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WP 13003 W 8524.23.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13003 OF 2023

Satish S/o. Balasaheb Nirwal,
Age 35 years, Occ. Service,
R/o. Somthana, Taluka Manwat
dist. Parbhani.

.. Petitioner

versus

1. The State of Maharashtra,
through its Secretary
Education and Sports Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education
Aurangabad Division, Aurangabad.
3. The Education Officer (Secondary)
Zilla Parishad, Parbhani.
4. Pathri Taluka Shikshan Prasarak Mandal,
Manvat, Tal. Manvat, Dist. Parbhani.
Through its Secretary
5. Smt. Shakuntalabai Kanchanrao Katruwar
Vidyalaya, Manvat, Tal. Manvat, Dist. Parbhani
through its Head Master.
6. Late Sa. Go. Nakhate, Secondary and
High Secondary School, Devnandra,
Tal. Pathri, Dist. Parbhani,
through its Head Master.
7. Siddharth Uttam Waghmare,
Age 43 years, Occ. Service,
R/o. Dnyaneshwar Nagar, Pathri,
Tal. Pathri, Dist. Parbhani.

.. Respondents.

Mr. Ramesh I. Wakade, Advocate for petitioner

Mr. S.K. Shirse, AGP for respondent Nos. 1 to 3.
Mr. R.R. Chandak, Advocate for respondent Nos. 4 and 6.
Mr. S.B. Choudhari, Advocate for respondent NO.7.

with

WRIT PETITION NO. 8525 OF 2023.

Siddharth S/o. Uttam Waghmare,
Age 43 years, Occ. Service,
R/o Dnyaneshwar Nagar, Pathri,
Tal. Pathri, Dist. Parbhani.

.. Petitioner

versus

1. The State of Maharashtra,
through its Secretary
Education and Sports Department,
Mantralaya, Mumbai – 32.
2. The Education Officer (Secondary)
Zilla Parishad, Parbhani.
3. Pathri Taluka Shikshan Prasarak Mandal,
Manvat, Tal. Manvat, Dist. Parbhani.
Through its Secretary/President.'
4. Kai. S. G. Nakhate, Secondary and
High Secondary School, Devnandra,
Tal. Pathri, Dist. Parbhani,
through its Head Master.

... Respondents.

Mr. S.B. Chaudhari, Adv. For petitioner
Mr. S.K. Shirse, AGP for respondent Nos. 1 and 2.
Mr. R.R. Chandak, Advocate for respondent Nos. 3 and 4.

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

RESERVED ON : 30TH APRIL, 2024
PRONOUNCED ON : 7TH MAY, 2024.

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. Rule. Rule made returnable forthwith. Since controversy raised in these writ petitions is as regards to grant of approval to the transfer from un-aided to aided post, on the basis inter-se seniority of Assistant teachers on establishment of schools run by same management, both these petitions are heard and decided together by consent of advocates appearing for respective parties.

3. The petitioner in W.P. No. 13003 of 2023 approached this Court under Article 226 of the Constitution of India impugning the order dated 7.8.2023 thereby declining proposal seeking approval to his transfer from partially aided to 100% aided post of Assistant Teacher.

4. Mr. Wakade, learned counsel for the petitioner submits that in pursuance of advertisement dated 5.6.2013, issued by respondent No.4 - Management, petitioner responded and after going through the selection process, came to be appointed as Assistant Teacher with respondent No.5 school. His appointment was approved vide order dated 18.10.2013 issued by the Education Officer. On completion of period of probation his services were continued w.e.f. 16.8.2016. Even the continuation of the petitioner has been approved by the Education Officer vide order dated 12.12.2007. After rendering the service of almost ten years on non-grant basis, the respondent No.6 school started receiving 20% grant in aid. On 1.7.2023, a post of Assistant Teacher

eligible for 100% grant in aid had fallen vacant. Consequently, vide order dated 3.7.2023, the management transferred the petitioner as Assistant Teacher on that post. Then proposal was moved for approval to the transfer. However, the Education Officer declined approval merely on the ground that the respondent No.7 (petitioner in W.P. 8525 of 2023) had raised objection as to seniority.

5. Mr. Wakade, would submit that in all 5 employees have been transferred by the management in pursuance of the order passed by this Court in W.P. No. 6010 of 2023. The petitioner has already rendered service of more than 10 years on unaided post. Therefore, he has been transferred to aided post against clear vacancy. The respondent No.7 has never challenged the transfer order issued by the management and directly raised objection before education officer to grant approval to the transfer of petitioner. Therefore, impugned order is not sustainable in law.

6. Mr. S.B. Chaudhari, learned advocate for respondent No.7 submits that this court vide order dated 15.6.2023 passed *in WP No. 6010 of 2023 in the case of Dipali Madhukarrao Patekar and others. Vs. State of Maharashtra*, directed the management to take steps on the request of the petitioners therein for transfer to aided division strictly in accordance with the Rules, regulations and the Govt. Resolutions issued from time to time. He would invite attention of this Court to the combined seniority list for the academic year 2013-14 which depicts that the name of the petitioner – Satish Nirwal is at Sr. No.49, whereas, the name of respondent no.7 appears at Sr. No. 40. He would, therefore, submit that the management has flouted the rules while transferring

petitioner on 100% aided post, ignoring the claim of respondent No.7. As such, he urges to maintain the impugned order.

7. Mr. Chaudhari would further submit that the respondent No.7 has filed companion W.P. No. 8525 of 2023 seeking direction against respondent management to transfer him from partially aided post to 100% aided post in terms of Rule 41-A of the MEPS Rules, 1981. As such, the petitioner and respondent No.7 are claiming right against vacant post on 100% aided division.

8. Mr. R.R. Chandak, learned advocate appearing for the Education Officer supports impugned order contending that the senior-most teacher would be entitled for transfer on aided post with respondent No.6 School. Respondent no. 7 claimed his seniority over petitioner by raising objection. The management of the school did not follow the rule of seniority while issuing the transfer order in favour of the petitioner. Hence approval to such transfer is rightly declined.

9. Having considered the submissions advanced, apparently, there is no dispute that petitioner as well as respondent No.7 are employees of the schools run by respondent No.4. Both of them are appointed as Assistant Teachers on same day. Prima-facie, the combined seniority list of Assistant Teachers on the establishment of the schools i.e. Secondary School, Devnandra and Smt. Shakuntalabai Katruwar Vidyalaya, Manvat (at Exhibit "N") for the academic year 2013-14, depict name of petitioner at Sr. No. 49, whereas, name of respondent No.7 appears at Sr. No. 40. The seniority appears to have been fixed on the basis of the date of birth, since respondent No.7 is senior by age to

petitioner. Be that as it may, when the petitioner was transferred on 100% aided post from partially aided post, the management of the school was under obligation to follow the conditions of transfer laid down under Rule 41-A of the M.E.P.S. Rules, which prescribes that the transfer of the employee from unaided to aided post is permissible, however, subject to conditions. Clause (e) of Sub-Rule (1) of Rule 41-A, prescribes that transfer shall be made only by following the seniority and as per the requirement of the subject.

10. It was, therefore, incumbent upon the Education Officer to examine the inter-se seniority of the employees and approve the transfer of senior-most teacher working on the unaided or partially aided post. The Education Officer should have taken necessary steps to call the seniority list from the respondent No.4 and also decide the issue of seniority amongst teachers instead of rejecting the proposal merely on the basis of the complaint given by respondent No.7. If the seniority list is already approved by the Education Officer, same can be acted upon while deciding the proposal seeking approval to the transfer of employee from unaided to aided division.

11. In the present case, apparently, Education Officer has not followed the procedure nor made endeavour to resolve controversy as regards the seniority and declined to grant the proposal seeking approval to transfer of the petitioner from unaided to aided post. Such an approach on the part of the Education Officer cannot be countenanced. We find that the Education Officer has utterly failed to discharge his obligations, particularly, in the light of Rule 12(3) of the MEPS Rules, which provides that the dispute, if any, in the matter of inter-se seniority

shall be referred to the Education Officer for his decision. Therefore, if any dispute was raised before the Education Officer, it was obligatory on his part, to decide rival claims after following the due process of law.

12. Resultantly, we deem it appropriate to relegate the matter for re-consideration to the Education Officer by setting aside the impugned order in W.P. No. 13003 of 2023 and direct him to reconsider the proposal seeking approval to the transfer of the petitioner in accordance with Rule 41-A of the MEPS Rules, as well as observations made in this order.

13. So far as W.P. No. 8525 of 2023 is concerned, we find that the petitioner (respondent No. 7 in W.P. No. 13003 of 2023) seeks direction against the management to forward the proposal seeking approval to his transfer from partially aided to aided establishment and also seeks directions against the Education Officer to decide such proposal in accordance with law. Pertinently, the petitioner has not raised any challenge to the transfer of Mr. Satish Balasaheb Nirwal (petitioner in W.P. No. 13003 of 2023). However, as per the scheme under MEPS Rules, no right is created in favour of the employee to seek transfer from unaided to aided post. But, when management of the school takes a decision to transfer employee from unaided to aided division, it is obligatory for the management to follow the mandate under Rule 41-A. Eventually, the management would be under obligation to transfer the employee who complies the conditions of eligibility, so also, senior-most amongst eligible employees for transfer to aided post. The gamut of the aforesaid provisions would bring within its sweep, right of senior employee to seek redressal of his grievance, in case the employee junior to him is transferred to the aided post. In that view of the matter,

although we are not inclined to grant prayer as made in this petition, we are inclined to direct the Education Officer to grant an opportunity of hearing to the petitioner while considering the proposal seeking approval to the transfer of Mr. Satish Nirwal from unaided to aided post.

14. Hence, we proceed to pass the following order :-

O R D E R

[a] W.P. Nos. 13003 of 2023 and 8525 of 2023 are partly allowed;

[b] The impugned orders dated 7.8.2023 passed by the Education Officer (Secondary), Zilla Parishad, Parbhani in W.P. No. 13003 of 2023 thereby declining to grant approval to the transfer of the petitioner - Satish Balasaheb Nirwal, is hereby quashed and set aside;

[c] The respondent No.3 Education Officer shall reconsider the proposal seeking transfer of the petitioner from unaided to aided post alongwith objection raised by respondent No.7 – Siddharth Uttam Waghmare (Petitioner in W.P. No. 8525 of 2023) and decide the issue of inter-se seniority, if not already settled, by invoking the powers under Rule 12 of the MEPS Rules and pass appropriate orders in accordance with law;

[d] Respondent No.3 , Education Officer shall call record from the respondent – Management and after hearing all concerned, pass appropriate orders on the proposal seeking approval to transfer of the petitioner from unaided to aided post, in accordance with law.

[e] Aforesaid exercise to be completed within 8 weeks from date of this order. Decision so taken, be communicated to the petitioners and

management of school.

[f] Rule is made absolute with aforesaid directions.

[g] Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-