



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10207 OF 2021

Shubhangi d/o Vikramrao Deshmukh,
age 33 years, Occ. Service as assistant
teacher at Saraswati Vidyalaya, Khadgaon,
Prakash Nagar, Latur, Dist. Latur Petitioner

VERSUS

1. The State Of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Latur.
4. Balvikas Shikshan Prasarak Mandal
C/o Saraswati Vidyalaya, Khadgaon,
Prakash Nagar, Latur, Through its
Secretary.
5. Saraswati Higher Secondary Vidyalaya,
Khadgaon, Prakash Nagar, Latur.
Dist. Latur through its Principal Respondents

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Advocate for the Petitioner : Mr. V.S. Panpatte
AGP for Respondents no.1 to 3: Mr. P S Patil
Advocate for Respondents 4,5 : Mr. S.S. Deshmukh

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

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Reserved on : 18th March, 2024.Pronounced on : 17th April, 2024.

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner approaches this Court under Article 226 of the Constitution of India, impugning the order dated 19.7.2021 passed by the Director of Education, Latur - Respondent No.2, thereby declining approval to the transfer of petitioner from unaided to aided post with Respondent No.5- Junior College. The petitioner further seeks to release her consequential financial benefits.

2. Mr. V.S. Panpatte, learned advocate appearing for the petitioner submit that on 31.12.2015 petitioner was appointed as an Assistant Teacher at Saraswati Secondary School on non-grant post. Her services were approved by the Education Officer vide order dated 27.12.2016 in pay scale of Rs.9,300/- to 34,800/-. Thereafter, permanent approval has been granted vide order dated 2.11.2018. As such, petitioner's services were continued on the post of Assistant Teacher at 'Saraswati Vidyalaya, Khadgaon'. In the year 2021, Mr. Radhakrishna Nipanikar, who was working on Higher Secondary Division of the School retired from service on attaining his age of superannuation. In anticipation of the aforesaid vacancy, petitioner had applied to the Management seeking her transfer on the vacant post on grant-in-aid section of the school.

3. Since the petitioner was holding requisite qualification, the Management passed a Resolution dated 27.1.2021 to transfer her from unaided secondary post to aided higher secondary post. Consequently, the order dated 28.6.2021 came to be passed. The petitioner joined on post of her transfer on 1.7.2021.

4. The Management forwarded the proposal for approval to the transfer of the petitioner from unaided to aided post, however, the Deputy Director of Education - Respondent No.2 declined to grant approval, giving the reason that transfer from unaided secondary school to aided higher secondary school is not permissible.

5. Mr. Panpatte, learned advocate appearing for the petitioner submit that the reasoning adopted by the respondent no.2 is unsustainable in law. He would refer to a communication dated 17.12.2021 issued by the Additional Secretary, Maharashtra State (School Education and Sports Department) bearing no.2020/Case No.325/TNT-1, which stipulated that pay scales of Higher Secondary/Junior Colleges and D.Ed colleges are similar. Therefore, the post of Higher Secondary teacher and Junior College teachers are also equivalent. As such, transfer can be permitted. Consequently, directions were given to grant approval to transfer of Smt. Rasika Paturkar and Mr. Uday Kolhekar. Mr. Panpatte, would also place his reliance on the order passed by this Court in Writ Petition no.11470 of 2022 dated 14.6.2023 in case of Vishnu Sonpeer Vs. State of Maharashtra to contend that the

procedure contemplated under section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short MEPS act) and Government Circular dated 1.4.2021 would not attract in cases of transfers.

6. Mr. P.S.Patil, learned AGP appearing for respondent nos.1 to 3, referring to the affidavit-in-reply filed by Mr. Ganpatrao More - Deputy Director of Education, supports the impugned order. He would submit that the impugned transfer order is passed after insertion of section 41-A after Rule 41 of Principal Rules. He would invite attention of this Court to sub-clause (d), which prohibits transfer on unequal cadre. He would submit that the petitioner has been transferred from Unaided Secondary School to Aided Higher Secondary School, which is contravention of Rule 41-A (1)(d) of MEPS Rules.

7. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective parties. We have perused the documents annexed with the petition. We have gone through the judgment and circular relied by the respective parties.

8. It is not in dispute that the petitioner was initially appointed on 31.12.2015 on the post of Assistant Teacher in the Secondary School. Her services were approved on unaided post. In the year 2018 permanent approval is also granted in her favour. After completion of period of more than five years of service in Unaided Secondary School, she had submitted an application to the Management to transfer her services to

Aided post at Higher Secondary level in the same school since vacancy was to arise on retirement of Shri Radhakrishna Nipanikar. In pursuance of the petitioner's application, the Management passed a Resolution dated 27.6.2011 for transfer on promotion of the petitioner against vacant post on Higher Secondary School that receive 100% grant-in-aid. The petitioner joined her services. The proposal moved by the Management seeking petitioner's transfer came to be rejected on the ground that the transfer from Secondary School to Higher Secondary School is not permissible.

9. Rule 41 of MEPS Rules, 1981 deals with transfers. Rule 41-A came to be inserted vide notification dated 8th June, 2020. It lays down conditions for transfer of teachers' from unaided to aided Divisions of the school. The relevant part of Rule 41-A states as under :-

“Conditions for transfer of teachers from unaided to partially aided or aided school or division -

1] The Management may transfer a teacher from unaided school or partially aided school to the vacant post in partially aided school or aided school or division; only if the following conditions are specified namely :-

a]
b]
c]

d] Transfer shall be made in equal or same cadre. The transfer shall not be made from primary to higher primary, or higher primary to

***secondary or secondary to higher secondary or
higher secondary to D.Ed. Schools or vice-versa.***

10. Perusal of the impugned order dated 19.7.2021 shows that the respondent no.2 declined to grant approval to the transfer of the petitioner since it was a transfer from unaided secondary school to aided higher secondary school. If the reasoning in the impugned order is examined with reference to sub-clause (d) of Rule 41-A (1), no infirmity can be found in the impugned order.

11. Although, Mr. Panpatte, the learned advocate appearing for the petitioner seeks to rely upon the Government order dated 17.12.2021, which stipulates that the pay scales of Higher Secondary, Junior College teachers is equivalent, therefore, transfer of Secondary School teacher to Higher Secondary School is permissible, we find that the said Government order deals with the situation prior to insertion of section 41(A) and in consonance with Rule 41(5) that was governing the field. In our considered opinion, the petitioner cannot secure any assistance from the said order. So far as reference to the order passed by this Court in case of Vishnu Sonpeer (supra), it simply deals with the situation where approval was denied in reference to Rule 5(1) of MEPS Rules. In that view of the matter, this Court has observed that section 5(1) of MEPS Act would not come into play while dealing with the approval to the transfer.

12. In that view of the matter, in our considered opinion, no case is made out to cause interference in impugned decision under Article 226 of the Constitution of India. Writ Petition sans merit. Writ Petition stands dismissed. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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aaa/- (f).