



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4283 OF 2022

Vikas s/o Gulabrao Patange,
age 31 years, Occ. Service as Teacher,
R/o. Balapur, Tq. Kalamnuri,
Dist. Hingoli.

Petitioner

Versus

1. The State of Maharashtra,
Through it's Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad, Hingoli.
3. Bal Shikshan Prasarak Mandal,
Girgaon, Tq. Vasmat, Dist. Hingoli,
Through it's Secretary.
4. Kai. Bapurao Deshmukh Secondary and
Higher Secondary School,
Address – Dongar Kada,
Tq. Kalamnuri, Dist Hingoli,
Through its Head Master.

Respondents.

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Mr. S.S. Tope, advocate for petitioner.
Mr. S.K. Shirse, AGP for Respondent Nos.1 and 2.
Mr. V. U. Pawar, Advocate for Respondent Nos.3 and 4.

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

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Reserved on : 28th February, 2024.
Pronounced on : 12th March, 2024.

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JUDGMENT :- (Per S.G.Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The Petitioner approaches this Court under Article 226 of the Constitution of India impugning the order dated 7.7.2021 passed by the Respondent No.2-Education Officer (Secondary), Zilla Parishad, Hingoli and further seeks to issue writ of mandamus, directing Respondent No.2-Education Officer, Zilla Parishad, Hingoli to grant approval to the transfer of the Petitioner on the post of 100% (Hundred Percent) grant-in-aid and pay consequential salary.

3. Mr. Tope, learned advocate appearing for the Petitioner submits that petitioner was appointed as an Assistant Teacher by Respondent No.3 on the vide order dated 19.6.2012. His appointment was on unaided post. His appointment was approved by the Education Officer (Primary). On completion of Probation period, permanent approval has been granted to his appointment on unaided basis.

4. On 14.12.2019, Mr. Umakant Chapare, expired. He was working as Assistant Teacher on 100% grant-in-aid post and teaching English subject. Therefore, need arose to fill in said vacancy. On 1.1.2020, the Management passed Resolution to transfer the Petitioner against the said vacancy. Proposal was forwarded for grant of approval to such transfer. The Education Officer vide his order dated 28.7.2020 accorded

approval to appointment of the Petitioner. However, it was with grant-in-aid to the extent of 20% in terms of the Government Circular dated 16.7.2016.

5. The Petitioner represented Management as well as Institution that since his appointment is made against vacancy arose on death of Mr. Umakant Chapare, who was serving on the post, receiving 100% grant-in-aid, the petitioner ought to have been granted the same benefit. The Respondent No.3 Management issued fresh transfer order dated 13.4.2021 to accommodate the Petitioner on clear vacant post, eligible for 100% grant-in-aid, as against the vacancy that arose due to sad demise of Mr. Umakant Chapare. Proposal for transfer order was forwarded to the Education Officer seeking approval. However, vide impugned order dated 7.7.2021 education officer rejected proposal, giving reason that at the time of transfer of the Petitioner i.e. on 1.1.2020, the circular dated 28.6.2016 governing transfers was in force. It provisioned for only 20% grant-in-aid for first year immediately after transfer of the teacher from unaided to aided post. According to Mr. Tope, such an order is arbitrary, illegal and sans reasons.

6. Mr. S.K. Shirse learned AGP appearing for respondent Nos.1 and 2 strongly opposes the prayer. He would point out that petitioner's transfer was approved by the Education Officer in terms of the Circular dated 28.6.2016 which was governing the field. Subsequent amendment in Rule 41(A) of MEPS Rules, introduced from 8.6.2020 cannot

be applied in the present case. The petitioner had given undertaking that he is ready to accept his transfer against 20% grant-in-aid. Only because subsequent amendment in MEPS Rules and the Government Resolution dated 1.4.2021 permits transfer on the aided post with 100% grant-in-aid, the petitioner cannot seek such benefit once he has accepted transfer order and conditional approval with 20% grants.

7. We have considered the submissions advanced by the respective parties. We have perused the record. It is not disputed that Petitioner possess qualification as BA.,D.Ed (English) and he was appointed by the Respondent No.3 vide order dated 30.6.2012 on the post of 'Assistant Teacher' on non-grant-in-aid basis. His appointment was approved by the Education Officer and on completion of probation period, he was granted permanent approval. Thereafter, petitioner was transferred against vacancy eligible for 100% grant-in-aid that was occupied by Mr. Umakant Chapare, who was a Teacher of English subject. It appears that in terms of circular dated 28.6.2016 the petitioner was accommodated with provision of 20% grant-in-aid for first year of his appointment, which was to be enhanced in phased manner.

8. This Court in the case of **Suryakant Janardhan Muge Vs. State of Maharashtra in Writ Petition No.1493 of 2018** considered the scope of Section 41 of the MEPS Rules, which empowers the Management to transfer the teachers. It is held that there is no bar for transfer of the teachers from

unaided post to aided post. Further, the scope of circular of 2016 has been considered by this Court in Writ Petition No.5313 of 2017 at Principal Seat, wherein it is held that the circular can hardly be said to be administrative instructions. It has no statutory force. Rule 41 framed under the MEPS Act is subordinate legislation, administrative decision which run contrary to rules cannot be held to be valid in law. Accordingly, it was held that clause nos.1 and 2 of said circular being inconsistent with Rule 41 would not be valid in law.

9. It is, therefore, apparent that earlier approval granted by the Education Officer, thereby accommodating the petitioner on the transferred post with 20% assistance of grant-in-aid is based on invalid clauses of circular of 2016. Hence cannot be sustained in law.

10. When the Petitioner has been transferred against the vacancy eligible for 100% grant-in-aid, there was no impediment in granting him approval with 100% grant-in-aid. Pertinently, petitioner was a confirmed and permanent teacher at the time of his transfer. Once, Education Officer found the petitioner to be fit for accommodation against vacancy and granted approval, the restriction to such approval with 20% grant-in-aid cannot be countenanced. Resultantly, we proceed to pass the following order.

ORDER

- i. Writ Petition is hereby **allowed**.

- ii. The impugned communication dated 7.7.2021 issued by respondent no.2-Education Officer (Secondary), Zilla Parishad, Hingoli is hereby quashed and set aside.
- iii. The Respondent no.2 shall grant approval to the appointment of the Petitioner on the post with 100% grant-in-aid from the date of his transfer i.e. 12.04.2021 against the clear and vacant post in terms of the proposal dated 14.5.2021 submitted by respondent no.3.
- iv. Writ Petition is accordingly disposed off. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

aaa/- (f)

aaa/-