



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

WRIT PETITION NO. 5444 OF 2022

Sharad s/o Digambar Cheke,
Age : 35 years, Occu : Service as Assistant
Teacher, R/o. Sarola Maroti, Tq.Motala,
Dist.Buldhana

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Amravati Division, Amravati, Dist.
Amravati
3. The Education Officer (Secondary)
Zilla Parishad, Buldhana.
Tq. & Dist. Buldhana.
4. Indira Bhaudeshiya Shikshan Sanstha,
Buldhana, Gode Niwas, Chikhli Road,
Buldhana,
Through its President/Secretary
5. Sharad Pawar Vidhalaya and Junior
College, Warud, Tq. And Dist. Buldhana,
Through its Head Master

.. Respondents

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

Mr. D.P.Thakare, Additional Government Pleader for respondent nos.1
to 3.

Mr. A.A.Zade. Advocate for respondent nos.4 and 5.

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

DATED : 30th August, 2024

ORAL JUDGMENT (Per : Nitin W. Sambre, 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 the respondent No.3 - Education Officer (Secondary) to modify the approval order dated 21/06/2021 regarding his appointment and release arrears of salary of the petitioner by granting approval to the transfer of the petitioner on 100% aided division.

(3) The petitioner contended that on 18/02/2014, the respondent Nos.4 and 5 appointed him as 'Assistant Teacher'. Subsequently respondent No.3 - Education Officer approved the said appointment, vide communication dated 31/08/2015. His appointment was made on a clear vacant and sanctioned post in the unaided division of the respondent No.5-School. He has rendered more than five years of service in the unaided post. Thereafter considering the seniority of the petitioner in the unaided division, the respondent No.4 - Education Society, by passing a Resolution resolved to transfer him from the unaided post to the 100% aided post in the respondent No.5 - School. Accordingly, the respondent No.3 vide order dated 25/02/2019 transferred the petitioner from the unaided post to the 100% aided post of '*Assistant Teacher*' w.e.f. 01/03/2019.

(4) The respondent No.4-Education Society submitted a proposal to

transfer the petitioner to the respondent No.5-School, before the respondent No.3-Education Officer to seek approval. However, respondent No.3, instead of granting approval to the petitioner's transfer as 'Assistant Teacher', vide impugned order, erroneously granted approval to his transfer from 21/06/2021 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 :-

(i) *Suryakant S/o Janardan Muge vs. The State of Maharashtra and others [Writ Petition No.1493 of 2018 (Aurangabd Bench)]*

(ii) *Arun Suryabhan Dhanak vs. The State of Maharashtra [Writ Petition 12512 of 2021 (Aurangabad Bench)]*

(iii) *Pramod s/o Prabhakar Pokale vs. State of Maharashtra and others [2019(4) Mh.L.J.]*

(iv) *Anil s/o Janardhan Sarkate and others vs. The State of Maharashtra and others [Writ Petition No.512 of 2022 (Nagpur Bench)]*

(v) *Sandip S/o Sudhakar Lawande vs. The State of Maharashtra and others [Writ Petition No.5413 of 2022 (Nagpur Bench)]*

(6) It is urged that the respondent No.3, without considering the law laid down in the aforesaid judgments, erred in granting approval to the proposal submitted by the respondent No.4-Education Society. Hence, he urges the issuance of direction to the respondent No.3 -Education Officer to modify the impugned order.

(7) As against, learned Additional Government Pleader strenuously argued that in view of Government Circular dated 28/06/2016 as the appointment on grant-in-aid basis has to be treated as fresh appointment, the respondent No.3 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 an appointment order dated 18/02/2014, the petitioner was appointed as 'Assistant Teacher' on probation, to which the respondent No.3 granted approval, vide communication dated 31/08/2015. 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 25.02.2019 w.e.f. 01.03.2019.

(10) It is further revealed that the petitioner had rendered service for more than five years in an unaided division. After completion of the five-year service, vide order dated 25/02/2019, he was transferred from the unaided division to the aided division w.e.f. 01/03/2019.

(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, the case of the petitioner is squarely covered by the aforesaid Judgments. Therefore, in our view, the petitioner is entitled to a similar reliefs.

(15) The petitioner claims to direct the respondent No.3 to grant approval

to his appointment on aided Section w.e.f. 01.03.2019 as an 'Assistant Teacher' instead of as 'Shikshan Sevak'. Therefore, in our view, the petitioner is entitled to claim approval for his services from the date of effecting the transfer which is 01.03.2019.

(16) In the backdrop of 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.3 - Education Officer is hereby directed to modify the approval order dated 21/06/2021 and grant approval to the services of the petitioner as 'Assistant Teacher' w.e.f. 01.03.2019 on the aided basis in respondent No.5 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.3 is directed to release the arrears of the petitioner's salary from 01.03.2019 within a period of four weeks from today.

Rule is made absolute in the aforesaid terms. No costs.

[Abhay J. Mantri, J.]

[Nitin W. Sambre, J.]

Mukund Ambulkar