

... PETITIONER

1. The State of Maharashtra, through its Principal Secretary School Education Department, Mantralaya, Mumbai – 400 032
2. The Deputy Director of Education, Latur Division, Latur
3. The Education Officer (Secondary), Zilla Parishad, Latur
4. Kisan Shikshan Prasarak Mandal, Beside City Police Station
5. Shivaji Vidyalaya, Handarguli

## ... RESPONDENTS

WRIT PETITION NO.15457 OF 2023

... PETITIONER

1. The State of Maharashtra, through its Principal Secretary School Education Department, Mantralaya, Mumbai – 400 032
2. The Deputy Director of Education, Latur Division, Latur
3. The Education Officer (Secondary), Zilla Parishad, Latur
4. Kisan Shikshan Prasarak Mandal,
5. Nagabuwa Vidyalaya, Helamb

## ... RESPONDENTS

WRIT PETITION NO.8731 OF 2023

... PETITIONER

1. The State of Maharashtra, through its Secretary School Education and Sports Department, Mantralaya, Mumbai – 400 032

2. The Deputy Director of Education,  
Latur Region, Latur  
Tq. and Dist. Latur
3. The Education Officer (Secondary),  
Zilla Parishad, Latur  
Tq. and Dist. Latur
4. Kisan Shikshan Prasarak Mandal,  
through its Secretary
5. Rahul s/o Parlhada Bhangawad
6. Akash s/o Gangadhar Kochewad ... **RESPONDENTS**

**AND  
WRIT PETITION NO.8732 OF 2023**

Balaji s/o Ramdas Jadhav ... **PETITIONER**  
**VERSUS**

1. The State of Maharashtra,  
through its Secretary  
School Education and Sports  
Department, Mantralaya,  
Mumbai – 400 032
2. The Deputy Director of Education,  
Latur Region, Latur  
Tq. and Dist. Latur
3. The Education Officer (Secondary),  
Zilla Parishad, Latur  
Tq. and Dist. Latur
4. Kisan Shikshan Prasarak Mandal,  
through its Secretary
5. Rahul s/o Parlhada Bhangawad
6. Akash s/o Gangadhar Kochewad ... **RESPONDENTS**

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Advocate for petitioners: Mr. K.P. Rodge in WP/15505/2023 and WP/15457/2023

Advocate for petitioners : Mr. V.D. Gunale in WP/8731/2023 and WP/8732/2023

A.G.P for respondent Nos.1 to 3 : Mr. D.R. Korde

Advocate for respondent Nos.5 and 6: Mr. K.P. Rodge in WP/8731/2023 and WP/8732/2023

Advocate for respondent No.4 : Mr. Amarjeet V. Patil

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**CORAM : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**DATED : 13.06.2024**

**ORDER (MANGESH S. PATIL, J.) :**

Leave granted to correct the name of the petitioner in WP No.8732/2023. Amendment to be carried out forthwith.

2. Rule in all the petitions. It is made returnable forthwith. The learned AGP and the learned advocates for the respective respondents waive service. At the joint request of the parties, matters are heard finally at the stage of admission, together as the issues being raised are interdependent and to avoid rigmarole.

3. All these petitioners are the teachers serving in the school being run by the respondent – Management. For the sake of convenience, the petitioners are being referred to by their surnames.

4. The Management transferred petitioners Kochewad and Bhangawad by separate orders dated 08.02.2022 and 27.01.2022 respectively from unaided division to the aided division purportedly in the light of Rules 41 and 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the MEPS Rules). The proposals were forwarded to the Education Officer for grant of approval to such transfers. Initially those proposals were turned down. Those decisions were challenged by these two individuals by two separate petitions, WP No.4824/2023 and WP No.4825/2023. By similar orders dated 25.04.2023 the petitions were partly allowed and the Education Officer was directed to consider their proposal for grant of approval to

such transfers in the light of Rule 41 (1) and 41 (2) and Rule 41A (1) of the MEPS Rules. Accordingly by the orders dated 07.06.2023 and 13.06.2023 the Education Officer granted approval to the transfer of Kochewad and Bhangawad respectively.

5. Petitioners Belkone and Jadhav challenge these orders of the Education Officer granting approval by filing separate writ petitions, as the ground that the approvals were granted contrary to Rule 41A and ignoring the *inter se* seniority amongst all the teachers. They allege that though all these four petitioners were appointed on the same date, they are senior to Kochewad and Bhangawad. Simultaneously, Belkone and Jadhav are praying that the Management be directed by way of writ of mandamus to transfer them from unaided division to aided division being senior.

6. When the Headmaster submitted a proposal to the Deputy Director of Education (DDE) for including the name of Kochewad and Bhangawad in the online portal for disbursement of salary, by the order dated 04.10.2023 the respondent – Deputy Director of Education, Latur Division, Latur refused to direct inclusion of their names in the Shalarth Pranali on the ground that the dispute regarding *inter se* was being questioned in the writ petitions filed by Belkone and Jadhav. By other two petitions, Kochewad and Bhangawad are impugning the decision by the DDE dated 04.10.2023.

7. Learned advocate Mr. Rodge for Kochewad and Bhangawad

would submit that as far as these petitioners are concerned approval was granted to their transfer from unaided division to aided divisions and till the time it was not revoked or cancelled, their claim for including their names in the Shalarth Pranali was innocuous and should have been approved by the DDE. Even if that approval was under challenge in the other two petitions, till the time those were not set aside these petitioners were entitled to receive the salary through the portal. He would place reliance on the decision of the division benches of this Court in the matter of **Amol Baban Sangar Vs. The State of Maharashtra and Ors.; WP No.8966/2021 (decided on 21.02.2022)** and **Dnyaneshwar Laxman Chavan Vs. The State of Maharashtra and Ors.; WP No.5013/2022 (decided on 05.05.2022)**.

8. As far as the *inter se* seniority is concerned, Mr. Rodge would strenuously submit that it is the prerogative of the Management to transfer a teacher as contemplated under Rules 41 and 41A. These petitioners had acquired requisite qualifications and the Management on that basis had transferred them and therefore the approval was granted by the Education Officer to such transfer. If at all some dispute was to be raised regarding supersession, the other two petitioners, Belkone and Jadhav could have approached the School Tribunal in appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (The MEPS Act).

9. Per contra, Mr. Gunale for the petitioners Belkone and

Jadhav would vehemently submit that a common seniority list has been prepared by the Management which is annexed in these petitions *prima facie* showing that these petitioners are senior to Kochewad and Bhangawad. He would point out that apart from these two petitioners Belkone and Jadhav even there were other teachers who were senior to Kochewad and Bhangawad and five of them had submitted an application to the Headmaster questioning the decision to transfer the teachers who were junior to them, from unaided division to aided ones. Even the dispute was raised with the Education Officer and still, ignoring the seniority and contrary to Rule 41A approvals were granted to the transfer of Kochewad and Bhangawad. He would submit that in fact this Court had expressly directed the Education Officer to consider the grant of approval to the transfer in the light of Rule 41 and Rule 41A of the Rules. In spite of that the impugned orders granting approval were passed.

10. Mr. Gunale would submit that once a seniority list was prepared by the Management which was even signed by all the teachers mentioned therein including Mr. Kochewad and Mr. Bhangawad, since the latter had never raised any objection to the seniority list which was prepared in accordance with the provisions of Scheduled 'F' of the MEPS Rules, the conduct of the Management in exercising the discretion under Rule 41A in transferring Kochewad and Bhangawad irrespective of the fact that they were junior to several other teachers is clearly violative of Rule 41A (1)(e). He would submit that even the conduct of the

Education Officer in not even ascertaining as to if these two teachers were really senior most clearly shows that he had granted approval arbitrarily and illegally. Mr. Gunale would, therefore, submit that even if the approval was granted to the transfer of Kochewad and Bhangawad since it was contrary to law and was expressly challenged in these petitions by Belkone and Jadhav, no fault can be found with the stand of the DDE in refusing to direct inclusion of names of Kochewad and Bhangawad in the Shalarth Pranali.

11. Learned advocate for the Management would submit that it is the discretion of the Management under Rules 41 and 41A to transfer a teacher from unaided division to aided ones and accordingly the decision was taken and the proposal was forwarded to the Education Officer who granted approval to such transfer.

12. Learned AGP would submit that no fault can be found with the stand of the DDE in refusing to direct inclusion of names of Kochewad and Bhangawad in the Shalarth Pranali when it was brought to his notice that Belkone and Jadhav have been expressly challenging even the order of transfer and also the approvals granted by the Education Officer.

13. As can be gathered, there is not much of a dispute on facts. So far as the issue regarding seniority is concerned, Belkone and Jadhav have filed seniority list of the teachers maintained by the Management for the year 2020-2021 in their respective petitions. The Management has not controverted this fact by filing any reply. More importantly Kochewad

and Bhangawad have filed their affidavits-in-reply in the petition of Belkone *inter alia* expressly admitting in paragraph No.2 that indeed (Exhibit-D page 44) therein is a common seniority list maintained by the respondent – Management in respect of the teachers. One can therefore safely proceed on the premise that (**Exhibit-D**) in petition of Belkone is the *inter se* seniority list which includes names of all these four petitioners. Belkone and Jadhav are at serial Nos.4 and 5, whereas, Bhangawad and Kochewad are at serial Nos.8 and 10 respectively. It is, therefore, in our considered view not necessary to elaborate on the aspect of the manner in which a seniority list is to be maintained in accordance with the Scheduled 'F' of the MEPS, Rules. Admittedly, no issue has been raised by anybody muchless by Kochewad and Bhangawad questioning legality of this seniority list.

14.           Though Mr. Rodge strenuously tried to impress upon us that Kochewad and Bhangawad were possessing higher qualification or even the essential qualification and therefore were entitled to be treated as senior to the other two petitioners and were entitled to be transferred to aided division under Rule 41A, the argument is not germane to the issue. As is observed earlier, no dispute regarding *inter se* seniority and questioning legality of the seniority list (**Exhibit-D**) maintained by the Management has been raised by anybody. Consequently, we cannot go into and beyond this seniority list.

15.           Even the submission of Mr. Rodge that Belkone and Jadhav

had the remedy before the School Tribunal under Section 9 of the MEPS Act is not sustainable for the simple reason that the jurisdiction of the School Tribunal is limited in respect of the disputes *inter alia* supersession in the matter of promotion. When the dispute in the matters in hand is merely regarding transfer from unaided division to aided division effected under Rule 41A, in our considered view it is not a matter of supersession in the matter of promotion so that a remedy of appeal could be available to petitioners Belkone and Jadhav.

16. Resultantly, when Rule 41A (1)(e) requires a Management to effect transfer from unaided division to aided division, by keeping in mind the seniority and when apparently, in the seniority list maintained by the Management, apart from Belkone and Jadhav there were five to six other teachers who were senior to Kochewad and Bhangawad, the action of the Management in transferring them and even the decision of the Education Officer in granting approval to such transfers is clearly illegal being violative of Rule 41 A (1)(e). We, therefore, have no hesitation in reaching such a conclusion. It is clearly an abdication of duty by the Education Officer in not undertaking the scrutiny of the proposals received by him from the Management, whereby, approval was sought to the transfer of Kochewad and Bhangawad. He should have solicited information from the Management regarding seniority list more so when the proposals received by him were clearly avoiding to even mention that these two teachers were senior most teachers who were

entitled to be transferred under Rule 41A. We, therefore, conclude that the orders granting approval to such transfer are clearly illegal and liable to be quashed and set aside.

17. True it is that in the matters of **Amol Baban Sangar** and **Dnyaneshwar Laxman Chavan** (supra) coordinate benches of this Court had observed that once approvals were granted by the Education Officer, it was not proper for the DDE to refuse to direct inclusion of names of such teachers in the Shalarth Pranali. However, *ex facie*, the matters in hand stand on a different footing. In the present matters when the proposal reached the DDE, already petitions were filed by Belkone and Jadhav questioning the approvals granted to transfer of Kochewad and Bhangawad and the fact was brought to his notice. Therefore, no fault can be found in the impugned order passed by him in refusing to direct inclusion of names of Kochewad and Bhangawad by observing that the two petitions were still pending before this Court. In view of above, Kochewad and Bhangawad are not entitled to derive any benefit from the above two decisions of the coordinate benches.

18. Resultantly, the writ petitions filed by Kochewad and Bhangawad are liable to be dismissed and the petitions filed by Belkone and Jadhav deserve to be allowed to the extent challenging the order passed by the Management transferring Kochewad and Bhangawad and questioning the legality of approval granted by the Education officer.

19. So far as the prayer of Belkone and Jadhav seeking a writ of

mandamus directing the Management to effect their transfers under Rule 41A is concerned, in our considered view, no such mandamus can be issued. As is evident from the wording of Rules 41 and 41A, it is the prerogative of the Management if it so desires to exercise that power. Use of word 'may' at the beginning of that Rule is conspicuous. Conversely, there is no provision which mandates a Management in exercising such discretion/power.

20. Mr. Gunale would vehemently submit that if at all there are vacancies in the aided divisions, Management can certainly be directed to effect transfers of the teachers from unaided division to aided division. When the provision has been inserted to enable such transfer, it comes with an obligation on the Management to take such decision in the interest of the teachers who have been serving in unaided division.

21. We are afraid, the submission of Mr. Gunale is not sustainable in law. There is no express provision which mandates a Management in exercising the powers under Rules 41 and 41A. Obviously, if the Management intends to exercise the discretion it would be guided by the parameters laid down therein but no mandamus can be issued directing it to undertake such transfers even if there are vacancies.

22. In view of above, the Writ Petition No.15505/2023 and Writ Petition No.15457/2023 are dismissed.

23. The Writ Petition No.8731/2023 and Writ Petition No.8732/2023 are allowed partly.

24. The orders passed by the respondent – Education Officer granting approval to the transfer of Kochewad and Bhangawad are quashed and set aside.

25. The Writ Petition No.8731/2023 and Writ Petition No.8732/2023 seeking writ of mandamus against the Management directing it to transfer Belkone and Jadhav under Rules 41 and 41A, from unaided post to aided post are dismissed.

26. Rules are made absolute in above terms.

**[ SHAILESH P. BRAHME ]**  
**JUDGE**

**[ MANGESH S. PATIL ]**  
**JUDGE**

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