



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13001 OF 2023

VISHNU SHIVAJIRAO MORE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS

...
Advocate for the Petitioner : Mr. T. M. Venjane
AGP for Respondents-State : Mr. V. M. Kagne
Advocate for Respondents No. 5 and 6 : Mr. Mr. V. S. Valse
Advocate for Respondent No. 4 : Mr. V. C. Patil h/f Mr. U. B. Bondar
...

CORAM : NITIN W. SAMBRE
SACHIN S. DESHMUKH, JJ.

Dated : June 12, 2025

PER COURT :-

1. From the month of June 2013, the petitioner was appointed as an Assistant Teacher on the establishment of the respondent-Management i.e. respondents No. 5 and 6 on no-grant-in-aid basis. After completing the formalities of seeking sponsorship of the candidates from the Surplus Teachers, the appointment of the petitioner is approved by the Education Officer. Since there was vacancy in respondent No. 6- school, petitioner made application for transfer from unaided to aided school. Respondents - Management transferred the petitioner from unaided post to aided post on 01.02.2022.

2. Respondent No. 6 forwarded the proposal for approval to the transfer of petitioner which is rejected by the Education Officer (Primary), Zilla Parishad, Latur, on the ground that there are surplus teachers in private primary schools in Latur District.

3. It is claimed that the issue is covered by the order dated 28.03.2024 delivered in **Writ Petition No. 11336 of 2022 (Smt. Balika Vs. The State of Maharashtra and Ors.)**. The learned counsel for the petitioner submits that approval to a transfer from unaided school to aided school cannot be refused on the ground that there are surplus teachers in the aided section.

4. We have considered the submission. The fact remains that since June 2013, the petitioner is working on the establishment of respondents No. 5 and 6. It appears that the Education Officer, instead of sponsoring the candidates from the list of surplus teachers, sat idle and same has prompted the respondent-Management to effect the transfer of the petitioner vide order dated 01.02.2022 i.e. almost after four months of seeking no objection from the Education Officer.

5. If we consider the Rule 41-A of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the transfer is an incident of service and such transfer is the administrative descretion of the management.

6. In the present case, it is not in dispute that since June' 2013, the petitioner is working in the respondents No. 5 and 6 - School as an Assistant Teacher on unaided basis and it is within the purview of the Management to invoke the provisions of Rule 41-A of MEPS Rules, 1981 for effecting the transfer of its employee.

7. The respondent-Management has sought no objection from the Education Officer and it was open for the Education Officer to levy the same by sponsoring the candidate from the list of surplus teachers. Neither, the no objection is granted nor the candidate from the surplus teachers list is sponsored by the Education Officer and it is only after the transfer of petitioner was effected and approval is sought, the impugned order came to be passed.

8. In our opinion, the respondent - Education Officer cannot take benefit of his own wrong of not deciding the requests for grant of no objection for effecting the transfer of petitioner and even for not sponsoring the candidate from the surplus teachers list. That being so, the impugned communication dated 13.09.2023 rendered by the respondent - Education Officer is quashed and set aside.

9. We direct the Education Officer to grant approval to the

transfer of petitioner from unaided to aided post of Assistant Teacher within six weeks from today.

10. Needles to clarify that the consequential benefits including that of salary receivable by the petitioner be paid to him within four weeks from today.

(SACHIN S. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)

Omkar Joshi