

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

WRIT PETITION NO. 229 OF 2022

Archana Vijay Shirolkar. ... Petitioner.
Versus
The State of Maharashtra & Ors. ... Respondents.

Mr. Chetan G. Patil, for Petitioner.

Mr. V.M. Mali, AGP, for Respondent/State.

Mr. Tejpal S. Ingale, for Respondent Nos. 3 and 4.

Mr. Umesh H. Pawar, for Respondent No. 5.

**CORAM: NITIN W. SAMBRE &
ASHWIN D. BHOBE, JJ.
DATED : 23rd JANUARY, 2025**

P.C:-

1. The Petitioner as Assistant Teacher has approached
this Court with following prayers :

(a) That this Hon'ble Court may be pleased to issue
an appropriate writ, order or direction, thereby
quashing and setting aside the order of Respondent
No. 6 Committee communicated to the Petitioner
along with covering letter dated 14th February 2020.

(b) That this Hon'ble Court be pleased to issue any
appropriate writ, order or direction in the nature of

writ thereby directing the Respondents no.1 to 4 and 6 herein to forthwith cancel the appointment of the respondent no.5 made on the post of Shikshan Sevak on 15-06-2017 in the respondent no.4 s junior college and further direct the Respondents no.1 to 4 and 6 herein to appoint the Petitioner on the aided post for the subject of Chemistry in the Respondent No. 4 Junior College since the date of retirement of Shri. C.B.Kulkarni in the year 2015 and release grant-in-aid for payment of salary to the Petitioner since the aforesaid date with all consequential benefits.

(c) That this Hon'ble Court be pleased to issue a writ or any other appropriate writ, order or direction thereby directing the Respondent No. 2 herein to grant approval to the appointment of the Petitioner since the date of her appointment in the years 2008 and release payment of salary to the petitioner since the date of approval with all consequential benefits.

2. The facts necessary for deciding the Petition are as under :

The page 32 and 33 are the advertisement issued by the Respondent No. 3 Institution registered Public Trust who is managing Respondent No. 4 College for the post of Assistant Teacher amongst other in the subject of Chemistry.

3. It is the case of the Petitioner that pursuant to the said advertisement, the Petitioner came to be appointed on the post of Assistant Teacher in 2008 itself and she continued to work

on the said post till this date.

4. According to the learned Counsel for the Petitioner, the Respondent Management, through its Head Master submitted a proposal for grant of approval based on the appointment order dated 31st July, 2011 which has led to the approval being granted by the Respondent-Education Officer vide order dated 5th May, 2017 with effect from the date of appointment i.e. 1st August, 2011. According to the learned Counsel for the Petitioner, appointment of the Petitioner should have been construed with effect from 2008 and not 2011. It is further claimed that the Petitioner thereafter was entitled for transfer on a vacant post of Assistant Teacher in subject of Chemistry after the retirement of one Mr. Kulkarni. Such rights are flowing to be from the Government Resolution dated 28th June, 2016, which according to the Petitioner was not granted and as such the Petitioner is seeking transfer to the said vacant post in the aided category. Apart from above, it is claimed that from the date of appointment i.e. 2008 the Petitioner should have been paid the salary as per the pay scale prescribed by the Government however, the chart produced on record at page 163 demonstrate that the Petitioner is not paid appropriate salary. As such it is claimed that not only

the Petitioner is entitled for the appointment on the post which is occupied by the Respondent No. 5 but the approval needs to be ordered in favour of the Petitioner from academic year 2008-2009 and the difference in wages must be paid to the Petitioner.

5. As against above, the Counsel for the Respondent Management Mr Ingale would invite our attention to the documents particularly in the communication issued by the Petitioner herself wherein she allegedly admitted that she was appointed on 1st August, 2011 and not in 2010. Mr. Ingale would place reliance on a communication dated November 14, 2019. It is further urged by Mr. Ingale that the provisions of Rule 41 and 41A of MEPS Rules are not mandatory and that being so, the Petitioner cannot claim by way of as of right for transferring from the unaided to aided post. He would further claim that the Petitioner has not even questioned the order granting approval to the extent of the date with effect from which approval is granted and in such an eventuality this Court may not go into the issue of grant of approval.

6. Mr. Ingale would further urge that the issue of salary this Court cannot go into in lieu of the fact that such claim is

barred by limitation in view of the fact that the appointment of the Petitioner is from 2011. Mr. Ingale would urge that the services of the Petitioner are already transferred to grant-in-aid post and the Petitioner is getting 60% of the salary from the public exchequer. That being so, the dismissal of the Petition is sought.

7. We have considered aforesaid submissions. We have to first require to deal with the issue as to whether the Petitioner as of right can seek transfer from unaided to aided post.

8. The provisions of Rule 41 and 41A of the MEPS Rule governs the transfer of an employee of private school like the Respondent No. 3.

9. In the case in hand, it is claimed that right of the Petitioner flows from the Government Circular dated 28th June, 2016 wherein a mandate is provided about the transfer of the employees who are working on unaided post to that of aided post.

10. The aforesaid G.R. is required to be read in

conjunction with the provisions of Rule 41 and 41A of the MEPS Rules. The Division Bench of this Court in *Syeda Shahana Firdaus v/s. State of Maharashtra & Ors. reported in 2024 SCC OnLine Bom. 871* and *Sandeep s/o Babasaheb Chate & Ors. v/s. Varchaman Sthanakwasi Jain & Ors. reported in 2019 SCC OnLine Bom 569* had an occasion to deal with the provisions of Rule 41A wherein it is held that the said provisions are enabling one for the benefit of the Management so as to administer the Institution. As such, the Mandate provided under Rule 41A cannot be interpreted to the benefit of the Petitioner. In such an eventuality, the claim put forth by the Petitioner seeking transfer from unaided to aided post as of right cannot be accepted and in view of the Judgement of the Division Bench in both these matters in *Syeda Shahana Firdaus(supra) & Sandeep s/o Babasaheb Chate(supra)*, the aforesaid contentions are rejected.

11. This takes us to the next limb of subject issue, whether the Petitioner was appointed 2010 or 2011. Our attention is invited by the Petitioner to the advertisement referred above, the documents maintained by the School Authorities wherein the Petitioner is shown to have discharged the duties in the conduct of HSC examination of March, 2008-2009, the inspection report

issued by the Education Authorities having carried out inspection of the Respondent School on August 28, 2008 wherein it is depicted as the Petitioner was shown to be on the establishment of the Respondent Management as an Assistant Teacher teaching Chemistry subject. As against the above, Mr. Ingale has claimed that the Petitioner herself has admitted that she was working since 2011 and not from 2008.

12. We have considered the aforesaid submissions. Though initially it is sought to be demonstrate that the Petition involves disputed question of facts, however, this Court cannot be ignorant of the public documents which the Petitioner has placed on record i.e. the Inspection Report. The Inspection Report carried out by the officials from the department of Education pursuant to the inspection dated August 28, 2008 in specific terms reflects that the Petitioner was shown on the establishment of the Respondent School and the Management. Apart from above, the other documents means the detailed documents published by the Respondent Management in the year 2008-09 demonstrate that the Petitioner was an employee of the Respondent Management on unaided basis giving lessons in the subject of Chemistry. The other documents reflects that the

Petitioner has discharged the duties while conducting HSC Examination in the year March, 2008-09, 2009-10, 2010-11 onwards.

13. The aforesaid public documents substantially establish that the Petitioner since 2008 was in the employment of the Respondent Management and that being so, we deem it appropriate to record a finding that the Petitioner has to be considered to be on the establishment of the Respondent-Management with effect from the opening of the academic session 2008-2009 on wards. The issue as regards whether now in view of the aforesaid findings, the Petitioner is entitled to the back-wages for a period from 2008-2011. This issue of salary as also difference in salary is required to be looked into.

14. The fact remains that from 2008 to 2011, it appears that the Petitioner is not paid any salary or remuneration by the Respondents.

15. Apart from above, the payment to be made to the Petitioner as per 6th, 7th pay commission is also not a fact in

dispute as could be referred from the reply of the Respondent Management. In such an eventuality, we are required to accept the contention raised by the Petitioner that the Petitioner is entitled for not only the salary for a period from 2008 to 2011 but also the difference in salary thereafter till this date. We are further pointed out by the Counsel for the Petitioner that even regular salary is not disbursed to the Petitioner.

16. In that view of the matter, we hereby declare that the Petitioner is entitled for the aforesaid benefits.

17. As regards the quantum to which the Petitioner is entitled, we deem it appropriate to refer the Petitioner and the Respondents to the Deputy Direction of Education before whom both the parties shall appear on 10th February, 2025 with their respective calculations. The Respondent Management shall produce the acknowledgment about the payments which were made to the Petitioner as regards the remuneration, honorarium received by the Petitioner as against the claim made in the Petition. The Deputy Director of Education within six weeks thereafter shall adjudicate the claim and pass a reasoned order which shall be communicated to both i.e. Petitioner and

Respondent-Management.

18. Once the order is received by the Respondent-Management, Respondent-Management shall make good the entire payment in three monthly installments to be paid on or before 30th of each calendar month from the end of the month after the order is received by the parties hereto.

19. As such the Writ Petition stands allowed in the above terms.

(ASHWIN D. BHOBE, J.)

(NITIN W. SAMBRE, J.)