

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4649 OF 2022

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|----|--|---|-----------------|
| 1. | Ravindra Gopal Deshpande, |] | |
| | Aged 52 Years, Occ. Service, |] | |
| | R/o. Naganwadi, Tal. Chandgad, |] | |
| | Dist. Kolhapur. |] | |
| 2. | Sharada Shikshan Prasarak Mandal, |] | |
| | Yashwant Nagar [Office at Patane Phata], |] | |
| | Tal. Chandgad, Dist. Kolhapur, |] | |
| | Through its Chairman / Secretary. |] | ... Petitioners |

Versus

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|----|------------------------------------|---|-----------------|
| 1. | The State of Maharashtra, |] | |
| | Through the Secretary, |] | |
| | School Education Department, |] | |
| | Mantralaya, Mumbai – 400 032. |] | |
| 2. | The Education Officer [Secondary], |] | |
| | Zilla Parishad, Kolhapur. |] | |
| 3. | The Deputy Director of Education, |] | |
| | Kolhapur Region, Kolhapur. |] | ... Respondents |

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- ◆ *Mr. Narendra Bandiwadekar, Senior Advocate a/w. Mr. Sagar Mane
i/b. Ms. Ashwini Bandiwadekar for the Petitioners.*
- ◆ *Mr. V. M. Mali, A.G.P for the Respondents-State.*
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Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : 12th November 2025.

ORAL JUDGMENT (Per : M. S. Karnik, J.) :-

1. The Petitioner impugns the order dated 26th November 2021 passed by the Respondent No. 2-The Education Officer (Secondary), Zilla Parishad, Kolhapur. The Respondent No.2 by the impugned order refused to grant approval to the transfer of the Petitioner No. 1 from the unaided school to fully aided school of the Petitioner No. 2-Management.

2. The facts of the case in brief are that :

. The Petitioner No. 1 was appointed as a 'Peon' by the Petitioner No. 2-Management in its unaided school namely Swami Vivekanand Vidyalaya, at Village Date, Tal. Chandgad, Dist-Kolhapur on 10th June 2002. The Respondent No. 2 granted approval to the said unaided appointment of the Petitioner No. 1 vide order dated 24th August 2004. The Petitioner No. 2 issued order and transferred the Petitioner No. 1 as a 'Peon' from the said unaided school to its fully aided school on 9th October 2021, on the post which became available due to promotion of 'Peon' working on that post as a Junior Clerk. The Headmaster of aided school submitted a proposal dated 28th October, 2021 to the Respondent No. 2 seeking approval to the above transfer of the Petitioner No. 1. By

the impugned order, Respondent No. 2 refused to grant approval to the transfer.

3. Mr. Mali, learned AGP appearing for the Respondent-State vehemently opposed the Petition. It is submitted that Rule-41(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, “*M.E.P.S. Rules*”) clearly provides that the said Section is applicable only to the teaching staff whereas the Petitioner is working as ‘Peon’ in the category of non teaching staff.

4. Learned AGP placed reliance on the Government Resolution dated 28th January, 2019 and 11th December, 2020.

5. It is further submitted that the decision relied upon by the learned Counsel for the Petitioner, of the Division Bench of this Court in its Judgment¹ authored by His Lordship (Shri Abhay Ahuja, J.) is not applicable in view of the specific intendment of Rule-41 (a) of the M.E.P.S. Rules. We have carefully perused the above decision of the Division Bench of this Court. Their Lordships in para 11 considered the scope of transfer provided under Rule-41 of the M.E.P.S. Rules. Their Lordships took a view that transfer does not amount to fresh recruitment/appointment. For the facility of convenience, we reproduce para nos. 7 to 17 which read thus:

¹ Writ Petition No. 5806 of 2018, Yuvraj Ananda Kamble & Anr. Vs. The State of Maharashtra & Anr., along with other connected Writ Petitions, dated 1st October 2021

“7. Facts not being in dispute in all these petitions, two common issues arise for our consideration: i) whether the transfer of the employee(s) from unaided school to aided school would be a case of recruitment/ fresh appointment, ii) whether Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the “MEPS Rules”) would apply only to teaching staff, but not to non-teaching staff.

8. In our view both the issues stand squarely covered by decisions of this Court.

9. With respect to the first issue, it has been held by the Aurangabad Bench of this Court in the case of **Sudhir Dnyandeo Gadakh/Smt. Ujwala Sunil Hande/Smt. Sonali Ashok Pathare Vs. The State of Maharashtra & Ors. in Writ Petition No. 5978 of 2014 with Writ Petition No.5979 of 2014 with Writ Petition No.5980 of 2014**, while considering the Government Resolution on ban on fresh recruitment that the said Government Resolution would not apply to the case of petitioners who have been transferred from unaided school to aided school having been appointed following due selection process, prior to the said ban imposed by the State for fresh recruitment, as it would not be a case of fresh appointment. The relevant paragraph 5 of the said decision is quoted as under:-

“5] We have considered the submissions canvassed by the learned counsel for the respective parties, so also, gone through the judgments. Proposal for approval to the appointments/absorption of the petitioners on the aided posts as Shikshan sevaks has been rejected solely on the ground that at the relevant time, there was a ban on the fresh recruitment. Perusal of the Govt. Resolution in question does not reveal that the Govt. Resolution would affect the cases of the petitioners. Petitioners claim to have been appointed by following due selection process prior to the ban imposed by the State for fresh recruitment. However, they were appointed as Shikshan Sevaks on unaided posts. When vacancies arose in aided posts, they were transferred to the aided posts. It would not be a case of fresh appointment. Nothing is brought on record to show that such recourse was not permissible or there was bar for such recourse. In view of that, the reason mentioned for rejection of approval is

unsustainable. ”

10. *In the above facts of these petitions also it is seen that the petitioner employees have been appointed prior to the Government Resolution banning the fresh recruitment, even though their transfers from unaided to aided have been after the ban on fresh recruitment. The above GRs being prior to the dates of appointment of the employee Petitioners would, in our view, also not apply to their case. We are, therefore, of the view that the Government Resolution banning fresh recruitment does not apply the case of employee-Petitioners in these petitions.*

11. *Further, “transfer” in our view does not amount to fresh recruitment/appointment. It would be pertinent here to quote the relevant Rule 41 of the MEPS Rules;*

“41. Transfers. - (1) Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned if it is administratively convenient to do so.

(2) Save in exceptional cases, and unless reasons are recorded in writing by the Management, such transfers shall not be effected in the middle of the term.

(3) The Management shall see that the transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfers do not result into loss in the pensionary benefits as admissible to them.

(4) The expenditure on Traveling allowance and Daily allowance, if any, at the rates applicable to the Government employees of the comparable status, shall be borne by the Management. If the transfer is at the request of the employee, this expenditure shall be borne by the employee concerned. Provided that, the transfer involves change of headquarters, the joining time to be allowed to an employee shall be limited to six days (excluding Sunday) and actual days of journey. Subject to this limit, the period of joining time shall be treated as "duty" for all purposes :

Provided that, an employee shall not be entitled to joining time, if transfer is effected during the vacation.

(5) Where a Management runs a secondary school or secondary schools and a Junior College of Education -

(a) Teachers in a Junior College of Education shall not be transferred to a secondary school against their will. Such transfers may, however, be made if they are at employees own requests, subject to availability of vacancies in secondary schools. In the event of such a transfer, the pay drawn by the teacher in the Junior College of Education shall not be protected. He shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly refixed on his joining the secondary school.

(b) Teachers in secondary school shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made if they are at the employees own requests, subject to the following conditions, namely :

(i) Vacancies should be available in the Junior College of Education;

(ii) The concerned employee shall retain the same place in the common seniority list; and

(iii) Their pay in the Junior College of Education shall be fixed at the same stage of pay as their existing pay or at the minimum of the scale of pay in the Junior College of Education, whichever is higher.”

12. As can be seen from the above, Rule 41 of the MEPS Rules deals with the transfer of employees by the management from one school to another school.

13. Rule 9 of the MEPS Rules specifically refers to “appointment” of staff and Rule 11 as referred to above is in respect of “transfer” of employees. In our view, appointment herein would refer to fresh recruitment in contradistinction to appointment by transfer. The purpose of the legislation in having two specific Rules is indicative of this intention.

14. With respect to the second issue regarding applicability of Rule 41 of the MEPS Rules, to the case of the employee petitioners, it would here also be pertinent to quote Section 2(7) of the Maharashtra Employees of Private Schools (Conditions of Service), Regulation Act, 1977 (“MEPS Regulations”) as under :-

“2(7)- “employee” means any member of the teaching and

non-teaching staff of a recognised school; [and includes [Assistant Teacher (Probationary)] ; (emphasis supplied)

15. A conjoint reading of the above provisions leads to an undeniable conclusion that transfer of “employees” under Rule 41 of the MEPS Rules would refer to teaching as well as non-teaching staff.

16. In this connection, the decision of this Court in the case of **Namdev Tukaram Patil & Anr. Vs. The State of Maharashtra & Anr.** in **Writ Petition No. 3154 of 2021** (wherein one of us, R.D. Dhanuka, J., was a party), this Court has, while answering this very question, relying upon the decision of this Court in Writ Petition No. 8643 of 2019 (Rajaram S. Mandale and Anr. Vs. State of Maharashtra) held that Rule 41 of the MEPS Rules applies to all employees, both teaching and non-teaching of a recognised school and that it permits transfer of teaching as well as non-teaching staff of a recognised school. Paragraphs 9 and 10 of the said decision are apt and are quoted as under:-

“9. A perusal of impugned order passed by Respondent No.2 indicates that only reason recorded in the impugned order rejecting approval is that there was no provision for such transfer of non-teaching employee from the unaided school to aided school. In our view, the impugned order discloses total non-application of mind on the part of Respondent No.2 and indicates gross violation of Rule 41 of M.E.P.S. Rules. A perusal of Rule 41 of M.E.P.S. Rules alongwith definition of employee under Section 2 (7) would clearly indicate that ‘employee’ means any member of the teaching and non-teaching of a recognized school. The Respondent No.2 does not dispute that Petitioner No.2 School is recognized school. In our view, the Petitioner was holding post of Peon and was thus an employee within the meaning of employee under Section 2(7) read with Rule 41 of the M.E.P.S. Rules. (emphasis supplied)

10. The Division Bench of this Court in case of Rajaram S. Mandale (supra) has held that Rule 41 applies to all employees, both teaching and non-teaching, as defined in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, of a recognized school. Rule 41, thus, permits transfer of teaching and as well as non-teaching staff of a recognized school.”

17. In this view of the matter, the second issue also stands

concluded. No fault, therefore, can be found in the transfer of the non-teaching staff viz. employee Petitioners in these petitions, from unaided to aided school and hold that Rule 41 permits such a transfer.

6. The Petitioners case is squarely covered by the decision referred to above. In this view of the matter, the submission of learned AGP that the said transfer is in breach of the Government Resolutions referred to herein before is not well founded. The Government Resolutions apply only in case of fresh recruitment and appointment and not in the case of transfer of an employee who is already working on an unaided post.

7. The Petition is therefore allowed in terms of prayer clauses (b) and (c), which read thus :

(b) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 26.11.2021 issued by the Respondent No.2, thereby refusing to grant approval to transfer of the Petitioner No.1 as a Peon [non-teaching employee] from un-aided School to aided School of the Petitioner No.2 Management, and accordingly the Respondent No.2 may be directed to grant approval to the said transfer w.e.f. 9.10.2021 and to release the grant-in-aid for payment of monthly salary in pay scale of the said post from the said date of transfer together with all arrears up-to-date.

(c) By a suitable writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent No. 3 to include the name of the Petitioner No.1 in Shalartha Pranali and to allot

the Shalarth I.D. to the Petitioner No.1 for online payment of salary to the Petitioner No.1 as Peon in the aided School of the Petitioner No. 2 by name Dhananjay Vidyalay, Naganwadi, Tal. Chandgad, Dist. Kolhapur.

8. Petition is disposed of. No costs.

TALLE
SHUBHAM
ASHOKRAO

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

Digitally signed by
TALLE SHUBHAM
ASHOKRAO

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