



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

941 WRIT PETITION NO. 10537 OF 2021

VITTHAL SANJAY TODGIRE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Mr. Katneshwarkar S.P.

AGP for Respondent/State : Mr. D.R. Korde

Advocate for Respondent No.2 : Mr. Pr. Tandale

Advocate for Respondent nos. 3 & 4 : Mr. A.G. Vasmatkar

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 11.06.2024

ORAL ORDER : (PER : SHAILESH P. BRAHME, J.)

Heard both the sides finally.

2. The petitioner is challenging a communication dated 09.09.2021 issued by the respondent no. 2-Education Officer, refusing to grant approval to the order of transfer of the petitioner from non-aided school to the aided school.

3. The petitioner is rendering services with the school run by the respondent no. 3 from 24.08.2011. The school in question is unaided. The services of the petitioner have been approved by the respondent no. 2 vide order dated 31.12.2014. In view of creation of vacancy in the aided school i.e. respondent no. 4 due to death of one of the teachers on 11.09.2020, the management proposed to transfer the petitioner from unaided school to the respondent no. 4-school. Accordingly, on 03.08.2021 a resolution was passed. An order of transfer was issued on 03.08.2021 and the proposal for approval was submitted to the respondent no. 2. It was rejected by the

impugned communication stating that no prior permission was solicited before effecting the order of transfer.

4. The learned advocate for the petitioner submits that as per Rule 41 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 the management is entitled to effect the transfer of an employee. The petitioner is a permanent employee, rendering services since 24.08.2011. Being a senior teacher, was eligible to be transferred. As he has been transferred on a permanent vacant post in the respondent no. 4-school, the order of transfer is within four corners of law. Reliance is placed by the learned advocate for the petitioner on the orders passed in the matter of **Anand Sikandar Gangne Vs. State of Maharashtra and others in Writ Petition No. 5000/2021.**

5. The learned advocate for the respondent no. 2 would oppose the submissions of the petitioner by filing an affidavit in reply. It is being pointed out that there are 136 surplus teachers who are yet to be absorbed and therefore it would not be permissible to accord approval to transfer of the petitioner. Reliance is placed on Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as well as Government circular dated 28.06.2016. It is further contended that as no prior permission was solicited, the order of transfer is bad in law.

6. The learned advocate for the respondent nos.3 and 4 would support the case of the petitioner. An affidavit in reply is filed to demonstrate that a resolution was passed and thereafter the order of transfer was issued. Before passing resolution, on 14.10.2020, an application was submitted by the management to the respondent no. 2-Education Officer seeking prior permission for effecting the transfer. The application was not considered and therefore the management was constrained to pass order of transfer.

7. We have considered the rival submissions of the parties. It is not

disputed that the petitioner is rendering service since 24.08.2011 in an unaided school. An approval has also been granted to his services. Due to the vacancy created in the respondent no. 4-school, the management was required to transfer him by passing a resolution.

8. The respondent nos. 3 and 4 have placed on record an application dated 14.10.2020 seeking prior permission from respondent no. 2 for transferring the petitioner to the respondent no. 4 school. The application bears an acknowledgment of the office of Education Department, Zilla Parishad, Latur. This fact has not been controverted by the respondent no. 2. Pertinently, the impugned order does not refer to application dated 14.10.2020. The respondent no. 2 should have considered the application when it was received on 14.10.2020. It would not be permissible to reject the approval for the reason that no prior permission is solicited by the management, without even bothering to decide the application.

9. So far as the plea of the respondent no.2 regarding availability of 136 surplus teachers is concerned, the proposal seeking transfer of the petitioner is not for a fresh appointment so as to attract the provisions of Section 5(1) of the Act of 1977. This aspect has been made clear in a decision rendered in the matter of **Vishnu Gangadhar Sonpeer Vs. State in Writ Petition No. 11470/2022**. Besides that, the Education Officer did not site this ground to reject proposal.

10. The learned advocate for the petitioner has rightly referred to the decision rendered in the matter of **Anand Sikandar Gangne Vs. State of Maharashtra and others**. In the present matter also there was a vacancy of a post of teacher in the respondent no. 4 school. Only reason stated by the respondent no. 2 for rejecting the proposal is for want of prior permission. No objection regarding seniority, roster or eligibility of the petitioner has been recorded. In that view of the matter, we find that the impugned communication is unsustainable. We are therefore, inclined to allow this

petition, partly.

11. The impugned communication/order dated 09.09.2021, issued by respondent no. 2 is quashed and set aside. Respondent no. 2 shall consider the proposal afresh by extending opportunity to the parties and decide it within a period of six weeks, on its own merits. However it shall not be rejected for the same reason stated in the impugned order.

12. The Writ Petition is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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