



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 2570 OF 2024

RAHUL RAMCHANDRA GOUNDGAVE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

...

Mr. Sambhaji Subhashrao Tope, Advocate for the Petitioner.

Mr. P. S. Patil, Addl. GP for Respondent-State.

Mr. A. R. Nikam, Advocate for Respondent No.2.

Mr. Vaibhav Pawar, Advocate for Respondent Nos.3 and 4.

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

DATED : 06th MARCH, 2024.

P.C.

1. The present petition has been filed for following reliefs:

"B. This Hon'ble Court, by issue of Writ of certiorari or Order or direction in the like nature, may kindly quashed and set-a-side the impugned order dated 01/02/2024 issued by the Respondent No.02 Education (Primary) Zilla Parishad, Parbhani (Exh-'J') and may kindly direct to issue the approval to the proposal of the petitioner for transfer from partially aided to 100% aided post.

C. This Hon'ble Court, by issue of Writ of certiorari or Order or direction in the like nature, may kindly quashed and set-a-side the impugned Government Circular dated 01/12/2022 (Exh- 'T') issued by the Respondent No.01 which is contrary to the MEPS Rules-1981.

D. This Hon'ble Court, by issue of Writ mandamus or Order or direction in the like nature, the Respondent No.02 Education Officer (Primary) Z.P. Parbhani may kindly be direct to sanction the proposal of the petitioner and thereby may kindly sanction 100% grant-in-aid approval to the petitioner and to pay regular salary accordingly."

2. The learned A.G.P. waives notice for respondent no.1. Mr. Nikam, learned Advocate waives notice for respondent no.2. Mr. Pawar, learned Advocate waives notice for respondent nos.3 and 4.

3. We have heard and perused the documents filed on behalf of the petitioner.

4. The petitioner was initially appointed as Assistant Teacher in respondent no.4-School on 01.09.2010 on unaided post. The approval to the appointment was granted by respondent no.2 on 28.03.2012. It appears that, respondent no.4 had forwarded the proposal in respect of the petitioner on 07.11.2023 for approval of transfer of the petitioner from unaided to aided post. It came to be rejected by respondent no.2 on 01.02.2024 on the ground that the process of transfer from private unaided to aided school has been suspended in view of the Government Circular dated 01.12.2022. The petitioner is pointing out the decision in Writ Petition No.2836/2023 (Late Madanlalji Kisanlalji Sancheti Seva Samiti, Malkapur, through its Secretary and others Vs. State of Maharashtra, through its Secretary, Education and Sport Deptt. Mumbai and anr.) decided by this Court Bench at Nagpur on 28.04.2023 in which reliance was place on Writ Petition No.8215/2022 (Friends Social Circle, Akola and others Vs. The State of Maharashtra and another) wherein it was considered that the Government Circular dated 01.12.2022 was permitted to operate in the manner that would not be in derogation of Rule 41A of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981. When similar order was before this Court Bench at Nagpur, it was then observed that the rejection of the said proposal for grant of approval on the said ground that transfer from unaided to aided post does not appear to be justifiable and the proposal should have been considered without giving effect to the Government Circular dated 01.12.2022. Here also we are taking same view, in view of the fact that the exercise of transfer of the petitioner from unaided to aided post was stated to be taken under Rule 41-A of the MEPS Rules, 1981. Definitely, the case is made out for reconsideration by respondent no.2. Hence, following order:

ORDER

- a. Writ Petition is allowed.
- b. The communication dated 01.02.2024 issued by respondent no.2-Education Officer (Primary), Zilla Parishad, Parbhani is set aside.
- c. The respondent no.2-Education Officer should reconsider the proposal dated 07.11.2023 and pass a fresh order without applying provisions of the Government Circular dated 01.12.2022. Necessary decision in this regard be taken within a period of four weeks of receiving copy of this order.
- d. Authenticate copy allowed.
- e. The petitioner may submit the said copy to respondent no.2.
- f. The respondent no.2 after taking decision should communicate it to the petitioner.
- g. Writ Petition is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE