



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12459 OF 2022

Vishal Diliprao Pawar,
Age-41 years, Occu:Service,
R/o-M.H.H.S. High School, Sindkheda,
Tq-Sindkheda, Dist-Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32,
- 2) The Director of Education,
Pune,
- 3) The Deputy Director of Education,
Nashik Division, Nashik,
- 4) The Education Officer (Secondary),
Zilla Parishad, Dhule,
- 5) M.H.H.S. High School and Junior College,
Sindkheda, Tq-Sindkheda, Dist-Dhule,
Through its Head Master / Principal,
- 6) Sindkheda Taluka Education Trust,
Tq-Sindkheda, Dist-Dhule,
Through its Secretary / Chairman

...RESPONDENTS

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Mr. G.R. Syed Advocate for Petitioner.
Mr. A.M. Phule, A.G.P. for Respondent Nos. 1 to 4.
Mr. P.B. Pawar Advocate for Respondent Nos. 5 and 6.

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

DATE : 2nd MAY, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition challenges the order dated 21st/31st October 2022 passed by respondent No.3 refusing to grant approval to the transfer of the petitioner from High School to Junior College.

2. It is not in dispute that the petitioner is serving in respondent No.5 school run by respondent No.6 institution. The petitioner is M.Sc. B.Ed. He came to be appointed from 10th August 2008 with the High School and his services were approved by the Education Office, Dhule by order dated 31st January 2012. It is said that respondent No.6 by following due procedure of law transferred the petitioner to the Junior College and a proposal was sent on 17th June 2022 for approval to the Education Department. The petitioner contends that respondent No.3 had wrongly relied on the Government Resolution dated 1st April 2021 and rejected the proposal illegally. Hence this Petition.

3. Affidavit-in-reply has been filed by respondent No.3 of one Bhausahab Bhikanrao Chavan, Deputy Director of Education, Nashik Region, Nashik, supporting the impugned order, wherein it is stated that Government Resolution dated 1st April 2021 gives guidelines for transferring employees of the private aided schools. Under the said Government Resolution, transfer of teaching employees on unequal post is prohibited and therefore, the proposal has been rightly rejected.

4. Heard learned Advocate Mr. G.R. Syed for the petitioner, learned AGP Mr. A.M. Phule, for respondent Nos. 1 to 4 and learned Advocate Mr. P.B. Pawar for respondent Nos. 5 and 6. In order to cut short, we would like to say that the learned Advocates appearing on behalf of the respective parties have argued in support of their respective contentions.

5. The first and foremost fact to be noted is that the petitioner was serving as an assistant teacher with the High School till he was transferred. It can be seen that the post became vacant in Junior College due to superannuation of the teacher of physics subject. Learned Advocate for the petitioner is relying on the decision of this Court in *Vishnu S/o Kanu Surashe*

vs. the State of Maharashtra and others (Writ Petition No.6952 of 2018 with companion matter, decided on 30th November, 2018), and says that such transfers are permissible. Important point to be noted is that the said decision is prior to coming into force of Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "the MEPS Rules"). The transfers are governed by Rule 41, as well as Rule 41-A of the MEPS Rules, which came into effect from 8th June 2020. We are more concerned with Rule 41-A of the MEPS Rules. Sub-Rule (1) (d) of Rule 41-A specifically says that the transfer should be made in equal or same cadre. The transfer shall not be made from primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. schools or vice-versa. The decisions which the petitioner has relied on in the Petition / attached to the Petition, are all prior to the date of coming into force of Rule 41-A of the MEPS Rules. The plain reading of the said Rule, therefore, prohibits such unequal transfer. Further, the said Rule also gives procedure for the transfers to be effected. It casts duty on the management also to see whether there are surplus teachers available and after getting the data in respect of surplus teachers then only such transfer can be given effect to. The resolution

that is alleged to have been passed by the management does not reflect, whether inquiry was made by the management regarding surplus teachers as contemplated under Rule 41-A of the MEPS Rules. It also appears that earlier the petitioner was transferred, taking into consideration the need of the school but that transfer was for a limited period. Only on the basis of that experience, the petitioner could not have been transferred permanently without following the procedure laid down in Rule 41-A of the MEPS Rules.

6. Under the said circumstances, there is no illegality or error committed by respondent No.3 in passing the impugned order. There is no merit in the present Writ Petition and it deserves to be dismissed.

7. Accordingly, the Writ Petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE