



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11945 OF 2021

1. Smt. Jyoti d/o Raju Dushing,
Age: 31 years, Occu.: Service as
Assistant Teacher, R/o. Ashok Nagar,
Tq. Shrirampur, Dist. Ahmednagar
2. Smt. Neeta d/o Santosh Autade,
Age: 39 years, Occu.: Service as
Assistant Teacher, R/o. At Post Malewadi,
Tq. Shrirampur, Dist. Ahmednagar.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Khasdar Govindrao Adik Rural
Education Society, Ashoknagar,
Tq. Shrirampur, Dist. Ahmednagar,
Through its Principal/Secretary.
4. New English School,
Karegaon, Tq. Shrirampur,
Dist. Ahmednagar
Through its Head Master.
5. New English School,
Nimgaonkhairi,
Tq. Shrirampur, Dist. Ahmednagar

.. RESPONDENTS

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Mr. V. S. Panpatte, Advocate for the petitioners.
Mr. P. S. Patil, AGP for respondent Nos.1 and 2 – State.
Mr. B. P. Gonare, Advocate for respondent Nos.3 to 5.

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

RESERVED ON : 27th FEBRUARY, 2024.
PRONOUNCED ON : 9th MAY, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. The petitioners are challenging the impugned order dated 18.06.2021 passed by respondent No.2 thereby rejecting the proposal of the transfer of petitioners to the post of 100% aided from unaided post.

3. Both the petitioners came to be appointed initially on 01.09.2016 and 02.01.2017 respectively as Assistant Teachers on unaided divisions in New English School, Matapur and Malwadgaon, Taluka Shrirampur, District Ahmednagar run by respondent No.3 society. It is said that the said appointment is by following due procedure and against clear and vacant sanctioned post. Respondent No.2 had granted approval to the appointment of the petitioners by order dated 02.08.2019. After the completion of two years probation period satisfactorily, respondent No.3 had confirmed their services and then transferred them from unaided division to 100% aided posts. According to the petitioners, the said posts on aided division became vacant as two teachers from D.Ed. scale were granted promotion to

B.Ed. scale. The petitioners are from D.Ed. scale. The governing council passed the resolution about the transfer of the petitioners on 01.01.2020 and 30.08.2019 respectively. The seniority was considered by respondent No.3. The sanctioned posts were in respondent Nos.4 and 5. Thereafter, proposal was sent for according approval to the transfer of the petitioners, however, it has been rejected. Hence, present petition.

4. Learned Advocate for the petitioners submits that the transfer of the petitioners is prior to coming into force of Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the "M.E.P.S. Rules"). The subsequent Government Resolutions cannot be made applicable to the petitioners retrospectively. Such view has been taken in the decision of this Court at Principal Seat in **Sandhya d/o Balkrushna Teli and Ors. v. The State of Maharashtra and Ors.**, [Writ Petition (Stamp) No.93919 of 2020 decided on 12.03.2021]. He further relies on the decisions of this Court in **Umakant Ramrao Khalane v. The State of Maharashtra and others**, [Writ Petition No.7438 of 2020 and connected petition decided on 20.07.2021], **Rajesh Shivajirao Devkar v. The State of Maharashtra and others**, [Writ Petition No.5530 of 2021 decided on 31.03.2021], **Ganesh Devidas Deshmukh and Another v. The State of Maharashtra and others**, [Writ Petition No.11656 of 2021 with

companion petition decided on 21.10.2021], **Vijendra s/o Uddhavrao Dhapse and Another v. The State of Maharashtra and others**, [Writ Petition No.3328 of 2022 with connected petitions decided on 23.03.2022], **Sharad Padmakar Chaudhari and Another v. The State of Maharashtra Through its Secretary and others**, [Writ Petition No.8226 of 2021 and companion petitions decided on 02.08.2021] and **Miss. Devkar Dipali Kisan and Ors. v. The State of Maharashtra and others**, [Writ Petition No.5313 of 2017 along with connected petitions decided on 25.04.2019]. Learned Advocate for the petitioners submits that at the time of appointment of the petitioners, there was no condition of appointment through Pavitra Portal and, in fact, at the time of granting approval to the transfer, the said question ought not to have been raised when the service of the petitioners was approved by respondent No.2 much earlier. The other documents annexed with the proposal were sufficient to show as to how the posts had become vacant. Therefore, the impugned order deserves to be set aside. He also submits that though Rule 41-A of M.E.P.S. Rules is not involved in this matter, yet under the Right to Information Act, he has received the information that the said amendment was never presented before both the houses of Assembly and proper approval has not been taken. Therefore, provisions of Rule 41-A of M.E.P.S. Rules cannot be considered at all, as it is not in existence legally.

5. Per contra, learned AGP relies on the affidavit filed by Satyajit s/o Vitthal Machchindra, Superintendent Class II in the office of Zilla Parishad, Ahmednagar, wherein he relies on Rule 41-A of M.E.P.S. Rules, Government Resolution dated 23.06.2017 making the Pavitra Portal compulsory and ban on recruitment by virtue of Government Resolution dated 04.05.2020. Learned AGP relies on the decision of this Court in **Pravin Bodhu Kasbe v. The State of Maharashtra and others**, [Writ Petition No.3142 of 2020 decided on 03.08.2021], wherein directions have been given and it is stated that the Government Resolution dated 23.06.2017 should be scrupulously followed without any exception. Further, reliance has been placed on the decision in **Patekar Someshwar Rohidas v. The State of Maharashtra and others**, [Writ Petition No.3336 of 2021 and companion matters decided on 02.05.2022], wherein Rule 41-A of M.E.P.S. Rules was taken note of and directions were given in respect of surplus teachers to be enlisted in respect of Beed district for the compliance of Rule 41-A of M.E.P.S. Rules.

6. At the outset, we would like to say that in the affidavit-in-reply, there is no question raised in respect of approval order, which came to be passed by respondent No.2 on 02.08.2019. By the said order, approval was granted to the appointment of both the petitioners from 02.01.2017 and 01.09.2016 respectively on the post of Assistant

Teachers. Now, it is said that the petitioners have not put five years service when they are transferred. This Court in Writ Petition No.1493 of 2018 with other connected matters decided on 04.07.2019, which is referred in **Ganesh Devidas Deshmukh (Supra)**, held that "as the petitioners have already worked on the unaided post for the period of three years and more and their services were approved, while granting approval to the transfer of the petitioners from unaided to aided post, the Education Officer was required to grant approval to them as Assistant Teachers and not as Shikshan Sevaks, was considered and the transfer of the petitioners on 100% grant-in-aid post was directed to be approved."

Similar view was also taken in **Vijendra s/o Uddhavrao Dhapse (Supra)** and **Sharad Padmakar Chaudhari (Supra)**. Herein also, the petitioners have put four years and taking into consideration the approval order dated 02.08.2019, the approval is to their appointment as Assistant Teachers and, therefore, the said objection taken by respondent No.2 appears to be misinterpretation and without taking into consideration the law clarified by this Court.

7. Another aspect to be noted is that taking into consideration the date of transfer, provisions of Rule 41-A of M.E.P.S. Rules, which came into effect on 08.06.2020 will not be applicable. The provisions of Rule 41-A of M.E.P.S. Rules cannot be made retrospectively applicable to

the facts of the present case. This aspect ought to have been considered by respondent No.2. Another fact to be noted is that in the proposal itself it has been stated as to how the post became vacant. It is stated that as regards the petitioners are concerned, two Assistant Teachers Sunil Dajiba Ohol and Ambadas Mahalu Ghode were given promotion in B.Ed. scale and therefore, two posts of D.Ed. Scale became vacant. Still, respondent No.2 has taken objection. It also appears that respondent No.2 had not taken note of the fact that he was not deciding the approval to the appointment, but he was deciding in fact the transfer. Therefore, he could not have gone to the extent of whether the appointment of the petitioners is as per rules or not. Taking into consideration the earlier position, it was not necessary to have certificate regarding non availability of surplus teacher. All the objections/grounds taken were not justifiable. The reliance placed by learned AGP on the decision in **Pravin Kasbe (Supra)** and **Patekar Someshwar Rohidas (Supra)** is misconceived taking into consideration the issue involved.

8. For the aforesaid reasons, the writ petition deserves to be allowed. We want to clarify that since no question involves regarding applicability of Rule 41-A of M.E.P.S. Rules, there is no necessity to deal with the objection raised that the said amendment was not placed before both the houses of Assembly. Hence, the following order :-

ORDER

I) The Writ Petition stands allowed.

II) The impugned order dated 18.06.2021 passed by respondent No.2 – Education Officer (Secondary), Zilla Parishad, Ahmednagar, is hereby quashed and set aside.

III) Respondent No.2 is directed to grant approval to the posts of the petitioners after transfer on 100% aided basis within a period of one month from today.

IV) The release of arrears of regular salary, if any, to be paid by the respective respondents within a period of six months in two installments and the first installment to start from 15.05.2024.

V) Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm