

Shailaja

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8933 OF 2023

Swapnil Shamrao Jadhav] **Petitioner**
versus
The State of Maharashtra and others] **Respondents**

....
Mr. Chetan Patil i/b Mr. Mandar Bagkar, for Petitioner.

Mr. V.M. Mali, A.G.P, for Respondent – State.

....

**CORAM : M.S. KARNIK &
AJIT B. KADETHANKAR, JJ.**

DATE : 22nd DECEMBER, 2025.

ORAL ORDER:[PER M.S. KARNIK, J.]:

1. By this petition preferred under Article 226 of the Constitution of India, the petitioner has challenged the order dated 20th August, 2019 issued by the Management and the orders dated 9th June, 2021 and 21st October, 2022 issued by the Education Officer. The petitioner, who was appointed on unaided post on 22nd June, 2017, was transferred on an aided post on 20th August, 2019. While appointing the petitioner on unaided post, he was appointed as “Shikshan Sevak” for a period of three years from 20th August, 2019 onwards. It is the contention of the learned Counsel for the

petitioner that the petitioner should have been appointed as a “Shikshan Sevak” only for the balance period, till he completed three years of service from the date of his initial appointment on unaided basis.

2. Brief facts of the case are that the petitioner is M.A. B.Ed by qualification. He belongs to Other Backward Class category. After following the requisite procedure contemplated by the rules, the petitioner was appointed on an unaided post as an Assistant Teacher on probation for a period of two years on the said post by an order dated 22nd June, 2017. The Education Officer granted approval to the petitioner’s appointment on the unaided post of Assistant Teacher with effect from 22nd June, 2016 by an order dated 3rd August, 2019. Thereafter, aided post for the subject of Marathi in respondent No.4 – College became vacant and the petitioner was transferred from unaided post to aided post and appointed as “Shikshan Sevak” from 20th August, 2019 to 19th August, 2022 vide an order dated 20th August, 2019. Respondent No.2 - Education Officer vide an order dated 9th June, 2021 granted approval to the said transfer of the petitioner on the post of Shikshan Sevak with effect from 20th August, 2019. Vide an order dated 29th July, 2021, name of the petitioner was permitted to be included in Shalarth System. Thereafter, the petitioner was appointed on the post of “Full Time Teacher” with

effect from 20th August, 2022. Respondent No.2 vide order dated 21st October, 2022 granted approval to the said appointment on regular pay scale.

3. It is the submission of the learned Counsel for the petitioner that the order issued by respondent Nos.2 and 3 whereby the petitioner was appointed on the post of “Shikshan Sevak” for a period of three years from the date of his transfer to the aided post and subsequent appointment and approval on regular pay scale with effect from 20th August, 2022 is contrary to the law laid down by this Court. It is submitted that this Court has held that the service rendered by an employee on unaided post is to be counted and as the petitioner had completed two years of his service on unaided post, he ought to have been given order as “Shikshan Sevak” only for the balance period till he completed three years of service from the date of his initial appointment on an unaided post.

4. Our attention is invited to the decision of Aurangabad Bench of this Court in **Suryakant S/o Janardan Muge versus The State of Maharashtra and others in Writ Petition No.1493 of 2019** alongwith connected Writ Petitions. Relevant paragraph Nos. 14 to 17, 20 and 21 are reproduced below;

“14. The MEPS Act applies uniformly and equally to the assistant teachers working on aided posts, so also unaided posts. No distinction is made in service conditions of the assistant teachers working on aided and

unaided posts. Section 13 of the MEPS Act gives authority to the State Government to frame the Rules. Pursuant thereto, the State Government has framed Rules viz. the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Rule 41 of the said Rules reads thus:

“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 transfer do not result into loss in the pensionary benefits as admissible to them.

(4) The expenditure on Travelling 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."

15. Rule 41 gives powers to the management of the institution to effectuate transfers for the better administration of the school and also considering the administrative exigency for convenience of the better administration of the school. The impugned circular dated 28.06.2016 lays down certain conditions for the transfer of assistant teachers from unaided to aided posts. Some of the salient features of the said circular is that the management shall confirm that there are no surplus teachers are available for filling in the posts becoming vacant on aided basis. For the said purpose, the circular makes reference to Section 5(1) of the MEPS Act and that if the surplus teachers are available, the approval should not be given to the teachers transferred from unaided to aided posts. The senior most teacher on unaided post shall be entitled for transfer to aided post and that the said assistant teacher who was working on unaided post, his appointment is required to be approved. The further embargo is that the assistant teachers should have worked at least five years on unaided post and if he has worked for less than five years, then an option should be taken from him that he would work for three years as Shikshan Sevak on honorarium basis if transferred to grant-in-aid post and if the assistant teacher to be transferred has worked for five years or more on an unaided post, then the teacher who has completed five years on unaided posts and upon transfer to the aided post will be entitled for 20% grant from the Government and 80% will have to be borne by the institution. For the second year he would be entitled for 40% Government grant and 60% will be borne by the institution. For the third year 60% grant would be given by the Government and 40% will be borne by the institution. After four years of transfer, 80% will be borne by the Government and 20% by the institution and after five years of the transfer of the teacher who had already worked for five years on unaided post, he will receive 100% grant from the Government.

16. The circular is issued by the Secretary, School Education and Sports Department. The orders in some of the matters are referred to therein. The reference is made to the some of the writ petitions.

17. The question would be whether by way of an executive instructions, the powers of the management under Rule 41 of MEPS Act for transfer of an employee can be circumscribed, curtailed and eroded. Rule 41 is framed under the Rule making power of the Government as provided under Section 13 of the MEPS Rules. The MEPS Rule is piece of subordinate legislation. It is trite that, executive instructions cannot override the statutory Rules. Precisely, this has been held by the Division Bench of this Court at Principal Seat at Bombay in Writ Petition No.5313 of 2017 with connected writ petitions decided on 25.04.2019. The Division Bench in the said judgment held that:

"The circular dated 28.06.2016 can hardly be said to be Government instructions. It has no statutory force in law. Rule 41 of the MEPS Act which is the subordinate legislation, the administrative decisions which run contrary to them cannot be held to be valid in law. We find that, since Clauses 1 and 2 of the said circular, run contrary to the provisions of the subordinate legislation as found in Rule 41, the same would not be valid in law."

While delivering the said judgment, the Division Bench considered the earlier judgments of this Court. Sub-clauses 1 and 2 of Clause 3 of the circular has already been held to be not valid in law by the Division Bench. There is no reason for us to take different view. The impugned circular as it affects the rights of the management to transfer, as such, same is improper and does not have any enforceable status.

20. One anomalous situation that requires to be considered is that if a person is appointed on grant-in-aid post for three years, he is required to work as Shikshan Sevak on honorarium basis, whereas, on an unaided post a person is directly appointed as assistant teacher. For example, if a person has worked as assistant teacher for one year on unaided post and is transferred on grant-in-aid post, he would claim that he was working as assistant teacher and should be considered as assistant teacher that would not be in tune with the scheme of Shikshan Sevak as framed by the Government under the Government Resolutions.

21. If the assistant teacher on unaided post has worked for less than three years and is transferred to aided post, he will have to work as Shikshan Sevak till he completes three years of service from the date of his initial appointment on an unaided post. That would be in conformity with the scheme of Shikshan Sevak framed by the State".

5. Though learned A.G.P vehemently argued in support of the impugned orders, we find substance in the contention of the learned Counsel for the petitioner that the controversy in the present case is

squarely covered by the decision in **Suryakant S/o Janardan Muge** (supra). We, therefore, have no hesitation in allowing this petition. Accordingly, the petition is allowed in terms of prayer clause (a), which reads thus;

“[A] That this Hon’ble Court be pleased to issue appropriate writ, order or direction in the nature of a writ thereby quashing and setting aside the orders dated 20th August, 2019, 9th June, 2021, 21st October, 2022 to the extent that they appoint and grant approval to the appointment of the petitioner on the post of Shikshan Sevak for a period of 3 years from the date of his transfer from unaided post to the aided post and appoint and grant approval to his appointment on regular pay scale after a period of 3 years from the date of his transfer on the aided post and further be pleased to direct respondent nos.2 and 3 herein to appoint and to approve the appointment of the petitioner on the post of Shikshan Sevak for a period from 20th August, 2019 to 21st June 2020 and appoint and grant approval to the appointment of the petitioner as Assistant Teacher on regular pay scale with effect from 22nd June, 2020 with all consequential benefits and in pursuance thereto, to release the necessary grant in aid expeditiously and preferably within a period of four weeks”.

6. The petition is disposed of in the aforesaid terms. No order as to costs.

[AJIT B. KADETHANKAR, J.]

[M.S. KARNIK, J.]