



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5413 OF 2022

Sandip s/o Sudhakar Lawande,
Age : 37 years, Occu : Service as Assistant
Teacher, R/o. Liha(Bk), Tq.Motala,
Dist.Buldhana

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Education Officer (Secondary)
Zilla Parishad, Buldhana.
3. Jagdamba Shikshan Prasarak Mandal,
Liha (Bk), Tq.Motala, Dist. Buldhana,
Through its President/Secretary
4. Shri Jagdamba Vidyalaya,
Liha (Bk), Tq.Motala, Dist. Buldhana,
Through its Head Master

.. Respondents

Mr. N.B.Kalwaghe, Advocate for Petitioner.

Mr. J.Y.Ghurde, AGP for respondent Nos.1 and 2.

**CORAM : NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.**

DATED : 09/07/2024

ORAL JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally, by
consent of the learned counsel appearing for the parties.

(2) By this petition, the petitioner is seeking direction against respondent No.2, Education Officer, to modify the approval order dated 11/02/2019 regarding his appointment.

(3) The petitioner contended that on 09/12/2013, the respondent Nos.3 and 4 appointed him as 'Assistant Teacher'. Subsequently respondent No.2 approved the said appointment vide communication dated 23/12/2013. His appointment was made on a clear vacant and sanctioned post in the unaided division of the respondent No.4 School. He has rendered more than five years of service in the unaided post; after that, considering his seniority in the unaided division, respondent No.3 Education Society, by passing a Resolution resolved to transfer him from the unaided post to the 100% aided post in respondent No.4 Secondary School. Accordingly, respondent No.3 vide order dated 19/09/2018 transferred the petitioner from the unaided post to the 100% aided post of '*Assistant Teacher*'.

(4) Respondent No.3 submitted a proposal to transfer the petitioner to Respondent No.4 School, before respondent No.2 to seek approval. However, respondent No.2, instead of granting approval to

the petitioner's transfer as 'Assistant Teacher', vide impugned order, erroneously granted approval to his transfer from 01/07/2018 as 'Shikshan Sevak' on honorarium of Rs.8000/- for three years. Hence, the petitioner has filed this petition.

(5) Mr. Kalwaghe, learned Counsel for the petitioner, vehemently contended that the petitioner has completed his probation period and worked in an unaided division on a regular basis. The petitioner's case is covered by the following Judgments :-

- 1. Suryakant S/o Janardan Muge vs. The State of Maharashtra and others [Writ Petition No.1493 of 2018 (Aurangabd Bench)]*
- 2. Arun Suryabhan Dhanak vs. The State of Maharashtra [Writ Petition 12512 of 2021 (Aurangabad Bench)]*
- 3. Pramod s/o Prabhakar Pokale vs. State of Maharashtra and others [2019(4) Mh.L.J.]*
- 4. Anil s/o Janardhan Sarkate and others vs. The State of Maharashtra and others [Writ Petition No.512 of 2022 (Nagpur Bench)]*

(6) However, respondent No.2, without considering the law laid down in the aforesaid judgments, erred in granting approval to the proposal submitted by respondent No.3 Society. Hence, he urges the issuance of direction to respondent No.2 to modify the impugned order.

(7) As against, learned Assistant Government Pleader strenuously argued that the services of the petitioner on the non-grant post are less than five years and therefore, as per Clause 5(a) of the Government Circular dated 28/06/2016, respondent No.2 has rightly granted approval. Hence, he urges the rejection of the petition.

(8) We have appreciated the submissions of learned Counsel for both parties. Perused the record and Judgments relied upon by the learned Counsel for the petitioner, as well as the Government Circular dated 28/06/2016.

(9) It appears that by appointment order dated 09/12/2013, the petitioner was appointed as 'Assistant Teacher' on probation, to which respondent No.2 granted approval vide communication dated 23/12/2013. The petitioner completed his service for a period of three years and worked there on a regular basis. It is also claimed that he was the senior Teacher in the unaided division. Therefore, he was transferred to the aided division by order dated 19/09/2018.

(10) It is further revealed that in the petition, the petitioner claimed that he had rendered service for more than five years in an

unaided division; however, factually, this is incorrect as he joined as 'Assistant Teacher' on 09/12/2013, and, therefore, five years' service would be completed on 08/12/2018. However, prior to completion of the five-year service, vide order dated 19/09/2018, he was transferred from the unaided division to the aided division.

(11) It is to be noted that as per sub-Clause 5(a) of Clause 3 of the Circular dated 28/06/2016, if the teacher appointed on an unaided basis and has rendered less than five years of service and in case the management wishes to make such transfer from unaided division to aided division, in that case, an undertaking should be obtained from the said Teacher to work as 'Shikshan Sevak' on consolidated pay.

(12) However, it appears that in Writ Petition No.5313/2017 with connected petitions decided on 25/04/2019, the Principal Seat at Bombay has held as under :-

"The circular dated 28/06/2016 can hardly be said to be Government instructions. It has no statutory force in law. Rule 41 of the MEPS Act, which is the subordinate legislation, the administrative decisions which run contrary to them cannot be held to be valid in law. We find that, since Clauses 1 and 2 of the said circular run contrary to the provisions of the subordinate legislation as found in Rule 41, the same would not be valid in law."

(13) Similarly, in the case of *Anil Sarkate* (supra), this Court, after considering the law laid down in the case of *Arun Dhanak* (supra) and the case of *Sandhya d/o Balkrushna Teli and others vs. The State of Maharashtra and others [Writ Petition (Stamp) No.93919/2020 decided on 13/03/2021]* has held that “*petitioners therein are entitled to the approval as ‘Assistant Teacher’ with effect from the date of transfer to the aided posts*”.

(14) Having considered the aforesaid dictum laid down by this court, it seems that the case of the petitioner is squarely covered by the said Judgments. Therefore, in our view, the petitioner is entitled to a similar relief.

(15) The petitioner, though, has claimed to direct respondent No.2 to grant approval to his appointment on aided Section w.e.f. 01/07/2016 as an ‘Assistant Teacher’ instead of as ‘Shikshan Sevak’. However, it is not in dispute that respondent No.3 issued the said order on 19/09/2018. Therefore, in our view, the petitioner is entitled to claim approval for his services from the date of issuance of the order dated 19/09/2018 instead of 01/07/2018.

(16) In the background above, we deem it appropriate to allow the present writ petition and pass the following order :-

ORDER

(i) The Writ Petition stands allowed.

(ii) The respondent No.2 Education Officer is hereby directed to modify the approval order dated 11/02/2019 and grant approval to the services of the petitioner as 'Assistant Teacher' w.e.f. 19/09/2018 on the aided basis in respondent No.4 School instead of 'Shikshan Sevak' within four weeks from the date of production of this order.

(iii) As a sequel to the above, respondent No.2 is directed to release the arrears of the petitioner's salary from 19/09/2018 within a period of four weeks from today.

(17) Rule is made absolute in the above terms. No costs.

[Abhay J. Mantri, J.]

[Nitin W. Sambre, J.]