

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

WRIT PETITION NO. 3681 OF 2023

Mrs. Kavita Kiran Kamat.

...Petitioner.

Versus

The State of Maharashtra and Others.

...Respondents.

Mr. Sagar Mane i/b Vinayak Kumbhar for the Petitioner.

Mr. V. M. Mali, AGP for the Respondent-State.

**Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.**

Date : September 23, 2025.

Order (Per Sharmila U. Deshmukh, J.) :

1. Petition challenges the orders dated 29th August 2017 and 17th September 2020 passed by the Respondent No.2–Education Officer (Secondary) Zilla Parishad, Sindhudurg approving the transfer of Petitioner from unaided post to aided post as Shikshan Sevak instead of granting approval to the transfer of Petitioner as Assistant Teacher together with release of grant-in-aid for payment of salary to the Petitioner in pay-scale applicable to the Assistant Teacher together with arrears.

2. The Petitioner came to be appointed on 15th June 2012 as an Assistant Teacher on unaided post as full-time teacher in the secondary school run by the Respondent No.3. On 14th November 2013, the Respondent No.2–Education Officer granted approval to the

appointment of Petitioner as unaided teacher. The Petitioner satisfactorily completed probation period of 2 years on 14th June 2014. After working on unaided post for more than 5 years and as per seniority amongst unaided teachers, the Petitioner was transferred to fully aided post of teacher with effect from 1st August 2017. However, the transfer was made as a Shikshan Sevak for 3 years on monthly honorarium. On 29th August 2017, the Respondent No.2 granted approval to the transfer of Petitioner as Shikshan Sevak for 3 years. Since the Petitioner was working as Assistant Teacher on an unaided post with the approval of Respondent No.2, the transfer to aided post as well as approval was required to be given as Assistant Teacher in pay-scale and not as Shikshan Sevak. Resultantly, the Petitioner requested the Respondent No.3 to issue revised order of transfer and to submit a fresh proposal to the Respondent No.2. On 29th April 2019, the Respondent No. 3 passed a resolution and issued a revised order of transfer to the Petitioner as Assistant Teacher on fully aided post with effect from 1st August 2017 and submitted proposal to the Respondent No.2. It is submitted that the Respondent No.2 did not accept the revised proposal in view of Government Resolution dated 28th June 2016.

3. Mr. Mane, learned Counsel for the Petitioner submits that the Petitioner had worked on unaided post of Assistant teacher for more

than 5 years prior to her transfer to fully aided post and that being so, the transfer was required to be made as an Assistant Teacher in the pay-scale and not as a Shikshan Sevak. He draws attention of this Court to the decisions of Division Bench of this Court in the case of ***Sandhya Laxman Ghosalkar v. State of Maharashtra***¹ and ***Pramod v. State of Maharashtra***² to contend that the consistent view taken by this Court is that if the appointment is as Assistant Teacher in aided school by transfer from unaided school on the basis of seniority, the approval ought to have been granted as Assistant Teacher.

4. Mr. Mali, learned AGP would submit that in the present case, the management itself had submitted the proposal for approval of the Petitioner as Shikshan Sevak. Mr. Mali would however fairly concede to the settled position of law and would submit that as per Rule 41A of MEPS Rules, upon transfer from unaided post to aided post, the approval should be granted as Assistant Teacher and not as Shikshan Sevak. He would submit that upon completion of 2 year's probation period, if approval has been granted by the Education Officer and in case the teacher is transferred from unaided post to aided post, upon completion of 3 years period as Assistant Teacher, the settled position in law is that there is no justification to ask her to work as Shikshan Sevak on consolidated pay for 3 years. We appreciate the fair stand

1 WP No. 5258 of 2012 decided on 12th Sept. 2012.

2 2019(4) Mh.L.J. 278.

taken by Mr. Mali in assisting this Court by relying upon the correct position in law.

5. We have considered the submissions.

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.

7. The decisions relied upon by learned Counsel for the Petitioner squarely apply to the facts of present case. There is no factual dispute about the appointment of Petitioner on 15th June 2012 on unaided post of Assistant Teacher, which was granted approval by the Respondent No. 2. By reason of superannuation on 31st July 2017 of an Assistant Teacher in aided school of Respondent No.3, the Petitioner being senior

most teacher came to be transferred. It was due to an error on the part of management, that initially the transfer to aided post was shown as that of Shikshan Sevak, which was rectified by issuance of revised order of transfer. There is no justification for the Education Officer (Secondary), Zilla Parishad to grant approval to the Petitioner as Shikshan Sevak. Upon transfer from unaided post to the aided post, on the basis of seniority, approval ought to have been granted as Assistant Teacher.

8. In the light of above discussion, the impugned orders dated 29th August 2017 and 17th September 2020 passed by the Respondent No. 2 – Education Officer (Secondary) Zilla Parishad, Sindhudurg are hereby quashed and set aside. The Respondent No.2 is directed to issue revised order granting approval to the transfer of the Petitioner as Assistant Teacher with effect from 1st August 2017 within period of eight weeks. The grant-in-aid for payment of salary to the Petitioner in the pay-scale applicable to the post of Assistant Teacher together with arrears from the date of transfer be released as expeditiously as possible and in any event within a period of three months from the date of granting approval.

9. Writ Petition is allowed in above terms.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]

**TALLE
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