



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

WRIT PETITION NO.11336 OF 2022

Smt. Balika d/o. Tukaram Salunke,
Age:- 41 yrs. Occ. Service,
R/o. Vitthal Nagar, Beside
West Side of Prakash Nagar, Latur
Tq. & Dist. Latur.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary)
Zilla Parishad, Latur
3. Balvikas Shikshan Prasarak Mandal,
Latur C/o. Saraswati Vidyalaya Khadgaon,
Prakash Nagar, Latur, Tq. & Dist. Latur
Through its President/Secretary.
4. Saraswati Primary Vidya Mandir,
Prakash Nagar, Latur, Tq. & Dist. Latur
Through its Head Master.

..Respondents

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Mr. V. S. Panpatte, Advocate for the Petitioner.
Mr. S. K. Shirse, AGP for Respondent No.1.
Mr. U. B. Bondar, Advocate for Respondent No.2.
Mr. B. P. Gonare (absent), Advocate for Respondent Nos.3 and 4.

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

JUDGMENT RESERVED ON :- 21st MARCH 2024.

JUDGMENT PRONOUNCED ON :- 28th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning order dated 03.10.2022 passed by respondent no.2-Education Officer (Primary), Zilla Parishad, Latur thereby declining to grant approval to the transfer of the petitioner from unaided to aided post of Assistant Teacher in respondent no.4-School. The petitioner further seeks issuance of Writ of Mandamus against respondent no.2 to grant approval to such transfer.

3. The petitioner contends that she holds educational qualification as HSC, D.Ed.. The respondent no.3 runs respondent no.4-School. The petitioner was appointed as an Assistant Teacher on unaided division with respondent no.4-School vide order dated 11.02.2013. The respondent no.2-Education Officer was pleased to grant approval to her appointment for probation period vide order dated 31.08.2013. Thereafter, permanent approval is granted on 03.09.2015.

4. On 31.07.2022 one of the employee of respondent no.4-School retired from service on attaining age of superannuation. His post fallen vacant with respondent no.4-School. The petitioner applied for her accommodation against the vacancy and transfer on aided post. In pursuance of the petitioner's request, respondent no.3-Management made communication dated 22.05.2022 to the office of respondent no.2-Education Officer informing occurrence of vacancy and sought permission to fill up the post. Since there was no response, the Management passed the Resolution dated 24.07.2022 and transferred the petitioner against vacancy of aided post. The petitioner received the transfer order. Accordingly, she joined on the aided post of transfer w.e.f. 01.08.2022. The Management forwarded the proposal seeking approval to

petitioners transfer from unaided to aided post. However, by the impugned order, the Education Officer declined to grant approval giving reason that there are surplus teachers in Latur district and as per Government Resolution dated 01.04.2021, it is necessary to accommodate the surplus teachers against vacancies. Therefore, the transfer of the petitioner from unaided to aided post cannot be approved.

5. Mr. Panpatte, learned Advocate appearing for the petitioner submits that Rules 41 and 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'M.E.P.S. Rules, 1981) empowers the Management to transfer the employee from unaided to aided division. The petitioner had served for the period of about 9 years on unaided post before her transfer. Her services were approved as permanent teacher. She was senior most teacher on unaided division. The Management had issued a communication dated 22.05.2022 in tune with Rule 5(1) of M.E.P.S. Rules, 1981. However, there was no response from the Education Officer. After waiting for the period of about two months, the Management passed the Resolution to transfer the petitioner against the aided vacancy. If the respondent no.3 has not responded to the communication made by the Management, no fault can be found with the Management or the petitioner. The reasons given in the impugned communication would not be available in the facts of the case. There was no other impediment in approving the transfer of the petitioner.

6. Mr. Bondar, learned Advocate appearing for respondent no.2 submits that large number of surplus teachers are available in Latur district. The Management as well as Education Officer is under obligation to verify the availability of the surplus

teachers before approving transfer of the employee from unaided to aided division. In the present case, the Management hastily transferred the petitioner without applying statutory requirements. As such, the impugned communication is just and proper.

7. We have considered the submissions advanced on behalf of the learned Advocate appearing for the respective parties. Rule 41-A of the M.E.P.S. Rules, 1981 governs transfers of the employees in the private schools. It is apposite to refer Rule 41-A for ready reference. Careful reading of the aforesaid provisions would show that the Management is empowered to transfer the employee from unaided to aided post subject to certain conditions. Clause 1(a)(i) of the Rule 41-A mandates that Management and Education Officer shall, before making transfer verify that there is no surplus person available in terms of Sub-Section (1) of Section 5 of the M.E.P.S. Act and in case of such availability, the Management is prohibited from effecting the transfer. Clause (c) mandates that before making transfer, the teacher must have completed minimum five years of continuous service in unaided school or division. Clause (e) mandates that the transfer shall be made only by following seniority. Clause (f) mandates that before making transfer the appointment of the teachers should have been approved by the Education Officer. Clause (g) mandates that transfer shall be made on vacant post.

8. Turning back to the facts of the present case, the petitioner served on unaided post from 11.02.2023 till 24.07.2022. Her services were approved as a permanent teacher on 03.09.2015. Apparently, she served as approved teacher on unaided post for more than 9 years till the date of her transfer. The Management

vide communication dated 22.05.2022 apprised respondent no.2 regarding vacancy of aided post on account of upcoming retirement of Smt. Ratnamala Kadam, who was to retire on 31.07.2022. The Management has also apprised that the petitioner has applied for transfer on aided post. The communication specifically states that it has been made in terms of Rule 5(1) of the M.E.P.S. Rules, 1981 before accepting the request of the petitioner for her transfer. Pertinently, there is no denial from respondent no.2 regarding communication made by the Management. The copy of such communication is placed at page no.69 alongwith reply of respondent nos.3 and 4. It bears seal and signature from the office of respondent no.2. In this background, it was obligatory on the part of the Education Office to inform availability of the surplus teachers for absorption against vacancies informed by the Management or atleast respondent no.2 could have raised an objections for transfer of the petitioner. After waiting for two months, the Management has passed Resolution dated 24.07.2022 in pursuance of the request of the petitioner and transferred her on the vacant post. The petitioner has joined the post as per her transfer on 01.08.2022.

9. It is evident from the record that the petitioner was the senior most teacher on unaided division and she has been transferred on clear vacant post. She had completed requisite period of service on unaided division as approved teacher. Therefore, she complies with all the parameters and conditions laid down under Rule 41-A of the M.E.P.S. Rules, 1981. The failure of respondent no.2 to respond communication of the Management or depute the surplus teacher against vacancy cannot be used to the disadvantage of the petitioner. In fact, the Education Officer shall blame himself, if he failed to comply his obligation to ascertain the

availability of the surplus teachers. In the aforesaid background, the case is made out for interference under Article 226 of the Constitution of India and to quash and set aside the impugned communication with further direction to grant approval to the transfer of the petitioner from unaided to aided post in terms of the proposal submitted by the Management. Hence, we proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 03.10.2022 passed by respondent no.2-Education Officer (Primary), Zilla Parishad, Latur is hereby quashed and set aside.
- c. The respondent no.2-Education Officer is directed to grant approval to the transfer of the petitioner from unaided to aided post of Assistant Teacher in respondent no.4-School w.e.f. 01.08.2022 and take further steps for release of the consequential benefits.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE