



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

946 WRIT PETITION NO. 3072 OF 2023

Lalkrishna Vishweshwar Chincholkar,
age 32 years, Occ. Service as Assistant Teacher,
R/o C/o Shri Chakrawati Ashok Vidyalaya,
Palsa, Tq. Hadgaon, Dist. Nanded. Petitioner.

VERSUS

1. The State of Maharashtra Through It's
Secretary, School Education Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Nanded.
4. Shri Chakrawati Ashok Vidyalaya,
Palsa, Tq. Hadgaon, Dist. Nanded.
Through it's Headmaster. Respondents.

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Advocate for the Petitioner : Mr. A.V. Patil Indrale
AGP for Respondents 1-3 : Mr. K S Patil
Advocate for Respondent 4 : Mr. A.N. Gaddime

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

Dated : March 20, 2024

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner approached this Court under Article 226 of the Constitution of India, impugning the communication dated 3.8.2019 issued by the Education Officer, Secondary, Zilla Parishad, Nanded, thereby restricting grant-in-

aid to the post of transfer of the petitioner, while approving his transfer from the unaided to aided Division. The petitioner contend that he is qualified as H.Sc. D.Ed. On 9.12.2013 he was appointed as an Assistant Teacher in respondent no.4-School on unaided Division. His services were approved by the Education Officer vide order dated 26.12.2013. On 29.4.2016 permanent approval was granted to his appointment on unaided basis. In the year 2018, on retirement of assistant teacher in respondent no.4 school, a post on grant-in-aid Division became vacant. Considering administrative exigency, the Management transferred services of Petitioner against said vacancy. Proposal was forwarded for approval to the transfer of the petitioner from unaided to aided division. Although, Education officer accorded approval to the transfer of the petitioner, it is only with 20% grant-in-aid. According to the petitioner, he had served for the period of six years on unaided post as a permanent teacher. He has been transferred against vacancy eligible for 100% grant-in-aid. Therefore, restriction imposed to release 20% grant-in-aid while approving transfer of the petitioner on vacant post is unjust and arbitrary so also contrary to various pronouncements of this Court in the subject matter.

2. Mr. A.V. Indrale Patil, learned advocate appearing for the petitioner placed his reliance on the judgment of this Court in case of **Suryakant Janardhan Muge Vs. State of Maharashtra and others (WP 1493 of 2018)** decided on 4.7.2019 and in the matter of **Ravindra Irwantrao Dase Vs. The State of Maharashtra (WP 5794 of 2021) dated 6.4.2021** to contend that the impugned order is passed relying upon the circular dated 28.6.2016. This Court has considered the

validity of clauses incorporated in said circular and found them to be invalid and contrary to the statutory provisions contained under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. He would therefore submit that the impugned order is not sustainable in law to the extent of it restricts grant-in-aid to the extent of 20% to the petitioner.

3. Mr. K.S. Patil, learned AGP appearing for respondent nos.1 to 3 supports the impugned order.

4. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective parties. We have perused the record tendered into service. We have gone through the judgments relied upon by the petitioner.

5. There is hardly any dispute as regards to the factual aspects of the matter. The petitioner holds requisite qualification for appointment as Assistant Teacher. He was appointed on 9.12.2013 in respondent no.4 School. It was approved by the Education Officer vide order dated 26.12.2013 on probation and on completion of the probation period, permanent appointment order and approval has been issued vide order dated 29.4.2016. On 30.6.2018 a post of Assistant Teacher eligible for 100% grant-in-aid became vacant with respondent no.4-School. The petitioner being eligible to occupy such vacancy, the Management exercised its powers under Rule 41 of MEPS Rules and transferred services of the petitioner against vacancy vide order dated 3.8.2019. Such transfer is approved by the Education Officer. However, with 20% grant-in-aid.

6. It is trite that the Management has every right to transfer the employee from unaided to aided post in terms of Rule 41 of the MEPS Rules. The petitioner has served on unaided post for more than five years and after vacancy on aided section, he has been transferred to present post. The decision of the Management appears in tune with the administrative exigency for convenience of better administration of the school. In such situation, when the petitioner has been transferred against vacancy eligible for 100% grant-in-aid, restriction of approval to his transfer with 20% grant-in-aid cannot be countenanced. This Court in case of **Ravindra Irwantrao Dase Vs. State of Maharashtra (WP 5794 of 2021)** after considering the relevant provisions of law, observed as under :-

“5] In case the petitioners are transferred on 100% grant-in-aid posts since the date of completion of three years, they shall be considered on 100% grant-in-aid posts. In case the petitioners are transferred on grant-in-aid posts, for example on 60%, then from the date of transfer, they would be on 60% grant-in-aid posts, but if the petitioners, after having completed three years on unaided posts and are transferred on 100% grant-in-aid posts, their services will have to be considered on 100% grant-in-posts.”

7. Taking into consideration the aforesaid observations, the impugned order to the extent it approves transfer of services of the petitioner with 20% grant-in-aid is unsustainable and liable to be quashed and set aside. The petitioner is entitled to receive benefits from the date of his transfer on aided post with 100% grant-in-aid. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition is allowed in terms of prayer clause “B”.
- ii. Writ Petition is accordingly disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

aaa/- (f)