

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

WRIT PETITION NO. 7484 OF 2024

1. Jitendra Narayan Patil,
Aged 46 Yrs, Occ. Service,
R/o. 305, Sarita Heights,
Near Gaondevi Mandir, Kalwa (W),
Thane – 400605

2. Gopalrao Patil Shikshan Prasarak
Mandal, Kalwa, Thane, Thr. Its
President/Secretary

...Petitioners

Versus

1. The State of Maharashtra,
Thr. Its Secretary,
School Education Department,
Mantralaya, Mumbai – 400032

2. The Deputy Director of Education,
Mumbai Region, Mumbai

3. The Education Officer (Secondary),
Zilla Parishad, Thane.

...Respondents

Mr. Narendra Bandiwadekar, Sr. Advocate a/w Mr. Vinayak Kumbhar, Mr. Ranjendra Khaire, Mr. Aniket Phapale i/by Ms. Ashiwini Bandiwadekar Advocate for the Petitioners.

Ms. N.M. Mehra, AGP for Respondent – State.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 25th NOVEMBER, 2024

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner No.1 has been appointed from 1st August, 2013 as an Assistant Teacher in the pay scale, on a post which was not extended salary grants by the State Government. His services were approved vide order dated 27th January, 2014. After two years, on 16th June, 2016, Petitioner No.1 was transferred from the Unaided Establishment to the Fully Aided Establishment, in view of the salary grants in Aid available for the said post. As a result, Petitioner No.1 was granted approval on 3rd August, 2016.

3. By order dated 29th July, 2020, the Education Officer (Secondary) has passed an order, thereby modifying the earlier approval granted to Petitioner No.1. He converted the earlier approval granted after his transfer to the Fully Aided Post of Assistant Teacher, into an approval for a period of three years, purportedly as a Shikshan Sevak from 16th June, 2016 to 15th June, 2019. Reliance is placed on Clause No.3 and 5(a) of the

Government Resolution dated 28th June, 2016.

4. We have perused the affidavit in reply filed by Smt. Lalita Dahitule (Kawade), Education Officer (Secondary), Zilla Parishad Thane, dated 11th July, 2024.

5. This issue has already been dealt with by this Court in *Pramod s/o Prabhakar Pokale V/s. State of Maharashtra and Others, 2019 (4) Mh.L.J. 278*, wherein this Court has specifically concluded as under :

“Prima facie said provision appears to be attractive, however, in case candidate is appointed on the post of Assistant Teacher after following the mandate of section 5 of the MEPS Act, 1977, and on completion of two years probation period, if the Education Officer has granted approval to his appointment on regular basis, and in case he is senior most teacher serving in the school on unaided basis run by the Institution, requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he has already completed 3 years period as Assistant Teacher, there is no justifiable reason to ask him to work again as Shikshan Sevak on consolidated pay for three years. The sub- clause 5(A) of clause 3 of the said Circular can be invoked wherein the Assistant Teacher has not completed three years period after his appointment as an Assistant Teacher in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis. In short, if the Assistant Teacher has not completed satisfactory probation period, and if his service or services are not approved by the Education

Officer on regular basis or there is no adherence to the provisions of section 5 of the MEPS Act, 1977, in that case, the management is not entitled to transfer such teacher from an unaided school to aided school or on aided post of Assistant Teacher/Shikshan Sevak from unaided post held by the Assistant Teacher. It is only in case where the Assistant Teacher has acquired status of regular employee on completion of two years probation period, and his appointment is in adherence to the provisions of section 5 of the MEPS Act, 1977, and the approval is granted by the Education Officer to his appointment on regular basis on the post of Assistant Teacher on completion of satisfactory probation period, and he is senior most teacher working in the school on unaided basis, in that case, the question of invoking sub-clause 5(A) of Clause 3 of the said Circular would not arise. In such case, invoking said provision would run contrary to the judgment of the Division Bench (Coram: Dr. D. Y. Chandrachud and A. A. Sayed, JJ.) of the Bombay High Court at Principal Seat in the case of Ms. Sandhya Laxman Ghosalkar (supra), wherein it is observed in para 4 that, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three Petitioners. It is further observed that, if the Petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is especially so having due regard to the fact that they were similarly circumstanced with other Teachers in whose case approval was granted as Assistant Teachers.”

6. By the impugned order, the Education Officer (Secondary) has not taken a stand that the selection and appointment of Petitioner No.1 was *de-hors* the procedure to be followed for making a selection or that he did not have the required

qualifications/ prerequisites. When he had completed two years on the post of Assistant Teacher on no grant basis and his service was approved, the view taken in *Pramod s/o Prabhakar Pokale* (Supra) in the light of the reproduced portion herein above, the impugned order cannot be sustained. In the similar circumstances, the Divisional Deputy Director Education, Mumbai has passed an order on 14th December, 2022, granting Shalarth-ID to an identically placed Employee namely Smt. Anagha Suhas Thale, which is in tune with the view taken by this Court in *Pramod s/o Prabhakar Pokale* (Supra).

7. In view of the above, the impugned order is quashed and set aside. The approval to be granted to the appointment of the Petitioner shall be from the date of his transfer to the Aided Category vide order dated 3rd August, 2016. Consequentially, by setting aside the impugned order, the order dated 3rd August, 2016, shall stand restored. The Shalarth-ID shall be granted to the Petitioner No.1 as an Assistant Teacher and the one granted by treating him to be a Shikshan Sevak, shall lose its efficacy.

8. **Rule is made absolute in the above terms.**

9. Needless to state, all consequential monetary benefits shall be paid to the Petitioner No.1, expeditiously.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)