



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 9634 OF 2021**

...aji S/o Dnyanoba Khakare,
Age : 33 years, Occup.: Service,
Resident of Sawargaon (Ghat) Post
Khadki (Ghat), Tq and Dist Beed.

..Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
School and Education Department,
Mantralaya, Mumbai-32.
2. The BC Cell, Deivisional Commissioner,
Aurangabad.
3. The Education Officer (Secondary),
Zilla Parishad, Beed.
4. Bankat Swami School,
Khadki (Ghat), Tq. & Dist. Beed.

..Respondents

...
Mr. S. R. Sapkal, Advocate for the Petitioner.
Mr. S. K. Shirse, AGP for Respondent Nos.1 to 3.
Mr. A. B. Chormal, Advocate for Respondent No.4.

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

JUDGMENT RESERVED ON :- 29th FEBRUARY 2024.

JUDGMENT PRONOUNCED ON :- 18th MARCH 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, thereby assailing the order dated 17.08.2021 passed by the Education Officer (Secondary), Zilla Parishad, Beed and seeks to issue Writ of Mandamus directing respondent no.3-Education

Officer (Secondary), Beed to grant approval to the proposal dated 10.07.2019 submitted by respondent no.4-Bankat Swami School, Khadki (Ghat) for transfer of the petitioner from unaided post to aided post.

3. The petitioner contends that he is qualified as B.Sc., B.Ed. and has been appointed on 15.06.2012 as an Assistant Teacher with respondent no.4. On completion of probation period, the Education Officer granted permanent approval to his appointment vide order dated 26.06.2014. The management transferred the petitioner from unaided post to aided post being the senior teacher vide order dated 01.07.2019. The proposal for approval to the transfer was forwarded to respondent no.3-Education Officer. However, respondent no.3-Education Officer vide order dated 29.01.2020 rejected the proposal. The petitioner assailed the order of the Education Officer in Writ Petition No.2482/2020 before this Court. After hearing the respective parties, by order dated 21.10.2020 this Court relegated the matter to the Education Officer for reconsideration. However, vide impugned order dated 17.08.2021 respondent no.3-Education Officer again rejected the proposal only on the ground that updated reservation roster has not been submitted. According to the petitioner, said requirement was already complied. However, proposal came to be turned down without appreciating the compliance.

4. The respondent no.3-Education Officer filed two affidavits. The first affidavit is filed on 30.11.2021 and second affidavit is filed on 21.02.2022. It is stated that the surplus teachers are available in the Beed district. The said fact was communicated to the Headmaster of respondent no.4. Therefore, permission cannot be granted to transfer of the petitioner from unaided to aided post. The petitioner has been transferred from Bankat Swami School, Khadki (Ghat) to Joganand

Vidyalay, Pargaon Ghumara, Tq. Patoda, Dist. Beed. Further as per record submitted with proposal submitted by the management, petitioner's name is not appearing in the roster. The management failed to provide duly verified updated roster from B.C. Cell. In subsequent affidavit it is contended that the copy of roster prepared by the management is placed on record, which depicts that the petitioner has been appointed from Open category. However, roster is not verified by the Competent Authority i.e. B.C. Cell, Aurangabad. The management cannot fill in the post without verifying the roster as per reservation policy.

5. We have heard the learned Advocate appearing for the respective parties and perused the record tendered into service. It appears that, the petitioner has been appointed as an Assistant Teacher against the clear vacancy in pay scale of Rs.9300-34800 with Grade Pay Rs.4300/- and he was posted on Bankat Swami School, Khadki (Ghat). The services of the petitioner were approved by the Education Officer on probation on unaided post vide order dated 25.09.2012. The permanent approval came to be granted to the appointment of the petitioner with effect from 16.06.2014 as per order issued by the management, which has been approved by the Education Officer. The respondent-Management transferred the petitioner on aided vacant post on account of retirement of a teacher. However, respondent no.3-Education Officer had refused to grant approval to such transfer. Apparently, the reason for non-grant of approval is that the updated reservation roster is not forwarded alongwith proposal.

6. The petitioner's transfer is effected under order dated 01.07.2019 issued by the management. Such transfer would be governed by Rule 41 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 (for short MEPS Rules').

7. Apparently, the transfer of the petitioner is against the vacant post as per staffing pattern. The petitioner's services on unaided post were duly approved and by the time of his transfer he had served more than five years on unaided division.

8. This Court approved right of the management to transfer the employee from unaided to aided post in Writ Petition No.1493/2018 with companion matters, decided on 04.07.2019. In yet another judgment in *Writ Petition No.6114/2018* decided on **14.01.2019** this Court had occasion to consider the validity of the Circular dated 28.06.2016. It is held that sub-Clauses 1, 3 and 4 of Clause 3 of the Government Resolution, mandating absorption of surplus teachers prior to approving the transfer has been held to be inconsistent with the Rule 41 of the MEPS Rules. Therefore, as on date of petitioners transfer there was no legal impediment of surplus teachers.

9. So far as the requirement of the updated reservation roster, Education Officer observed in the impugned order that the proposal do not contain the reservation roster for 2007-2008 and name of the petitioner is not appearing in the reservation roster. It is difficult to countenance with the requirement of the Education Officer. Admittedly, the petitioner was initially appointed in the year 2012 and approved as permanent teacher since year 2014. His transfer is made under the order dated 01.07.2019 from unaided to aided post. Therefore, roster of 2007-2008 does not appear to be relevant for deciding the issue of grant of approval to the transfer of the petitioner. The affidavit-in-reply filed on behalf of the Education Officer again insists on requirements of the reservation roster. However, no specific reasons are given to support such requirements. We are, therefore, inclined to set aside the impugned order dated 17.08.2021 and direct the Education Officer to grant approval to the transfer of the petitioner from unaided

post to aided post as per proposal submitted by respondent no.4. Resultantly, we proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 17.08.2021 passed by the Education Officer (Secondary), Zilla Parishad, Beed passed on the proposal for grant of approval to the transfer of the petitioner from unaided post to aided post is hereby quashed and set aside.
- c. The respondent no.3-Education Officer (Secondary), Zilla Parishad, Beed is directed to grant approval to the proposal dated 10.07.2019 submitted by respondent no.4-Bankat Swami School, Khadki (Ghat) without impeded by the requirements of the reservation roster in terms of Rule 41 of the MEPS Rules.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE