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wp 13220.23R.odt

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

WRIT PETITION NO. 13220 OF 2023

1. Farukh Ahmed Abdul Khadar Deshmukh,
Age 46 years, Occ. Service as Assistant
Teacher, Aadhar No. 428112210291
R/o. Himayat Patel, Old Post Office,
Navi Peth, Ausa,
Tq. Ausa, Dist. Latur.
2. Afasarbegum Mohammed Qamarudim
Age 40 years, Occ. Service as Assistant
Teacher, Aadhar No. 436149345884
R/o. Nilanga Main Road,
Old Sarafadine, Nilanga,
Tq. Nilanga, Dist. Latur.

Petitioners.

VERSUS

1. The State of Maharashtra
Through its Secretary
Education Department
Mantralaya, Mumbai-32.
2. The Deputy Director of Education
Latur Division, Latur,
Tq. & Dist. Latur.
3. The Education Officer (Primary)
Latur, Zilla Parishad Latur.
4. The Superintendent,
Pay and Provident Fund Unit (Primary Section)
Zilla Parishad, Latur,
Tq. And Dist. Latur.
5. Rahemaniya Jaleemi Society,
Main Road, Nilanga,
At Post Nilanga

Tq. Nilanga, Dist. Latur,
through its Secretary.

6. Gulshan-E-Atfal Urdu P.S. Nilanga,
Tq. Nilanga, Dist. Latur
Through its Head Master.

.. Respondents.

Mr. V.S. Panpatte, Advocate for the petitioners
Mr. P.S. Patil, AGP for respondent Nos. 1 and 2
Mr. V.C. Patil h/f. Mr. U.B. Bondar, Adv. For responded Nos. 3 and 4
Mr. R.C. Bramhankar, Adv. For respondent Nos. 5 and 6.

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

**RESERVED ON : 11th MARCH, 2024.
PRONOUNCED ON : 21st MARCH, 2024.**

JUDGMENT [PER S.G. CHAPALGAONKAR, J.] :-

1. The petitioners approached this Court under Article 226 of the Constitution of India impugning the order dated 9.1.2023 passed by the respondent No.3, Education Officer Latur (E) and seek further directions against him to grant approval to their transfer from un-aided posts to aided posts as Assistant Teacher with respondent No.6 School and release arrears of salary by including their names in Shalarth Pranali.

2. The petitioners contend that the respondent No.5 is a minority institution, registered under the Maharashtra Public Trusts Act. It is receiving 100% grant-in-aid. The petitioners have been appointed at Rehmania Urdu School, at Kasar Shirsi, Taluka Nilanga, which is eligible to receive 40% grant-in-aid. The appointments of the petitioners were

approved by the Education Officer vide order dated 2.6.2012 on no grant basis. On 5.8.2015, permanent approval was granted to them. In the year 2022, two posts with 100% grant-in-aid had fallen vacant in the respondent No.6 School on account of retirement of the teachers. On 1.10.2022, the respondent No.3 transferred the petitioners against the vacancies eligible for 100% grant-in-aid. The petitioners joined their duties. The proposal for grant of approval was forwarded to the respondent No.3. However, the respondent No.3 rejected the proposals giving the reason that there are surplus teachers of Urdu Medium in Latur District and as per the Government Resolution dated 1.12.2022, transfers have been banned from un-aided to aided section of the school.

3. Mr. V.S. Panpatte, learned advocate for the petitioner submits that this Court has dealt with similar issue in W.P. No. 8215 of 2022 (Nagpur Bench) and it is held that circular dated 1.12.2022 to the extent it stays the operation of Rule 41A of the MEPS Rules, 1981 is set aside and consequently, orders passed by the Education Officer refusing to approve the transfer orders have been set aside. Mr. Panpatte invited our attention to Rule 41 and 41-A of the MEPS Rules, which enables transfer of the employee from unaided to aided school. He would point out that transfers are effected considering the administrative exigency and willingness of the petitioners. As such, the reasons recorded in the impugned order are incorrect. He would further point out that since the respondent Nos. 5 and 6 are minority institutions, there was no impediment in approving the transfers.

4. We have heard Mr. P.S. Patil, AGP appearing for respondent Nos. 1 and 2, Mr. V.C. Patil appearing for Mr. U.B. Bondar, Advocate for

respondent Nos. 3 and 4 and Mr. R.C. Brahmanekar, Advocate for respondent Nos. 5 and 6.

5. We have perused the record tendered into service. It is not in dispute that the petitioners were initially appointed as teachers on non-grant basis and they were approved as permanent teachers. They have rendered services for more than 5 years before their transfers. The petitioners who was working with Rehmania Urdu High School Karai Sirsa has been transferred to Gulshan-E-Atfal Urdu Primary School, Nilanga as Primary Graduate Teacher, whereas, petitioner No.2 who was working at Rahemania Urdu High School, Nilanga has been transferred to Gulshan-E-Atfal Urdu Primary School on the post of Primary Graduate Teacher w.e.f. 1.10.2022. Both the petitioners have joined on the post of their transfer. The proposal for grant of approval to their transfer from 40% to 100% aided school came to be rejected giving two reasons, namely :-

[I] There are 41 surplus teachers of Urdu Medium in Latur District, and;

[II] As per the Government Resolution dated 1.12.2022, transfers have been banned from unaided to aided section.

6. Apparently, the petitioners were working on the posts receiving 40% grant-in-aid and they have been transferred on the posts eligible for 100% grant-in-aid. Rule 41 and 41-A of the MEPS Rules deal with such transfers. Looking to the provisions, there is no bar for transfer of a teacher from unaided to aided school. Sub-clause (1)(a)(ii) prohibits transfer, if surplus persons are available with the management and sub-clause (d) of sub-section (1) provides that the transfer shall be

made in equal or same cadre. Transfer shall not be made from Primary to Higher Primary, Higher Primary, Secondary or Secondary to Higher Secondary or Higher Secondary to D.Ed. Schools or vice-versa. Further sub-clause (e) provides that the transfer shall be made by following seniority as per the requirement of the subject.

7. On perusal of the impugned order, it is evident that only for aforesaid two reasons, the proposal for grant of approval to transfer has been rejected. In our view, the Government Resolution dated 1.10.2022 would not be an impediment in approving such transfer, particularly, when this Court in ***W.P. No. 8215 of 2022 (Friends Social Circle, Akola and others Vs. State of Maharashtra and others*** with connected matters) has set aside the operation of the Govt. Resolution dated 1.10.2022 to the extent it stays the operation of Rule 41-A.

8. So far as the second reason is concerned, there are 41 surplus teachers in the Latur District. We find that, that itself would not be an impediment. In the present case, the petitioners were already working in partially aided school and the management looking to the administrative exigency, transferred the petitioners against vacant posts eligible for 100% grant-in-aid. In such contingency, the bar of availability of surplus teachers in the District may not apply, particularly when the petitioners are working in the minority institution. Consequently, we deem it appropriate to quash and set aside the impugned order and pass the following order :-

ORDER

[a] Writ petition is partly allowed;

[b] The impugned order dated 9.1.2023 passed by respondent No.3, Education Officer Latur is hereby quashed and set aside;

[c] The respondent No.3 shall re-consider the proposal for grant of approval to the transfers of the petitioners w.e.f. 1.10.2022 to aided posts as Assistant Teachers in respondent No.6 School in the light of directions issued by this Court in W.P. No. 8215 of 2022 (**Friends Social Circle, Akola and others Vs. State of Maharashtra and others, with other connected matters**).

[d] The respondent No.3 shall take further decision within a period of three months from the date of this order, after hearing all concerned.

[e] Writ petition stands disposed of in above terms.

[S.G. CHAPALGAONKAR, J] [SMT. VIBHA KANKANWADI, J]

grt/-