

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12203 OF 2023

Mahendra Waman Waghmare ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Y. B Lengare for the Petitioner.
Mr. S. B. Kalel, AGP for the Respondent-State

CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.

DATED : 27 JUNE 2024

P.C.:

1. Heard learned Counsel for the parties.
2. The Petitioner is working with the Respondent No. 4-Educational Institute in the Respondent No. 5-School as a peon. The Petitioner was issued an appointment order on 17 December 2004 previously on unaided division and thereafter on aided division. The appointment of the Petitioner was approved by the Respondent No. 3-Education Officer on 18 March 2005 with effect from 17 December 2004.
3. The Petitioner was thereafter transferred by the Respondent-Management from unaided to aided section and the proposal was submitted on 9 December 2021 and approval was granted by the

Respondent No. 3 – Education Officer on 8 March 2022. Thereafter, the Respondent-Management submitted a proposal on 12 April 2022 and 25 April 2022 for entering the name of the Petitioner in Shalarth Pranali, which has been rejected by the impugned order dated 11 May 2022 on the ground that it was not permissible to transfer the Petitioner from unaided to aided division and there is no provision to that effect.

4. The Petitioner has relied on the decision in case of *Rajaram S. Mandale and Anr. Vs. the State of Maharashtra and Anr.* (Writ Petition No. 8643 of 2019 dated 8 October 2020) to contend that even the transfer between unaided to aided section is covered under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and therefore, the premise of the impugned order is incorrect.

5. Rule 41 was already in existence when rule 41A was specifically incorporated to provide contingency between transfer from unaided to aided section in respect of teachers. In respect of non-teaching staff, we are informed that the State Government is contemplating to amend the rules to incorporate rule 41B, which is yet not brought into force. Therefore, it will have to be considered whether Rule 41, which was already in existence would cover the case of non teaching staff. The intention of the legislature is clear from incorporating specific provision permitting transfer of teaching staff from unaided to aided. However, it is not necessary for us to dwell further into the said issue as it may arise when the approval is sought for transfer of non-teaching staff from

unaided to aided division. As on today, the transfer of the Petitioner from unaided to aided division is already approved and is not cancelled and continues till date.

6. The Deputy Director of Education, as it has been held in various decisions of this Court does not have a general power of review at time of entering the name in the Shalarth Pranali, unless it is a case of fraud, misrepresentation and collusion, for which power under different government resolutions would apply. That is not the power exercised under the impugned order.

7. Therefore, as on today, since the approval granted to the Petitioner posting from unaided to aided section stands, the action of the Deputy Director of Education refusing to enter the name of the Petitioner in Shalarth Pranali cannot be sustained.

8. In these circumstances, the impugned order dated 11 May 2022 is quashed and set aside. The Respondent – Deputy Director of Education will enter the name of the Petitioner in Shalarth Pranali within a period of 6 weeks from today and take consequential steps.

9. The Writ Petition is accordingly disposed of.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)