



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4606 OF 2021

Chandrakant S/o. Bhaskar Sanap
Age. 42 years, Occ. Service as Assistant Teacher,
R/o. Mehrun, Tq. & Dist. Jalgaon.Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
3. Jai Bhawani Shikshan Mandal,
Mehrun, Tq. & Dist. Jalgaon
Through its President/Secretary
4. Yadav Devchand Patil (i.e. Y.D. Patil)
Madhyamik Vidyalaya, Mehrun,
Tq. & Dist. Jalgaon,
Through its Head MasterRespondents

Advocate for Petitioner : Mr. V.S. Panpatte
AGP for Respondent Nos. 1 & 2 : Mr. S.P. Joshi

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 07 AUGUST 2024

JUDGMENT [*Shailesh P. Brahme, J.*] :

Rule. Rule is made returnable forthwith. Heard both
sides.

2. Being aggrieved by defective order of approval passed by respondent no. 2 – Education Officer on 19.11.2018, petitioner is approaching this Court. Petitioner is transferred teacher who was seeking approval on 100% aided division with effect from 01.07.2018.

3. Petitioner was appointed on 17.06.2013 in the respondent no. 4 – School on unaided division. His appointment was approved by order dated 14.08.2013 on non grant basis with effect from 17.06.2013. He was transferred to 100% aided post with effect from 01.07.2018. After transfer, the management submitted proposal seeking approval. Respondent no. 2 – Education Officer by impugned order granted approval from the date of transfer but subject to clause no. 5 of government circular dated 28.06.2016.

4. Learned counsel for the petitioner submits that impugned order is patently illegal as the petitioner was appointed in unaided section from 17.06.2013 and after completion of five years, he was transferred to the aided section vide order dated 02.07.2018. He would submit that circular dated 28.06.2016 has no statutory force and it is not enforceable. For that purpose, he

would rely on judgment in the matter of *Suryakant S/o. Janardan Muge Versus The State of Maharashtra*, passed by this Court in Writ Petition No. 1493/2018, *Miss. Devkar Dipali Kisan and Others Versus The State of Maharashtra and Others*, passed by this High Court in Writ Petition No. 5313/2017, *Vijendra S/o. Uddhavrao Dhapse and Another Versus The State of Maharashtra and Others*, passed by this High Court in Writ Petition No. 3328/2022 and *Sandhya D/o. Balkrushna Teli and Others Versus The State of Maharashtra and Others*, passed by Bombay High Court in Writ Petition (Stamp) No. 93919/2020.

5. Learned AGP supports impugned order. He submits that circular dated 28.06.2016 would indicate the modality in case a teacher is transferred after completion of five years of service from unaided division to aided division.

6. Having considered rival submissions of the parties, what is required to be seen is as to whether circular dated 28.06.2016 is applicable. This circular was considered by the co-ordinate benches on number of occasions. They are *Pramod Prabhakar Pokale Versus State of Maharashtra and Others* in Writ Petition No. 6114/2018 on 14.01.2019, *Suryakant Janardan Muge*

Versus The State of Maharashtra and others in Writ Petition No. 1493/2018, *Miss. Devkar Dipali Kisan and Others Versus The State of Maharashtra and Others* in Writ Petition No. 5313/2017, *Nagnath Harishchandra Chavan Versus The State of Maharashtra and Others* in Writ Petition No. 13676/2018, *Dilip Venkatrao Boienar Versus The State of Maharashtra and others* in Writ Petition No. 7841/2019. It has been consistently held that circular dated 28.06.2016 has no statutory force. It is apposite to reiterate what is observed by division bench in the matter of *Miss. Devkar Dipali Kisan and Others* (supra). Its paragraph no. 12 is as follows :

“12. It can thus be clearly seen that the Division Bench has clearly held that, Clause-3, Sub-Clauses 1 and 2 of the G.R. dated 28th June, 2016 have been held to be contrary to the view taken by the various Division Benches of this Court. We are in complete agreement with the view taken by the Division Bench at Aurangabad. It is further to be noted that the Circular dated 28th June, 2016 which provides for those instructions can hardly be said to be government instructions. It has no statutory force in law. When Rule 41 of the M.E.P.S. Act which is the subordinate legislation, the administrative decisions which run contrary to them cannot be held to be valid in law. As such, though the learned Judges of the Division Bench at Aurangabad have not considered this aspect, we find that since Clauses-1 and 2 of the said Circular, run contrary to the provisions of the subordinate legislation as found in Rule 41, the same would not be valid in law. In the result, we are convinced with the view taken by the various Division Benches and that transfer of a Teacher from unaided post to aided post is permissible in law. Equally, a transfer of an employee from unaided post to an aided post in another School run by the same Management would also be permissible in law.”

7. In view of above legal position circular dated 28.06.2016, cannot be made applicable to the proposal of the petitioner. There is no dispute that the petitioner was transferred in consonance with Rule 41 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and the Rules, 1981. He was senior-most teacher. Impugned order qualifies the approval with the provisions of clause 5 (B) of circular dated 28.06.2016.

8. Petitioner had put in service of more than five years in unaided section. He had received approval also for initial period of two years on probation. He should not have been approved stage-wise starting with 20% of grant-in-aid payable by the Government, after his transfer. Petition deserves to be allowed.

9. Rule is made absolute in terms of prayer clause 'B', which reads thus :

"B. By writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondent no. 2 — Education Officer (Secondary), Jalgaon may please be directed to grant approval to the transfer of the petitioner as Assistant Teachers on 100% aided division in the respondent no. 4 — Secondary School in regular pay scale from 01.07.2018 by setting aside the condition nos. 5(b) (1 to 5) of Government Circular dated 28.06.2016 in the approval order dated 19.11.2018 at Exhibit "F" and accordingly release arrears of salary of the petitioner within a period of eight weeks."

10. No order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Thakur-Chauhan/-