

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7555 OF 2023

Sulbha Mahadev Gavali and Another.

...Petitioners.

Versus

The State of Maharashtra and Others.

...Respondents.

Mr. Sagar A. Mane and Rushikesh D. Jagdale for the Petitioners.

Mr. A. P. Vanarase, AGP for the Respondent-State.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : December 23, 2025.

Oral Judgment [Per M. S. Karnik, J.] :

1. Challenge in this petition is to the order dated 22nd April 2022 passed by the Respondent No.2- Education Officer (Secondary) Zilla Parishad, Solapur refusing to modify the order of approval to the transfer of Petitioner No.1 from unaided post to aided post.
2. By order dated 2nd February 2013, Petitioner No.1 was appointed on an unaided post of Assistant Teacher in the school run by Petitioner No.2. On 7th November 2015, Respondent No.2 granted approval to the appointment of Petitioner No.1 on an unaided post. After completion of probation period of 2 years, Petitioner No.1 became deemed permanent in service. On 15th June 2015, Petitioner No.1 was transferred from unaided post to aided post of full-time teacher in the

same school. Headmaster submitted a proposal to the Respondent No.2 seeking approval to above transfer as Assistant Teacher in the pay scale. The Respondent No. 2 by order dated 27th June 2016 granted approval to transfer of Petitioner No.1 on aided post of Assistant Teacher.

3. The Headmaster submitted a proposal to Respondent No.2 for allotting Shalarth ID to Petitioner No.1. The said proposal was forwarded to the Director of Education (Secondary and Higher Secondary), Maharashtra State, Pune. By communication dated 26th February 2018, the Director of Education informed the Respondent No.2 that transfer from an unaided post to aided post should be granted approval as per Government Circular dated 28th June 2016. Respondent No.2 forwarded the said communication to the Headmaster with instructions to submit an undertaking of Petitioner No.1 about being ready and willing to accept transfer as Shikshan Sevak for 3 years, because Petitioner No.1 had not completed 5 years service on an unaided post prior to transfer. Since the Shalarth ID was withheld for want of undertaking, Petitioner No.1 was left with no alternative but to submit such undertaking to the Respondent No. 2. On 27th February 2018, Respondent No.2 issued order granting approval to transfer of Petitioner No.1 as Shikshan Sevak with effect from 15th June 2015 in place of approval granted as Assistant Teacher

under order dated 27th June 2016. Thus, Respondent No.2 modified the order of approval to transfer. On 7th March 2018, the Director of Education issued order allotting Shalarth ID to Petitioner No.1. After completing 3 years as Shikshan Sevak, Petitioner No.1 was granted approval by the Respondent No.2 as full-time teacher w.e.f. 15th June 2018 vide order dated 6th August 2018. Headmaster submitted a proposal on 8th March 2022 to the Respondent No.2 requesting to grant approval to transfer as Assistant Teacher in pay scale with effect from 15th June 2015. On 22nd April 2022, the Respondent No. 2 issued the impugned order and rejected the proposal.

4. Learned AGP argued in support of the impugned order. It is further submitted that the Petitioner No.1 having given an undertaking, is now not justified in backtracking on such undertaking.

5. We have heard learned Counsel for the Petitioner and learned AGP for the Respondent-State.

6. We find that Petitioner No.1 was appointed on an unaided post with effect from 4th February 2013 and the said appointment was approved by the Respondent No. 2 vide order dated 7th November 2015. After working on unaided post for more than 2 years, with due approval on probation by the Respondent No. 2, Petitioner No. 1 was transferred to fully aided post of teacher in pay scale from 15th June 2015. Initially, Respondent No.2 granted approval to said transfer vide

order dated 27th June 2016. However, later on Respondent No.2 modified the said order of approval and issued order dated 27th February 2018 granting approval to transfer as Shikshan Sevak for three years on monthly honorarium.

7. In our opinion, Petitioner No.1 cannot be compelled to again work as Shikshan Sevak for three years on monthly honorarium. Such approach of the Respondent No.2 was erroneous and unfair to Petitioner No.1. Petitioner No.1 undoubtedly has given an undertaking that he is willing to accept the date as proposed by the Respondents. However, we find that Petitioner No.1 did not have any choice but to give such an undertaking. Such an undertaking in these circumstances, cannot bind the Petitioner No.1 as he was left with no choice but to accept the same. The Petitioner No. 1 however, should not be deprived of his rightful claim merely because he has given an undertaking, which has to be regarded as involuntary.

8. We are in agreement with learned Counsel for the Petitioners that the issue involved in the present petition is squarely covered by the decision of this Court in Writ Petition No. 3681 of 2023 (Kavita Kiran Kamat v. State of Maharashtra decided on 23rd September 2025).

Paragraph 6 of the said decision reads thus :

“6. The grievance of the Petitioner is that despite having rendered more than 5 years service on the unaided post, upon transfer to the aided post based on seniority, instead of approval

being granted to the Petitioner as Assistant Teacher, the approval has been granted as Shikshan Sevak. In ***Pramod v. State of Maharashtra*** (supra), the Hon'ble Division Bench has held that a teacher who has served 5 years or more and approval is granted to the appointment of such teacher by Education Officer on completion of satisfactory probation period and if such teacher is transferred on vacant aided post, there is no justifiable reason to ask him to work again as Shikshan Sevak for three years. The Petitioner herein has completed more than 5 years prior to her transfer to fully aided post and her appointment has been approved by Education Officer."

9. In this view of the matter, we have no hesitation in setting aside the impugned order. Writ Petition is allowed in terms of prayer clause (b), which reads thus :

"(b) By a suitable writ, order or direction, this Hon'ble Court may be pleased to quash and set aside the impugned order dated 22.4.2022 issued by the Respondent No. 2, and the Respondent No. 2 may be directed to issue a revised order of approval granting approval to the transfer of the Petitioner No.1 on the fully aided post thereby granting approval to the said transfer as a Shikshan Sevak on payment of monthly honorarium from 15.6.2015 to 3.2.2016 and thereafter to grant the approval as Assistant Teacher on payment of salary in full pay scale w.e.f., 4.2.2016 and thereafter to release the grant-in-aid for release of differential amount of salary after deducting the amount paid to the Petitioner No. 1 from the said date of transfer."

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]