



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

WRIT PETITION NO.6610 OF 2022

Shrirang S/o. Pandharinath Padature,
Age: 37 Years, Occu: Service as Assistant Teacher,
R/o. Yashwant Higher Secondary School,
Ahmedpur, Tal. Ahmedpur, Dist. Latur. ..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32
2. The Deputy Director of Education
Latur Region, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Latur,
Taluka District Latur
4. Tagore Shikshan Samiti,
Ahmedpur, Tal. Ahmedpur, Dist. Latur,
Through its Secretary.
5. Yashwant Secondary and Higher Secondary Vidyalaya,
Ahmedpur, Tal. Ahmedpur, Dist. Latur,
Through its Headmaster/Principal. ..Respondents

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Mr. V. D. Gunale, Advocate for the Petitioner.
Mr. P. S. Patil, Addl. GP for Respondent Nos.1 to 3.
Mr. V. S. Kodale, Advocate for Respondent Nos.4 and 5.

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

**JUDGMENT RESERVED ON :- 04th APRIL 2024.
JUDGMENT PRONOUNCED ON :- 15th APRIL 2024.**

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

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning order dated 20.04.2022 passed by respondent no.2-Deputy Director of Education, thereby declining to grant approval to his transfer from unaided post to aided post in respondent no.5-School. The petitioner seeks consequential Writ of Mandamus to grant approval to the proposal made by the Management.

3. The petitioner contends that in response to the advertisement dated 04.04.2013, he applied for the appointment on the post of an Assistant Teacher in respondent no.5-School, run by respondent no.4-Trust. He was interviewed and being qualified, eligible and suitable came to be appointed against the reserved post for OBC category. He joined the service in pursuance of the appointment order. Since 2014, he served as an Assistant Teacher on non grant-in-aid basis. His services were approved by the Education Officer as an Assistant Teacher on non-grant basis. Since, his performance was up to the mark and respondent no.5 was in need of an Assistant Teacher to occupy the vacancy that arose on account of unfortunate death of Shri. B. S. Biradar, he has been transferred vide order dated 28.02.2020 from unaided to aided post in the same school. The proposal for approval to his transfer was forwarded to respondent no.2-Deputy Director of Education. However, respondent no.2-Deputy Director of Education declined to grant approval relying upon Clause 4 of the Government Resolution dated 01.04.2021. According to the petitioner, the order is unsustainable in law and consequential directions are required to be issued to the Deputy Director of Education by setting aside the impugned order.

4. The respondent nos.4 and 5 filed affidavit in support of the petitioner, whereas respondent no.2-Deputy Director of

Education filed his affidavit contending that the transfer of the petitioner is from Secondary School (unaided) to Higher Secondary School (aided), which is inconsistent with the existing Rules. Affidavit states that such a transfer would be in contravention with the Government Resolution dated 01.04.2021. Therefore, the impugned order is justified.

5. We have heard Mr. Gunale, learned Advocate appearing for the petitioner, Mr. Patil, learned Addl. G.P. for respondent nos.1 to 3 and Mr. Kodale, learned Advocate for respondent nos.4 and 5.

6. Mr. Gunale, learned Advocate appearing for the petitioner would submit that the petitioner possess requisite qualification. He discharged his duties on unaided post for more than five years. Considering the administrative exigencies of the Management, the petitioner has been transferred against the vacancy in Higher Secondary School. He would submit that looking to the provisions of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short 'MEPS Rules, 1981), there is no prohibition for such transfer. The petitioner would be filing an undertaking to accept salary commensurate to his post in Secondary School. Mr. Gunale, learned Advocate places his reliance upon the order passed by Nagpur Bench of this Court in case of ***Akola Education Society & Ors. Vs. State of Maharashtra & Ors., Writ Petition No.7030/2019*** dated ***05.11.2019*** to contend that such transfer is permissible provided that the pay in the Junior College shall be fixed at the same stage of pay as the existing pay or at the minimum of scale of pay in the Junior College, whichever is higher.

7. Mr. Patil, learned Addl. G.P. appearing for respondent nos.1 to 3 would submit that in view of the provisions of Rule 41-A

of the MEPS Rules, 1981, the transfer from Secondary School to Higher Secondary School is prohibited. Similar was the prescription under Government Resolution dated 01.04.2021, particularly Clause 4. The Deputy Director of Education taking into consideration the aforesaid aspects rightly declined to grant approval.

8. We have considered the submissions advanced on behalf of the learned Advocates appearing for the respective parties. The provisions of Rule 41 of the MEPS Rules, 1981 empowers the Management to transfer the employee from one school to other school or one division to other division in the same school. Rule 41 of the MEPS Rules, 1981 reads thus:

“41. Transfers. -

(1) Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned, if it is administratively convenient to do so.

(2) Save in exceptional cases, and unless reasons are recorded in writing by the Management, such transfers shall not be effected in the middle of the term.

(3) The Management shall see that the transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfer do not result into loss in the pensionary benefits as admissible to them.

(4) The expenditure on Travelling allowance and Daily allowance, if any, at the rates applicable to the Government employees of the comparable status, shall be borne by the

Management. If the transfer is at the request of the employee, this expenditure shall be borne by the employee concerned. Provided that the transfer involves change of headquarters, the joining time to be allowed to an employee shall be limited to six days (excluding Sunday) and actual days of journey. Subject to this limit, the period of joining time shall be treated as "duty" for all purposes :

Provided that, an employee shall not be entitled to joining time, if transfer is effected during the vacation.

(5) Where a Management runs a secondary school or secondary schools and a Junior College of Education -

(a) Teachers in a Junior College of Education shall not be transferred to a secondary school against their will. Such transfers may, however, be made if they are at employees own requests, subject to availability of vacancies in secondary schools. In the event of such a transfer, the pay drawn by the teacher in the Junior College of Education shall not be protected. He shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly refixed on his joining the secondary school.

(b) Teachers in secondary school shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made if they are at the employees' own requests, subject to the following conditions, namely :

(i) Vacancies should be available in the Junior College of Education;

(ii) The concerned employee shall retain the same place in the common seniority list; and

(iii) Their pay in the Junior College of Education shall be fixed at the same stage of pay as their existing pay or at the minimum of the scale of pay in the Junior College of Education, whichever is higher.]'

9. It appears that Rule 41-A has been introduced in the MEPS Rules, 1981 with effect from 01.03.2020. However, in this case issue of transfer effected on 28.02.2020 is subject matter. The amended provision of Section 41-A cannot be retrospectively made applicable in the facts of the case. So far as Government Resolution dated 01.04.2021 is concerned, this Court has already held that said Government Resolution is invalid, so far as it is inconsistent with the statutory provisions. In that view of the matter, case of the petitioner will have to be examined in terms of Rule 41 of the MEPS Rules, 1981, as it stands on 01.03.2020. The bare reading of the Rule 41 would show that there is no prohibition for transfer of the employee from unaided to aided division. Sub-Clause 5 of Rule 41 deals with the transfer by the Management, who runs Secondary School and Junior College of Education. In that case, the law stipulates that pay shall be adjusted. However, such stipulation is not found in case of transfer from Secondary School to Higher Secondary School or Higher Secondary School to Junior College. Overall survey of the aforesaid provisions would show that the impugned order is based on misconception of applicable provisions of law. The issue raised in the present case is squarely covered by the judgment of this Court in case of **Akola Education Society & Ors.** (supra). We are inclined to follow the same course. Consequently, the impugned order deserves to be quashed and set aside. Hence, we proceed to pass following order:

ORDER

a. Writ Petition is partly allowed.

b. The impugned order dated 20.04.2022 passed by respondent no.2-Deputy Director of Education, Latur Region, Latur is hereby quashed and set aside.

c. The respondent no.2-Deputy Director of Education, Latur Region, Latur shall forthwith grant approval to the transfer of the petitioner from unaided to aided school.

d. In case of the difference in pay scale, the pay of the petitioner be fixed at the same stage of pay as the existing pay or at the minimum of scale of pay in the Higher Secondary School, whichever is higher.

e. Writ Petition is disposed of.

f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE