

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14361 OF 2022

Sadanand Hari Ghodake
since deceased by heirs

(a) Smt. Suvarna wd/o Sadanand Ghodke.

(b) Mst. Yashwardhan Sadanand Ghodke

(c) Ms. Aarohi Sadanand Ghodke. ... Petitioner.

Versus

1. The State of Maharashtra

2. The Education Officer (Secondary),
Zilla Parishad, Solapur.

3. Sambhajirao Shinde Vidyamandir. ... Respondents.

...

Mr. Narendra V. Bandiwadekar, Senior Counsel, a/w. Mr. Rajendra B. Khaire, Mr. Aniket S. Phapale i/b. Mr. Vinayak Ramesh Kumbhar, for the Petitioner.

Mr. B.V. Samant, Addl. GP, a/w. Smt. Priyanka B. Chavan, A.G.P. for the State/Respondent.

...

**CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.**

DATED : 03rd JANUARY, 2025

P.C:-

1. At the outset we must take a note that since the Petitioner has demised on 10th May, 2021, the Petition is

prosecuted by his legal heirs and the amendment is accordingly carried out in the title clause.

2. The Petitioner appointed as Assistant Teacher on 5.11.2012 on unaided basis in the school of Respondent No. 3, received approval from Education Officer on 25th June, 2013 and the approval categorically stipulated that it has been granted subject to the completion of probation period of two years basis.

By an order dated 1st August, 2017, Petitioner was transferred to the aided division in the same school, since there had been increase in the strength of students and one post was created and one Sambhaji Shinde was transferred to the said post and therefore, the Petitioner was came to be transferred to the aided division.

So far so, he faced no difficulty, but upon his transfer, on 13th October, 2017, the Education Officer, Secondary granted approval to his appointment as if it was a fresh appointment of Shikshan Sevak and from 1st August, 2017 he was again placed on probation as Shikshan Sevak but this time on aided division.

3 The above action of the Education Officer is what the

Petitioner is aggrieved by and he has approached this Court seeking quashment of the said direction and the learned Counsel Mr. Bandiwadekar representing the Petitioner has urged that having been appointed as Shikshan Sevak/Assistant Teacher on the no grant basis section on 5th November, 2012, he has completed required period of three years, pursuant to the approval granted by the Education Officer and therefore when he was transferred to the aided division, he need not undergo the same exercise and the Education Officer has therefore erred in asking him to undergo the said period once again before his appointment is confirmed as Assistant Teacher.

4 In his submission Mr. Bandiwadekar has placed reliance upon the decision of this Court in the case of ***Pramod Prabhakar Pokale v/s. State of Maharashtra & Ors. reported in 2019(4) Mh. L.J. page 278*** which dealt with the very same Government Resolution dated 28th June, 2016 which imposes a specific condition in subclause -5 (a) of clause 3, thereof stating that if a teacher is transferred from unaided section to aided section, and if he has completed less than five years, in the unaided section but is transferred to the aided section of the school, an undertaking should be taken from him that he is ready

to work on honorarium basis for a period of 3 years.

This clause in the Government Resolution came up for consideration before the Division Bench and dealing with the rival contentions advanced in this regard, the Division Bench, specifically observed thus :

“18. The State Government can issue direction to the Institutions to fulfill its obligation to the extent of disbursement of salary amount indicated in sub clause 5 (B) (1) to (5) of clause 3 of the said Circular. But there is no reason for asking teacher / teachers to give such undertaking, who has / have served 5 years or more than 5 years, and approval is granted to the appointment of such teacher by the Education Officer on completion of satisfactory probation period, and if such teacher is transferred on aided post became vacant on account of retirement of teacher working in the said institution. Such teacher can be transferred keeping in view the overall seniority of teachers serving in the said unaided school to aided school run by the same institution or other such unaided schools run by the same institution/trust.

Upon careful perusal of sub clause 5 (A) of clause 3 of the said Circular, it is mentioned therein that, if the teacher appointed on unaided basis, has rendered less than 5 years service, and in case the management wishes to make such transfer from unaided school to aided school, in that case, an undertaking should be obtained from such teacher to work as Shikshan Sevak on consolidated pay. Prima facie said provision appears to be attractive, however, in case candidate is appointed on the post of Assistant Teacher after following the mandate of [Section 5](#) of the MEPS Act, 1977, and on completion of two years probation period, if the Education Officer has granted approval to his appointment on regular basis, and in case he is senior most teacher serving in the school on unaided basis run by the Institution, requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he has already completed 3 years period as Assistant Teacher, there is no justifiable reason to ask him to work again as Shikshan Sevak on consolidated pay for three years. The sub clause 5 (A) of clause 3 of the said Circular can be invoked wherein the Assistant Teacher has

not completed three years period after his appointment as an Assistant Teacher in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis. In short, if the Assistant Teacher has not completed satisfactory probation period, and if his service or services are not approved by the Education Officer on regular basis or there is no adherence to the provisions of [Section 5](#) of the MEPS Act, 1977, in that case, the management is not entitled to transfer such teacher from an unaided school to aided school or on aided post of Assistant Teacher / Shikshan Sevak from unaided post held by the Assistant Teacher. It is only in case where the Assistant Teacher has acquired status of regular employee on completion of two years probation period, and his appointment is in adherence to the provisions of [Section 5](#) of the MEPS Act, 1977, and the approval is granted by the Education Officer to his appointment on regular basis on the post of Assistant Teacher on completion of satisfactory probation period, and he is 6114.18WP senior most teacher working in the school on unaided basis, in that case, the question of invoking sub clause 5 (A) of Clause 3 of the said Circular would not arise. In such case, invoking said provision would run contrary to the judgment of the Division Bench (Coram : Dr.D.Y.Chandrachud and A.A.Sayed, JJ.) of the Bombay High Court at Principal Seat in the case of Ms.Sandhya Laxman Ghosalkar [supra], wherein it is observed in para 4 that, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three Petitioners. It is further observed that, if the Petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is especially so having due regard to the fact that they were similarly circumstanced 6114.18WP with other Teachers in whose case approval was granted as Assistant Teachers.”

5 In addition, reliance is also placed upon the decision of the Division Bench in Group of Petitions decided on 25th April, 2019 when this very Government Resolution fell for consideration before the Bench and in no uncertain terms it expressed its

concurrence with the Division Bench at Aurangabad, which had noted that the circular dated 28th June, 2016 which provides for instructions can hardly be said to be government instructions and that it has no statutory force in law. Recording to that Rule 41 of the MEPS Act which is the subordinate legislation, the administrative decisions which are in conflict with them cannot be held to be valid in law, pronouncing upon the clause 1 and 2 of the circular, the Division Bench had recorded that it runs contrary to the subordinate legislation found Rule 41 and the same is not valid in law.

6 Of course, the aforesaid decision operated on a larger plank but the decision in the case of **Promod Pokale** specifically focused upon the very same clause i.e. Subclause 5(a) of Clause 3 of the Government Resolution dated 28th June, 2016 and as the Division Bench has clearly declared that once having undergone the period as Shikshan Sevak before an employee gets himself promoted as Assistant Teacher on completion of 3 years, there is no justification in he being asked to undergo the same rigmarole when he gets voluntarily, shifted to aided section or is transferred to the aided section by the Management and we concur with the findings of the Division Bench, as we find the

exercise of asking the Shikshan Sevak, Assistant Teacher to undergo the said period once again to be unjusticeable as for getting himself converted into regular post of Assistant Teacher what is required is that he has gained the experience of three years and it hardly matters whether an experience was being in unaided section or aided section, as asfar as teaching experience is concerned, there is no difference.

7 In the wake of the above, we have also heard the learned Addl. G.P. Shri Samant alongwith AGP Ms. Chavan who concede to the legal position as is laid down by the authoritative pronouncement delivered by this Court on earlier occasions and there can be no dispute that each one is bound by the principle of law flowing thereof.

8 In the wake of the above, we deem it appropriate to quash and set aside the impugned order dated 13th October, 2017 and since we have allowed the Petition, the Petitioner is entitled to be paid salary of Assistant Teacher from the date of his transfer in the Aided Division and we direct the Respondent No. 2 the Education Officer (Secondary), Zilla Parishad, Solapur to compute the difference in the honorarium and the pay scale to

which the Petitioner is entitled as an Assistant Teacher from 1st August, 2017 and release this amount within a period of six weeks in favour of the legal heirs of the Petitioner.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)

ARUNA
SANDEEP
TALWALKAR

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