

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

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WRIT PETITION NO. 10590 OF 2022

Smt. Poonam Bhagwan Borse And AnrPetitioners
V/S

The State Of Maharashtra And OrsRespondents

Mr. Narendra Bandiwadekar, Senior Advocate a/w. Adv. Vinayak Kumbhar, Adv. Rajendra Khaire, Adv. Aniket Phapale i/b. Adv. Ashwini N. Bandiwadekar for the Petitioners
Adv. Sandeep Shinde, for the Respondent No. 2
Mr. B. V. Samant, Addl. GP a/w. Adv. S. P. Kamble, AGP for the Respondent-State

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 22 MARCH 2024

P.C. :

1. Heard the learned counsel for the parties. Taken up for final disposal.

2. The Petitioner No. 1 is working as Assistant Teacher with Petitioner No. 2 Institute. They are jointly challenging the impugned order dated 1 April 2022 passed by Respondent No.2- Administrative Officer, Education Department, Kalyan Dombivali Municipal Corporation, Kalyan. By this order, approval to transfer of Petitioner No. 1 as assistant teacher from un-aided to fully aided post in a primary school run by Petitioner No. 2 is rejected.

3. Learned counsel for the Petitioner submitted that this issue is directly covered by various judgments including that of Ms. Sandhya Laxman Ghosalkar Vs. State of Maharashtra (WP No. 5258 of 2012 Order dated 12 September 2012), Dattu Bhima Thorat Vs. State of Maharashtra (WP No. 2960 of 2012 order dated 11 October 2012) and Pramod Prabhakar Pokale Vs. State of Maharashtra [2019(4) Mh.L.J. 278], wherein it is clearly held that vacant post of teacher in aided school can be filled by the Institute by transfer of qualified assistant teacher working on unaided post whose services on unaided post are duly approved.

4. Perused record. No reply is filed. In the present case, Petitioner No. 1 was appointed on un-aided post from 3 January 2017. Due to vacancy created owing to retirement of another teacher, Petitioner No. 1 was transferred from un-aided to aided post w.e.f. 1 January 2020 by same Institute in same school. Appointment of Petitioner No. 1 was duly approved on 29 October 2021. Thereafter, Petitioner No. 2 Institute submitted its proposal on 11 March 2022 for approval to transfer of Petitioner No. 1, as aforesaid. These facts are squarely covered by the law laid down by the aforesaid judgments relied upon by the Petitioner.

5. Learned Counsel for the Respondent No. 2 Education Authority was at pains to defend the impugned Order, but could not distinguish the facts of the present case from that of the above

judgments.

6. In that view of the matter, the impugned order taking contrary stand, can not be sustained and the same is therefore quashed and set aside. Respondent No.2 - Administrative Officer is directed to grant approval to the transfer of Petitioner No. 1 from un-aided to aided post as prayed in proposal dated 11 March 2022 with all consequential benefits, within a period of 5 weeks from today.

7. Writ Petition is disposed of in the aforesaid terms. No order as to costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)