

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2829 OF 2024**

Samina Tahsin Iliyas Ahmed Hirapure. ... Petitioner.

Versus

Anjumane Targeeb E Talim & Ors. ... Respondents.

...

Mr. Prasad B. Kulkarni, for the Petitioner.

Mr. Akhil Kupade, for Respondent Nos. 1 and 2.

Ms. Anu C. Kaladharan h/f. Mrs. Anjali Helekar, for Respondent no. 6 (UOI).

Mr. Vikas M. Mali, A.G.P. for the State/Respondent Nos. 3 and 4.

...

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

DATED : 03rd JANUARY, 2025

P.C:-

1. The grievance of the Petitioner who has been appointed as Shikshan Sevak in the Respondent Institute on unaided basis with effect from 28th October, 2010 is that despite a post (grant-in-aid division) being created in the year 2021, the Respondent-management did not take any steps to transfer her. The post was kept vacant from 2019 onwards though the Management issued advertisement from time to time, but

ultimately an advertisement was issued in December, 2024 and today the learned Counsel for the Management has informed that pursuant to the advertisement, a candidate has been appointed on the aided post with effect from 28th December, 2024.

The copy of the appointment order is placed on record.

2. In the wake of the aforesaid development, Counsel for the Petitioner seeks leave to amend the Petition by impleading the person who is appointed in the said post, i.e. Shri Sayyad Zeba Tayyab as a party Respondent and also add the necessary grounds to assail the said appointment.

We permit the amendment to be carried within one week from today.

3. Though the learned Counsel representing the Management has invited our attention to the decision of the Division Bench in the case of *Syeda Shahana Firdaus & Anr. v/s. State of Maharashtra and Others (Writ Petition No. 14956 of 2017)* and other connected Writ Petitions decided on 18th March, 2024 and the relevant observations therein to the effect that use

of the word “may” under section 41-A is indicative of discretion in the Management to transfer a teacher from unaided school to an aided school or division and it cannot be claimed by way of right, on reading this provision what is inferred by us is that despite the power being discretionary, once the Management decides to exercise the discretion, sub-section (1) of section 41A contemplate that the power shall be exercised upon certain conditions being satisfied and these conditions are being stipulated in the form of Clause (a) to (h) which are couched in the mandatory form.

We would therefore like to hear the respective Counsel as regards this aspect of the matter as the Division Bench in the case of *Syeda Shahana Firdaus* has failed to consider the impact of the mandatory stipulation which has hedged the discretion vested in the Management, while considering the submission of the Management that an employee cannot seek transfer by way of right.

4. Upon amendment being carried out, issue notice to the newly added Respondent by making it returnable on **10th February, 2025**. Hamdast granted. In addition, the notice is permitted to be served through private mode of service.

5. In the interregnum, we restrain the Respondent Management from forwarding the proposal of the new appointee to the Education Officer for receipt of approval.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)

ARUNA
SANDEEP
TALWALKAR

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ARUNA SANDEEP
TALWALKAR
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