



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

WRIT PETITION NO.6210 OF 2023

Ku. Sarika Bhaskarrao Gawali Now Sou. Mrunal Ravindra Katolkar

Vs.

The State of Maharashtra, through its Secretary, Education & Sports
Department, Mantralaya, Mumbai-32 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.D. Mohgaonkar, Advocate for petitioner.

Shri N.R. Rode, AGP for respondent nos.1 to 3/State.

CORAM : VINAY JOSHI & M.W. CHANDWANI JJ.

DATE : JULY 25, 2024.

Heard.

2. The petitioner was appointed as a Lecturer for Marathi faculty in respondent no.5–Junior College after following recruitment process. The petitioner's initial appointment was approved. She has completed probation and her confirmation was also approved. In said school, a vacancy arose in Marathi faculty due to retirement of teacher namely Ms Sadhna Telrandhe. In turn, the school/junior college has transferred the petitioner from unaided to aided division vide communication dated 09.04.2022. It is petitioner's contention that in view of amendment in Rule 41A and consequential Government Resolution dated 01.04.2021 her transfer from unaided to aided division is permissible. The Management has submitted proposal for transfer, however, it was rejected by the Deputy Director of

Education vide communication dated 18.07.2022 stating that petitioner has not completed requisite five years of service which she would complete on 19.03.2023. In turn, after completion of five years, the Management once again re-submitted the proposal which was again rejected by the Deputy Director of Education vide communication dated 10.05.2023 stating that there is stay to transfer vide Government Resolution dated 01.12.2022. In the meantime, petitions have been filed before this Court challenging the legality of the Government Resolution dated 01.12.2022 which in effect has stayed operation of Rule 41A of the MEPS Rules, 1981. This Court has granted interim stay to the said Government Resolution vide order dated 07.06.2023. Once again, the Management has sent proposal for approval on 21.06.2023 however it was rejected on the count that though interim stay was granted by this Court however, the present petitioner was not party petitioner to said petitions.

3. Be that as it may, the said petition bearing No.Writ Petition No.8215 of 2022 with connected writ petitions were finally decided by this Court vide judgment and order dated 21.07.2023, whereby Government Resolution dated 01.12.2022 to the extent of staying the operation of Rule 41A of the Government Resolution MEPS Rules, 1981 was set aside for want of competency of the State Government. In the wake of such position, once again the Management sent the proposal on 03.08.2023 however,

despite knowing that G.R. dated 01.12.2022 was set aside by this Court, the proposal was rejected reiterating the stand that petitioner was not party in the said petitions.

4. It is pertinent to note that this Court has set aside Government Resolution dated 01.12.2022 by judicial order. In such background the respondent-Education Officer ought to have considered the proposal for transfer on other parameters. We cannot comment upon understanding of the authority, but when the Government Resolution is set aside by this Court the reason that its applicability is restricted to the party therein is unconscionable. It reveals that each time for some or other reason proposal for approval of transfer has been rejected.

5. We clarify that though the petitioner is not party to the Writ Petition No.8215 of 2022 and connected petitions however, as Government Resolution is set aside, the said Government Resolution would not come in the way of petitioner in any manner nor the proposal can be rejected on said count.

6. With this clarification, we set aside the impugned communications dated 18.07.2022, 10.05.2023, 10.07.2023 and 04.09.2022.

7. The matter is remitted back to Deputy Director of Education, Nagpur Division, Nagpur to consider afresh in the

light of above observations and take appropriate decision within four weeks from the date of communication of this order.

8. In view of above, writ petition stands disposed of. No order as to costs.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

Wagh