



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 5361 OF 2023

SINAGAR MANJUSHA MACCHINDRA
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE PRINCIPAL
SECRETARY AND OTHERS

WITH

WRIT PETITION NO. 5388 OF 2023

SHARAD KHANDERAO NIKAM
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE PRINCIPAL
SECRETARY AND OTHERS

...
Mr. Shivaji T. Shelke Advocate for Petitioners.
Dr. Kalpalata Patil-Bharaswadkar, A.G.P. for Resp. Nos.1 and 2.
Mr. Shriniwas S. Wagh Advocate for Resp. No.3.
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CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.

DATE : 3rd MAY 2024

ORDER :

1. Both the Petitions are filed for challenging the impugned order dated 18th November 2022 passed by the Education Officer (Secondary), Zilla Parishad, Ahmednagar rejecting the proposal

of the management for transfer of the petitioners from unaided to aided posts.

2. Heard learned Advocate Mr. Shelke for the petitioners, learned AGP Dr. Kalpalata Patil-Bharaswadkar for respondent Nos.1 and 2 and learned Advocate Mr. Wagh for respondent No.3. Perused affidavit-in-reply filed by Mahavir Uddhav Dhodad, Superintendent, Class-II, supporting the impugned order.

3. From the impugned order, it appears that the Education Officer, who was considering the proposal, had not applied his mind. The date of the transfer order is 13th June 2022 and therefore, it ought to have been seen by the Education Officer as to whether there is proper compliance of the provisions and the procedure adopted is correct or otherwise. Therefore, limited inquiry was contemplated while dealing with such proposal and if there were any deficiencies of the documents, the Education Officer could have asked the management to produce the same before ultimate decision of rejection or grant of approval being taken. This Court time and again has stated that such approach of the Education Officers or the other officers in the Education Department who are dealing with the proposals, to reject the

proposal when they found deficiencies of documents in the proposal, has to be deprecated. In fact they should call upon the management to produce those documents. In other words, an opportunity should be given to the management to produce those documents and if those documents are produced, the decision accordingly has to be taken and if those documents are not produced then also the proposal has to be decided as per its own merits.

4. Since the impugned order dated 18th November 2022 is without application of mind, it deserves to be set aside. Accordingly, it is set aside. The matters are now relegated to the Education Officer (Secondary), Zilla Parishad, Ahmednagar. The Education Officer may give an opportunity to the management to produce the documents which are found to be deficit upon verification of the proposals. Such communication should be in writing, giving sufficient opportunity to the management. After production of the documents (and also non-production of the documents) respondent No.2 – Education Officer (Secondary) to take the final decision taking into consideration the policies, procedure laid down and the statutory provisions under Rule 41-A of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981; on its own merits within the period of two months after giving an opportunity to the management, as per his volition.

5. With these directions, both the Writ Petition stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAY24