRIT PETITION NO. 1350 OF 2023

Sarika Badrinath Shinde
VERSUS

The State Of Maharashtra Through Its Secretary And Another
...

Advocate for the Petitioner : Mr. V.A. Dhakne
AGP for Respondents: Mr. S.K. Tambe
(in all petitions)
...

**CORAM : RAVINDRA V. GHUGE AND
S. G. CHAPALGAONKAR, JJ.**

Dated : February 14, 2024

FINAL ORDER :-

1. In all these matters, the petitioners belonging to the Educational Institutions, who have been transferred from the unaided D.Ed. Junior College to the Higher Secondary School, by recording their consent, have suffered refusal of approval by the Education Officer, Secondary Zilla Parishad, Beed. The reason for refusing approval is that, since there are surplus teachers, approval cannot be granted.

2. Time and again, we have come across several matters, wherein, the Education Officer refused approval simply by stating in the order that there are surplus teachers and if surplus teachers are available, the approval to the transfer of the teachers from the unaided category to the aided establishment or from the Junior College to the Higher Secondary School, cannot be granted.

3. We find that Rule 41 of the The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short Rules of 1981), more specifically sub-section (5)(a), permits teachers to be transferred from the Junior College of Education to a Secondary School only on their consent. Such transfers are not permissible against their will.

While effecting such transfers, salary scale available to the lower post on which transfer is consented to, would be payable to the said candidate and a higher pay scale drawn by him while being in the junior college, would not be protected.

4. Rule 41-A is introduced by way of an amendment for introducing conditions for transfer of teachers from unaided establishment to partially aided or fully aided school or college. Since Rule 41-A deals with transfer of teachers from the unaided establishment or partially aided establishment to a fully aided establishment, sub-clause below Rule 41-(A), more particularly, clauses b,c,d,e,f,g,h introduced certain strict conditions binding the employer/Educational institution from effecting such transfers. Clause (d) mandates that the transfer shall be made in an equal or same cadre and such transfer shall not be made from a primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. Schools, or vice-versa. However, sub-clause (b) below Rule 41(5) permits transfer of teachers from the secondary school to Junior College, provided that they consent. As such, sub-clause (a) deals with transfer from the Junior College downwards, subject to the consent of the

teachers. Similarly, sub-clause (b) permits a teacher from the school to be transferred to the Junior College within the contours of Rule 41(5). This would be subject to availability of eligible surplus teachers. So also, there would be no protection of pay scale, if teachers volunteer to be transferred from the Junior College to the School. Prima facie, Rule 41 and Rule 41-A operate in different fields. The common factor is, if there are eligible surplus teachers, they have to be given a first preference for absorption.

5. Taking into account the above scenario, this Court has passed an order in on 26.10.2023 in Writ Petition No.14414 of 2021 at Aurangabad (Balaji Datta Ladke Vs. The State of Maharashtra and others), more specifically, in paragraph nos.7 to 13 as under :-

“7. However, we have noticed from several orders passed by the Education Officer while refusing approval to the transfer of the teachers to the aided establishments, that the presence of senior surplus teachers is acknowledged / recorded. However, in our view, it would be appropriate for the Education Officers, while rejecting the proposals of teachers for transfer, to mention the names of those surplus teachers, who are eligible and are senior to the teacher in whose case the proposal has been forwarded. This would give an opportunity to the teacher to know as to who are those surplus teachers who are above him in seniority. We, therefore, direct that the Education Officers, who reject such proposals, would mention names of the eligible

surplus teachers, who are senior to the teacher at issue, in order to let him realize his seniority vis-a-vis, the surplus teachers.

8. We find that the common difficulty with such teachers as well as the Management is that all are in speculation as to whether there are any surplus teachers. To add to their confusion, the Education Officer only writes a particular number of teachers, without giving details. Shri. Mali, learned advocate, is right in contending in the three cases, which are on the production board, as to how the Education Officer on every occasion mentions that there are 95 surplus teachers, when the earlier order is of 13th January, 2023 and the recent order is of 19th April, 2023. He is, therefore, right in submitting that the district-wise list of surplus teachers should be maintained in order to enable either the teachers like the Petitioners or the Management, to verify whether there are any surplus teachers, who have preference over the teachers like the Petitioners.

9. In our view, in this era of Information and Technology, information has to be readily available for any candidate. What we commonly find in such matters is that Managements forward proposals of teachers for transferring them from unaided to partially aided schools / divisions or from partially aided to fully aided schools / divisions. Seldom do we find that the Managements have scrupulously followed various contingencies enumerated in Rule 41A.

10. We, therefore, direct the Education Officers of each Zilla Parishad / District wise, to prepare a subject-wise list of surplus teachers at the district level in order to consider such names at the time of deciding proposals for transfer of teachers, forwarded by Managements. This would also help the Managements as well as the teachers in knowing those surplus teachers, who are senior to such teachers. For example / illustration, if a teacher teaching the subject 'History' can be considered for transfer to the aided school / division in view of a permanent

vacancy, a surplus teacher teaching the same subject, who may be senior to the said teacher can be spotted in the list maintained by Education Officer. The Management can see the presence of that surplus teacher, before deciding to send the proposal of another teacher, in as much as, the Education Officer can deal with a proposal if the Management has lost sight of an eligible surplus teacher, who is senior to the teacher in whose favour the Management has forwarded the proposal. As the law stands today, Rule 41A is enforceable and all the Managements are duty bound to scrupulously comply with the provisions / conditions set out under Rule 41A.

11. In the light of the above, we have perused the judgment delivered by this Court dated 6th July, 2021 in Writ Petition No.7614 of 2020 (Prakash Dattatray Bagul V/s State of Maharashtra and Others), as well as the judgment delivered by a Co-ordinate Bench of this Court at the Principal Seat dated 12th March, 2021 in Writ Petition Stamp No. 93919 of 2020 (Sandhya Balkrushna Teli V/s State of Maharashtra and Others).

12. In view of the above, these petitions are disposed off with a direction to the Education Officer to upload the list of surplus teachers in each Zilla Parishad, district-wise. We direct the Management to strictly follow the conditions set out in Rule 41A of the MEPS Rules and if the present petitioners are eligible as per the scheme of Rule 41A, their proposals may be forwarded as and when they become eligible for approval, to the Education Officer. The Managements shall consider the list before forwarding proposals of its teachers, in as much as, the Education Officer can consider the availability of surplus teachers while deciding such proposals.

13. We direct the learned Registrar (Judicial) of this Court to place this order before the learned Principal Secretary, School Education Department, State of Maharashtra (Respondent No.1) to circulate this order amongst all the

Education Officers and also issue a Circular for the knowledge and assistance of all the Education Officers in the State of Maharashtra, to follow the directions set out in paragraph No. 12, hereinabove.

6. Vide the above reproduced order, we have directed the Principal Secretary to appraise all the Education officers and similar authorities, who are vested with the jurisdiction to deal with such cases, to maintain a list of surplus teachers in the subject wise categories for the District level and also for the schools by uploading names of surplus teachers on the website of the Education Department of the Zilla Parishad. We have also recorded that this would give the school Management as well as the candidates an opportunity to find out available surplus teachers. We have also directed the Management not to transfer the teachers to the partially or fully aided establishment, when such eligible surplus teachers are available on the website of the Zilla Parishad.

7. In view of the above, **these Petitions are partly allowed.** The impugned orders are quashed and set aside. A solemn statement is made by all the Petitioners that they had given their consent, for being sent to the School from a Junior

College and their higher Pay Scale, if any, shall not be protected.

8. The petitioners contend that the pay scale is identical and their grade is the same. Therefore, we direct the Education Officer to reconsider these proposal by keeping in view the availability of eligible surplus teachers, who will have a preferential right over these petitioners. For the said purpose, our directions set out in the order dated 26.10.2023 in Writ Petition no.14414 of 2021 and group of cases, shall be scrupulously followed and the names of eligible surplus teachers would be considered by the Education Officer, who would pass a fresh order, whether the proposals can be accepted or rejected. Let such order be passed within a period of 90 (Ninety) days after scrutiny of the record alongwith reasons. If required, he shall call upon the Head Master to produce the relevant records and address him, if he deems it appropriate.

(S. G. CHAPALGAONKAR, J.)

(RAVINDRA V. GHUGE, J.)

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