



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13267 OF 2021

Shaikh Aaqeb Jawed s/o Shaikh Iliyas,
age 30 years, occ. Service,
R/o Karanja Road, Giram Galli,
Beed. Petitioner.

Versus

1. The Education Officer (Secondary),
Zilla Parishad, Beed.
2. Anjuman Ishat-e-Taleem, Beed,
Through It's Secretary,
R/o C/o Miliya High School,
Parali Vajjnath, Dist. Beed.
3. Miliya High School,
Through It's Head Master,
R/o Parali Vajjnath, Dist. Beed.
4. The State of Maharashtra,
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai – 32. Respondents.

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Mr. S.V. Dixit, Advocate for petitioner.
Ms. R.P. Gour, AGP for respondent nos.1 and 4
Mr. S.S. Shinde, advocate for respondent nos.2 and 3.

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CORAM	:	SMT. VIBHA KANKANWADI & S. G. CHAPALGAONKAR, JJ.
Dated	:	2 nd May, 2024

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

1. The Petitioner has approached this Court under Article 226 of the Constitution of India, assailing the order

dated 30.8.2021 passed by the Education Officer – Respondent No.1, declining to grant proposal seeking approval to his transfer from unaided to aided section with Respondent No.3-School.

2. Mr. S.V. Dixit, learned advocate appearing for the petitioner submit that the petitioner possess qualification as B.Sc., B.PEd. He has been appointed as ‘Physical Education Teacher’ with Miliya Urdu D.Ed. College, at Beed against vacant post. His services have been approved by the Deputy Director of Education. Management of the School, considering administrative exigency, transferred services of the petitioner on establishment of respondent no.3 against the vacancy on aided section. Accordingly, the petitioner joined his service on the post of transfer from 1.1.2019. The proposal seeking approval to transfer was moved to Respondent-Education Officer, however, vide impugned order dated 30.8.2021, he declined to grant the same, giving reason that as per the staffing pattern of respondent no.3 for academic year 2018-2019, the post of physical instructor is not sanctioned. Mr. Dixit, would point out that said order is passed under misconception. In fact, the post of physical instructor was very much available and sanctioned on the establishment of respondent no.3-School. However, it was not separately earmarked in the staffing pattern. He would invite attention of this Court to the communication dated 22.2.2016 made by respondent no.1, which records that the post of physical instructor is included in the sanctioned posts of graduate teachers, without separately indicating in the staffing pattern.

He would therefore urge to quash and set aside impugned order and issue directions against respondent no.1-Education Officer to approve transfer of the petitioner from unaided to aided post.

3. We have heard learned Advocates appearing for the respective parties.

4. On 12.4.2024 when this matter was heard, this Court had called upon learned AGP appearing for respondent nos.1 and 4 to file additional affidavit-in-reply and clarify the position as regards to the availability of post of physical instructor on the establishment of respondent no.3-School. Today, the learned AGP placed on record a communication dated 30.4.2024, addressed by respondent no.1 to office of the Government Pleader. It is taken on record and marked as Exhibit 'X' for identification. It states that in staffing pattern for year 2014-2015, the posts of graduate teacher and special teacher were separately indicated. However, in subsequent approved staffing pattern, the post of special teacher is included alongwith graduate teachers without showing it separately.

5. The aforesaid communication shows that the impugned order dated 30.8.2021 has been passed by respondent no.1 under mis-conception of facts. As such, cannot be sustained. Consequently, we proceed to pass the following order.

ORDER

- i. Writ Petition is allowed.
- ii. The impugned order dated 30.8.2021 passed by the respondent no.1 is quashed and set aside.
- iii. The respondent no.1 shall re-consider the proposal dated 15.3.2021 forwarded by the respondent no.2-Management seeking approval to the transfer of the petitioner from unaided to aided post of Special Teacher with effect from 1.1.2019 and take further decision within a period of eight (8) weeks from the date of this order, after giving an opportunity to furnish deficit documents, if any, to the Management.
- iv. Writ Petition is accordingly disposed off. No costs.

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

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