



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO. 7298 OF 2022

ARCHANA LAXMANRAO DABKE

VERSUS

THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS

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Advocate for the Petitioner : Mr. B. L. Sagar Killarikar.

AGP for Respondent/s-State : Mr. S. R. Yadav-Lonikar.

Advocate for Respondent No.4 : Mr. V. M. Vibhute.

Advocate for Respondent No.6 : Mr. Ajay Shinde.

Advocate for Respondent No.7 : Mr. S. V. Adwant.

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CORAM : S. G. MEHARE, AND
SHAILESH P. BRAHME, JJ.

DATE : 26.02.2025

PER COURT :-

1. Heard both the sides finally at admission stage.
2. The petitioner is aggrieved by the order dated 02.05.2022 passed by respondent No.3/Deputy Director of Education refusing to grant approval to her transfer from unaided post to aided post. Only reason cited by him is that the petitioner did not complete five years service on unaided post so as to be eligible for the transfer to the aided post. Two relevant facts to decide controversy are that the petitioner was

appointed on 16.06.2012. Her appointment was approved by respondent No.4/Education Officer vide order dated 13.02.2015. By the said order, appointment of respondent No.7 was also approved. Thereafter, the petitioner was transferred from unaided section to aided section on 09.09.2016. Respondent No.7 was aggrieved by the transfer given to the petitioner and complaints were made. Respondent No.3 conducted inquiry and after hearing petitioner as well as respondent No.7 and other State holders, impugned order was passed.

3. Learned counsel for the petitioner submits that amended provision of Rule 41-A was introduced in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rules on 08.06.2020. The transfer of the petitioner was effected on 01.09.2016. Therefore, the amended provision of Rule 41-A stipulating condition of rendering of five years service in unaided section cannot be made applicable retrospectively. He would rely upon the judgment of Co-ordinate Bench passed in Writ Petition No.2278 of 2021 and connected matters. He would submit that on the ground of parity, the impugned order is liable to be

quashed.

4. Learned counsel Mr. S. V. Adwant for respondent No.7 would advert our attention to the affidavit-in-reply filed by respondent No.7. He would submit that the petitioner's initial appointment in the year 2012 was illegal as policy of reservation was not followed. The petitioner was belonging to OBC category and only two posts of the said category were available. Those posts were filled in by appointments of Smt. Savitri Balkrishna Bhingare and Smt. Chayya Jagannath Mandalik. So, no post was available to appoint the petitioner. It is further submitted that one post of S.C. category was available. It is further vehemently submitted that order of appointment and approval granted to the petitioner were bad in law. The transfer of the petitioner was in violation of Rule 41A(1)(c) of the Rules 1981. He would further submit that the ratio laid down in Writ Petition Nos.1493 of 2018 and 2278 of 2021 cannot be made applicable to the present case. It is further urged that if respondent Nos.1 to 3 are permitted to file additional documents on record, some more facts bearing on the merits of the matter would be disclosed to decide the controversy.

5. Learned AGP appearing for respondent Nos.1 to 3 would support the impugned order. He would submit that in paragraph No.11 of the impugned order, the Deputy Director of Education considered the backlog and breakup of reserved categories. The appointment of the petitioner was against the reservation and therefore, her proposal is rightly rejected by the impugned order.

6. We have considered the rival submissions of the parties. Petitioner was appointed on 16.06.2012. Respondent No.7 was appointed on 19.06.2012. The appointments of both petitioner and respondent No.7 were approved by common order dated 13.02.2015. Those appointments were on unaided posts. The petitioner was transferred to the aided posts on 01.09.2016. During interregnum, the appointment order and the approval given to the petitioner was not challenged by respondent No.7. However, when transfer was effected objections were raised by respondent No.7. In pursuance of those, respondent No.3 conducted an inquiry.

7. During the course of inquiry, respondent No.7 was also heard. However, relevant paragraph No.10 of the impugned

order shows only one reason was assigned for rejecting the proposal seeking approval to the transfer that the petitioner did not complete five years of service. The objection raised by respondent No.7 which can be reflected from earlier part of the impugned order were not at all dealt with by the concerned authority.

8. Respondent No.7 as well as learned AGP initially sought time so as to enable the learned AGP to produce certain documents on record. However, only reason cited by the Deputy Director of Education is in respect of eligibility of the petitioner for transfer. The proposal was not rejected on any other count though objections were raised by respondent No.7.

9. The transfer was made when unamended provisions of Section 41 was in force. Rule 41 suffered amendment on 08.06.2020. By virtue of Rule No.41A(1)(c), a rider of five years of continuous service in unaided school or division was introduced in the statute book. The transfer being prior in time, the amended provisions cannot be made applicable retrospectively. We accept the submissions of the learned counsel for the petitioner in this regard. The reasons cited in

the impugned order are totally unsustainable.

10. Learned counsel for respondent No.7 vehemently argued that the judgment relied upon by the petitioner are not applicable to the present case. The judgment rendered by Co-ordinate Bench on 04.02.2021 was in respect of circular dated 28.06.2016. The facts in those cases are different because in those cases, the schools were partially receiving grant in aid. In the present case, when the petitioner was transferred, the school was already receiving 100% grant. We are not relying upon the judgment cited by the petitioner.

11. Considering the date of transfer and the date of amendment to Rule 41, we are of the opinion that the impugned order is unsustainable. We, therefore, pass following order :

ORDER

- (i) Writ petition is allowed partly.
- (ii) Impugned order dated 02.05.2022 passed by respondent No.3/Deputy Director of Education to the extent of present petitioner is quashed and set

aside and the matter is relegated to respondent No.3/Deputy Director of Education to consider the proposal of the petitioner afresh on its own merits. However, respondent No.3 shall not reject the proposal on self same ground which we have quashed in the present petition.

- (iii) Respondent No.3 shall conduct objective scrutiny and decide the proposal within a period of four (4) weeks.

(SHAILESH P BRAHME, J.)

(S. G. MEHARE, J.)

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