



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 8248 OF 2022

ARUN SURYABHAN DHANAK

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL  
SECRETARY AND OTHERS

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Advocate for the Petitioner : Mr. Panpatte V. S.  
AGP for Respondents-State : Mr. S. B. Pulkundwar.  
Advocate for Respondent No.4 : Mr. A. N. Nagargoje.

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

DATE : 26.02.2025

PER COURT :-

1. Heard both sides finally considering the exigency in the matter.
2. The petitioner is aggrieved by order dated 27.01.2022 passed by respondent No.2/Education officer refusing to grant approval to the transfer of the petitioner from unaided post to aided post. Admittedly, he is also seeking rectification in the order of approval dated 20.07.2018.
3. The petitioner was appointed as "Assistant Teacher" on 21.10.2013 in unaided section. His appointment was approved

by the Education Officer on 30.10.2013. No sooner than a vacancy was created in aided section of the school due to superannuation of one Mr. A. B. Bhand, the petitioner was transferred vide order dated 22.03.2017. His transfer was approved by respondent No.2/Education Officer vide order dated 20.07.2018 as a “Shikshan Sevak”.

4. Petitioner was not satisfied due to defective approval as he has already rendered services as a “Shikshan Sevak” for three years. After transfer, he was entitled to be treated as Assistant Teacher. Hence, he filed Writ Petition No.12512 of 2021 to redress the grievance. Division Bench directed the Education Officer to ascertain certain facts and to grant approval to the petitioner accordingly. In pursuance of that order, inquiry was conducted and impugned order was passed on 27.01.2022.

5. Learned counsel for the petitioner submits that the parameters of rendering of services of five years in unaided section is for the first time introduced by amendment dated 08.06.2020 to Rule 41 of M.E.P.S. Rules of 1981. As the transfer of the petitioner is prior to the amendment, the

reasons assigned by the Education Officer is totally unsustainable. It is further submitted that petitioner had already completed three years period as a Shikshan Sevak before his transfer and therefore, granting him approval after transfer again as a Shikshan Sevak is misconceived.

6. Learned AGP supports the impugned order. He would submit that the Education Officer has conducted objective scrutiny and he is justified in rejecting the proposal.

7. Petitioner's earlier appointment and approval is not controverted by the respondents. He was rendering services in unaided section. Thereafter, he was transferred on 22.03.2017 before completion of five years period in unaided post. The amendment was made to Rule 41 by introducing 41(A) on 08.06.2020. By Rule 41(A)(1)(c) of the Rules, the condition of five years period is introduced to become eligible for transfer. However, the said amendment cannot be made applicable retrospectively.

8. There was no point in approving the transfer of the petitioner as a Shikshan Sevak vide order dated 20.07.2018. Petitioner had completed period of Shikshan Sevak before

transfer itself. Mr. Panpatte, learned counsel for petitioner is right in contending that approval dated 20.07.2018 is defective and the petitioner should have been treated as Assistant Teacher in the approval. Hence, we pass the following order :

**ORDER**

- (i) Writ petition is allowed in terms of prayer Clause “B”.
- (ii) Respondent No.2 shall modify the proposal dated 20.07.2018 by treating the petitioner as “Assistant Teacher” instead of “Shikshan Sevak” and shall issue the approval accordingly.
- (iii) The petitioner is entitled to the consequential benefits.

**(SHAILESH P. BRAHME, J.)**

**(S. G. MEHARE, J.)**

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vmk/-