



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9268 OF 2021

Sambhaji Damodhar Narwade,
Age: 31years, Occu: Service as Assistant Teacher,
in Vidya Vikas Primary School,
KandharTq. Kandhar Dist. Nanded.
R/o: Panshewadi, Kandhar
Tq. Kandhar Dist. Nanded.

...Petitioner

VERSUS

1. Smt. Jayashree Kishanrao Panchal
Age: 37 years, Occu: Assistant Teacher
In Vidya Vikas Primary School,
Kandhar Tq. Kandhar Dist. Nanded
R/o: Vidya Vikas Primary School,
Kandhar Tq. Kandhar Dist. Nanded
2. Annabhao Sathe Shikshan Prasarak Mandal,
Through its Secretary,
KandharTq. Kandhar Dist. Nanded.
3. VidyaVikas Primary School
Through its Head Master,
Kandhar Tq. Kandhar Dist. Nanded
4. The Education Officer (Primary),
Zilla Parishad, Nanded,
Dist. Nanded.
5. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Dist. Mumbai.
6. B.C. Cell Department

Divisional Commissioner Officer
Aurangabad.

...Respondents

Advocate for the Petitioner : Mr. R.J. Godbole
AGP for Respondent/State : Mr. S.J. Salgare
Advocate for Respondent No.1 : Mr. V.S. Panpatte
Advocate for Respondent Nos.2 and 3 : Mr. Suryawanshi R.R.
Advocate for Respondent No.4 : Ms. Megha Mali h/f. Ms. Yogita Thorat

**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

DATE : 05.12.2025

FINAL ORDER : (PER : R.G. AVACHAT, J.)

. Heard.

2. This petition has been filed for the following main reliefs :

“B) By an appropriate writ or order, the impugned transfer order dated 03.03.2017 w.e.f. 01.12.2016 passed by the respondent No. 2 transferring respondent No. 1 from unaided post to aided post be quashed and set aside;

C) By an appropriate writ or order, the impugned approval order dated 09.03.2020 granting approval in favor of respondent No. 1 be quashed and set aside.

E) By an appropriate order or writ Respondent management may kindly be directed to forward proposal of the petitioner transferring him from unaided post to aided post w.e.f. 01.12.2016 and respondent Education Officer may kindly be directed to grant approval to such proposal forwarded by the respondent management w.e.f. 01.12.2016 against aided post and till then salary may not be released in favor of respondent No. 1 from Education Department.

F) By an appropriate order respondent Education Officer (Primary) Zilla Parishad, Nanded be directed to grant arrears of salary till final disposal of this writ petition in favor of petitioner if respondent management transfers petitioner from unaided post to aided post w.e.f. 01.12.2016.”

3. In short, the challenge is to the transfer of respondent No.1 from unaided to aided post. The grounds of challenge are as follows :-

- a) The petitioner belongs to NT-B category.
- b) The respondent No.1 belongs to open (unreserved) category.
- c) The roster is required to be maintained separately in respect of fully grant in aid posts.

4. The learned Advocate Mr. Godbole, appearing for the petitioner submits that the post on which the respondent No.1 has been transferred was reserved for backward category candidates. The management of the school and the Education Officer joined hands to transfer the respondent No.1 from unaided to aided post and accordingly granted approval to the said transfer. According to learned Advocate, the Division Bench of this Court while disposing of the Writ Petition No.184 of 2018, has specifically observed that at the time of according approval to the transfer order, roster is required to be checked. According to him, aided posts sanctioned in the school of

respondent/management as per reservation policy and as per Rule 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (in short 'Rules,1981'), 52% seats were reserved for backward category candidates. As such 2 out of 4 posts were required to be reserved for backward category candidates. One such candidate was already working on aided post. When other post became vacant, the respondent/management, ought to have transferred the petitioner from unaided to aided post. The respondent/Education Officer without verification of roster, accorded approval to the transfer of respondent No.1. According to learned Advocate, the petitioner was unaware of transfer of respondent No.1 from unaided to aided post. It was only when the respondent/Education Officer granted approval to the said transfer, the petitioner got to know of the same. The petitioner, therefore, approached the authorities concerned first and then immediately filed the present Writ Petition.

5. The learned A.G.P and learned Advocate Mr. Panpatte, appearing for the respondent No.1 would on the other hand submit that, the petition suffers from delay and laches. According to them, roster is to be considered as against sanctioned strength of teaching and non-

teaching staff of the school and not of aided posts separately. They, therefore, urged for dismissal of the Writ Petition.

6. We have considered submissions advanced. Perused the documents relied on. Both the petitioner and respondent No.1 hold qualification of B.A.-D.Ed. The respondent No.1 was appointed way back in June 2009. She belongs to open (unreserved)category. The petitioner was appointed in April 2012 i.e about three years after the appointment of respondent No.1 in the respondent-school. The appointment of both of them was after following due recruitment process. The respondent/school has four aided posts. The respondent-management transferred the respondent No.1 from unaided to aided post on 03.03.2017. The transfer was with effect from 01.02.2016. Admittedly, the petitioner has already been serving with the very school. The petitioner, therefore, could not be heard to say that he was unaware of the transfer of respondent No.1 from unaided to aided post until, the respondent/Education Officer recently granted approval to the said transfer. It is true, that the approval has been accorded by the Education Officer in March 2020 and thereafter, the petition has been filed.

7. The fact remains that after about five years of the transfer of respondent No.1 from unaided to aided post, the petitioner has challenged the same. The petition, therefore, necessarily suffers from delay and laches.

8. On this sole ground, we are not inclined to entertain the petition so as to unsettle the settled position. We are not to be taken to have approved the contentions of the respondent/ management that roster is to be considered as against entire staffing pattern of the school. As and when vacancy arises in the posts of grant in aid, the petitioner may be considered on his own merit.

9. With the reasons stated hereinabove, the Writ Petition stands dismissed with a liberty as urged hereinabove.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

vsj..