



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11061 OF 2022

Tukaram Dada Shinde,
Age 44 yrs., Occ. Service,
R/o Plot No.98, Ulkanagari,
Garkheda, Aurangabad,
Tq. & Dist. Aurangabad.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through it's Additional Chief Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 32.
- 2 The Commissioner of Education,
Maharashtra State, Pune,
Central Building, Pune – 1.
- 3 The Director of Education (Primary),
Maharashtra State, Pune,
Central Building, Pune – 1.
- 4 The Divisional Deputy Director of Education,
Aurangabad Division, Aurangabad.
- 5 The Education Officer (Primary),
Zilla Parishad, Aurangabad.
- 6 The President/Secretary,
Sarvodaya Kala Mandal,
C/o Balkrishnagar Vijay Chowk,
Garkheda Parisar, Aurangabad.
- 7 The Head Master,
Chhatrapati Prathamik Vidyalaya,

Balkrishna Nagar, Vijaynagar Chowk,
Garkheda Parisar, Aurangabad,
Tq. & Dist. Aurangabad.

... **Respondents**

...

Mr. V.G. Salgare, Advocate for petitioner

Mrs. R.P. Gaur, AGP for respondent Nos.1, 2 and 4

Mr. S.M. Ganachari, Advocate for respondent No.5

Mr. S.Y. Mahajan, Advocate for respondent Nos.6 and 7

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

RESERVED ON : 21st MARCH, 2024

PRONOUNCED ON : 02nd APRIL, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

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

2 The present petition has been filed to challenge order dated 08.09.2022 passed by respondent No.5 rejecting to grant approval to the transfer of the petitioner from unaided post of trained graduate teacher to the aided post of primary teacher with further direction to respondent No.5 to accord approval.

3 The facts which are not in dispute are that the petitioner is serving as Assistant Teacher with respondent No.7 school run by respondent No.6 Management. He came to be appointed from 14.06.2010 on unaided post under Chhatrapati High School run by respondent No.6 Management. Approval to his services were granted by the Education Officer (Secondary), Zilla Parishad, Aurangabad by order dated 26.03.2013 and 09.12.2014. Thereafter, he was transferred from unaided post of Chhatrapati High School to the vacant aided post under Assistant Teacher with respondent No.7 primary school by order dated 06.06.2019. Then proposal for approval to the transfer of the petitioner was submitted by respondent No.7 to respondent No.5 which was not decided and thereafter petitioner himself had made representations to respondent No.5. It was not decided. Therefore, petitioner had approached this Court by filing Writ Petition No.3240 of 2022 to decide his proposal for approval. This Court by order dated 07.03.2022 directed respondent No.5 to decide the proposal for approval within stipulated period. Again the petitioner was required to make representation to respondent No.5 on 18.05.2022 and 10.08.2022. However, by order dated 08.06.2022 and by referring Government Resolution dated 01.04.2021 respondent No.5 has rejected the said approval. The petitioner says that his transfer is with his consent and on his application and it is as per the provisions of law and, therefore, it ought to have been accepted.

4 Heard learned Advocate Mr. V.G. Salgare for the petitioner, learned AGP Mrs. R.P. Gaur for respondent Nos.1, 2 and 4, learned Advocate Mr. S.M. Ganachari for respondent No.5 and learned Advocate Mr. S.Y. Mahajan for respondent Nos.6 and 7.

5 Learned Advocate for respondent Nos.6 and 7 has then produced resolution passed by respondent No.6 dated 03.05.2019 by which the transfer of the petitioner was placed before the Committee/Directors and all had accepted the same.

6 Learned Advocate for respondent No.5 and learned AGP strongly opposed the petition on the ground that such transfers were prohibited by Government Resolution dated 01.04.2021 and then which itself was the outcome of the order passed by this Court in Writ Petition No.5313 of 2017 dated 25.04.2019, in which it was then suggested to have some clarification in respect of transfers made in private schools (aided or unaided or partially aided). They both contend that such transfers would affect the State exchequer.

7 Learned Advocate for the petitioner as well as respondent Nos.6 and 7 submit that the petitioner was taken on unaided post much earlier to the present transfer. He was working since at least for nine years in the

secondary school but now since vacancy has arisen in respect of aided school under primary school he had made the said application for transfer to respondent No.6. In view of Rule 41 of MEPS Rules such transfer is permissible when it is with the consent of the employee and administratively suitable to the institution.

8 Before turning to the facts, we would like to quote the relevant rule i.e. Rule 41(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which runs thus -

“41(1) Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned if it is administratively convenient to do so.”

Therefore, taking into consideration the rules applicable for the transfer of the employee under the M.E.P.S. Rules two conditions must be satisfied; 1) that there is consent of the employee and 2) it is administratively convenient to the educational institution. Here, though the petitioner's qualification is higher than the requirement for primary school and he was in the employment under the secondary school for more than nine years, but it was on unaided post. He had given a written application to respondent No.6 for his transfer, that means, he is giving consent, which is of course,

presumed to be with knowledge regarding the difference in the pay scale. Perusal of the resolution dated 03.05.2019, though it is not so happily worded as regards the administrative convenience is concerned; yet, the said application of the petitioner was considered by the members of the respondent No.6 and the transfer was made/effectuated on 17.06.2019 to which respondent No.5 Education Officer cannot apply the Government Resolution dated 01.04.2021 which came after the said transfer order was passed. It ought to have been considered by respondent No.5 that whether there is consent of the employee and whether the institution has taken care to see the administrative angle before giving such order. The question of rise in State exchequer cannot be considered as it is not so demonstrated when in fact the pay scale appears to be on a lower side on the transferred post. Further, if the employee is willingly taking the risk of lower pay scale, then respondent No.5 should only get ensured from the employee that whether he is aware about the said fact. In view of these circumstances the impugned order dated 08.09.2022 deserves to be set aside. Accordingly, it is set aside. The writ petition stands allowed in terms of prayer clause 'B'. Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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