

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

WRIT PETITION NO.16195 OF 2024

Revati Dhananjay Thakur

(@ Revati Padaji Thakur)

Age: 45 years, Occ. Service

R/o.Shri. Siddhivinayak Park,

Lokmanya Nagar, Pada No.4,

Near Sai Baba Temple,

Thane (W)-400606

....Petitioner

versus

1. State of Maharashtra

Through the Secretary

School Education Department

Mantralaya, Mumbai 400032

2. The Education Officer

(Secondary), Zilla Parishad, Thane

3. Lokmanyagar Shikshan Mandal

Bharatratna Smt. Indira Gandhi Vidyamandir

Swantrayantveer Sawarkar Nagar

Thane (W) 400606

Through its Chairman/Secretary

4. Bharatrana Smt. Indira Gandhi Vidyamandir

Swantrayantveer Sawarkar nagar

Thane (W) 400606

Through its Headmistress

....Respondents

Mr. Rahul S. Kadam, Advocate for the Petitioner.

Ms. Priyanka Chavan, AGP for the Respondent – State.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

RESERVED ON : 7th FEBRUARY, 2025.

PRONOUNCED ON : 27th FEBRUARY, 2025.

ORAL ORDER (PER ASHWIN D. BHOBE, J.) :-

1. Heard Mr. Rahul Kadam, the learned Counsel appearing for the Petitioner and Ms. Priyanka Chavan, the learned AGP for the Respondent-State.

2. By this petition, the Petitioner assails the order dated 14.12.2022 passed by the Respondent No.2, rejecting the proposal submitted by the Respondent No.3-Educational Institution seeking approval to the transfer of the Petitioner from Unaided Division of the School to the Aided Division of the School (“Impugned Order”).

3. **Factual Matrix:**

(a) On 20.05.2002, the Petitioner was appointed as a Assistant Teacher by the Respondent No.3.

(b) Petitioner joined services w.e.f. 13.06.2002.

(c) Petitioner along with similarly placed teachers filed Writ Petition No. 2886 of 2012 before this Court seeking a direction to the Respondent No.2, to consider the proposal for approval of the Petitioner as a Assistant Teacher. By order dated 15.10.2012, this Court disposed off the said petition with the the following order:

“(6) The Education Officer shall consider any request for approval in accordance with law by applying his mind to all relevant aspects including whether the appointments of the Petitioners were made after following due process of law.

(7) The petition is accordingly disposed of. There shall be no order as to costs.”

(d) Respondent No.2 vide order dated 07.03.2014 granted approval to Petitioner’s appointment as Assistant Teacher w.e.f. 15.06.2013.

(e) Petitioner who claims to be the senior most teacher in the Respondent No.3-Institution, in unaided division was transferred

to the post in aided division of the school “Smt. Indira Gandhi Vidyamandir, Savarkarnagar, Thane” run by the Respondent 3-Educational Institution.

(f) Respondent No.3 submitted proposal dated 01.08.2019 seeking approval to the transfer of the Petitioner from unaided division to the aided division.

(g) By order dated 17.12.2019, Respondent No.2 rejected the proposal dated 01.08.2019.

(h) Dissatisfied by the order dated 17.12.2019, Petitioner filed Writ Petition No.31639 of 2019 before this Court.

(i) By order dated 3rd October, 2022, this Court disposed the Writ Petition No.31639 of 2019 by directing the Respondent No.2 to decide the proposal seeking approval to the transfer of the Petitioner from unaided to aided, on its own merits, Paragraph Nos. 5, 6 and 7 are as follows:

“5. For the proposal seeking approval to the transfer of the petitioner from unaided to aided, the advertisement, no objection certificate, interviews would not be necessary. The Education Officer has to consider the seniority, the roster, the qualification for transfer to the aided post. It is for the petitioner to establish that the petitioner was

appointed to teach IXth and Xth standard with necessary documentary evidence before the Education Officer. It is also for the Education Officer to consider staffing pattern, the classes for which the petitioner is appointed to teach and come to the conclusion.

6. In light of the above, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the transfer of the petitioner from unaided to aided, on its own merits.

7. Considering the observations herein above, the petitioner and/or the Management shall place on record the documents to demonstrate that the petitioner was appointed to teach IXth and Xth , so also the staffing pattern, the Education Officer shall thereafter arrive at the conclusion afresh and decide the proposal on its own merits, preferably within six months.”

(j) By order dated 14.12.2022, the Respondent No.2 rejected the said proposal to the transfer of the Petitioner from Unaided to Aided Division.

(k) The Petitioner is, therefore, before this Court seeking the following *substantial* relief:

“[A] That this Hon’ble Court under its Civil Appellate Writ Jurisdiction under Article 226 and 227 of the Constitution of India, 1950, be

pleased to call for the record and proceedings of the order dated 14th December, 2022 and thus the said order being illegal and bad in law, same may be quashed and set aside with further directions to the Respondent No. 2 Education Officer that the proposal submitted of the present Petitioner for grant of approval of her transfer on Aided Division from the Date- may be approved on such terms and conditions that this Hon'ble court may deem fit and proper."

4. Respondent No.2 Ms. Lalita Dahitule (Kawade), Education Officer (Secondary) Zilla Parishad, Thane, District Thane has filed Affidavit-in-Reply dated 25.01.2025 on behalf of the Respondent No.2. Paragraph Nos.3, 4 and 5 of the said Affidavit are transcribed herein:

"3. I say and submit that in the impugned order dated 14/12/2022 in respect of clause No 6, 8 & 9 rejecting the approval to the petitioner is inadvertently passed and for the said grave error, I tender my unconditional apology for the same. I hereby give assurance to this Hon'ble Court that in future I will take precaution and abide all the orders passed by this Hon'ble court and Apex Court.

4. I say and submit that in the view of above circumstances once again I tender my unconditional apology. The said order dated 14/12/2022 in respect of clause no 6, 8 & 9 passed is not deliberate and with any intension but passed inadvertently.

5. I say that if the respondent school management submit the proposal in accordance with the

checklist and formats prescribe in the Government Resolution dated 03/10/2024, this office will forward the proposal expeditiously to State Government for necessary Sanction. (Here to Annexed and Marked as EXHIBIT 1 is the copy of Government Resolution Dated 03/10/2024.

In view of the above facts and circumstances, appropriate order may please be pass in the interest of natural justice.”

Submissions:

5. Mr. Rahul Kadam, learned Counsel for the Petitioner has criticized the impugned order. He contends that this is the second occasion, wherein the Respondent No.2 has arbitrarily rejected the proposal, on grounds, which are non-existing and illusory. He points out the order dated 03.10.2022 by which this Court had directed the Respondent No.2 to decide the proposal on its own merits and by considering the observations made by this Court in the said order. He submits that the Respondent No.2 has disobeyed the said direction. According to him, the Petitioner is entitled for the approval. He, therefore, submits that the petition be allowed and the Respondent No.2 be directed to grant approval to the transfer of the Petitioner from Unaided Division of the School to the Aided Division of the School .

6. Ms. Priyanka Chavan, learned AGP for the Respondent-State submits that the Respondent No.2 has accepted his mistake and has further stated that the impugned order was passed inadvertently. She points out that the Respondent No.2, for the said mistake, has tendered an unconditional apology, with an assurance that in future, the Respondent No.2 will take precautions and abide all the orders passed by this Court and the Hon'ble Apex Court. She submits that the School Management be called upon to submit the proposal in accordance with the checklist and the formats as prescribed in the Government Resolution dated 03.10.2024, which proposal upon receipt shall be expeditiously forwarded by the Respondent No.2 to the State Government for necessary sanction. She, therefore, seeks indulgence of this Court in pardoning the Respondent No.2.

7. The records bear out that this Court in its order dated 03.10.2022 passed in Writ Petition No.31639 of 2019 has directed the Respondent No.2 to consider the proposal seeking approval to the transfer of the petitioner from Unaided to Aided Division on its own merits, keeping in mind, the observations made in the order dated 03.10.2022. Thus, the Respondent No.2 was obliged to abide by the said directions and act accordingly. However, we find that the Respondent No.2 has failed to comply with the directions of this

Court. The Respondent No.2 has accepted her mistake. For this reason, the impugned order is required to be quashed which is accordingly quashed and set aside.

8. The unconditional apology tendered by the Respondent No.2 and the assurance given by the Respondent No.2 to take all precautions in future to abide by the orders passed by this Court and the Hon'ble Supreme Court, is accepted. This Court expects the Respondent No.2 to abide by the assurance made in the Affidavit-in-Reply dated 25.01.2025.

9. Having quashed the impugned order, the question before us would be, whether the Petitioner would be entitled for a direction to the Respondent No.2 to grant approval to the transfer of the Petitioner from Unaided to Aided Division or whether the course as suggested by the Respondent No.2, would be appropriate?

10. The Respondent-State vide Government Resolution dated 03.10.2024 has notified the procedure in respect of matters pertaining to transfer proposals of teachers in private schools from unaided / partially to aided, as more particularly, referred to therein. In terms of the said Government Resolution dated 03.10.2024, submission of transfer proposals are required to be made along with

relevant documents as per the checklist in Appendix “A”. Proposals are required to be submitted to the State Government for necessary sanction.

11. The said Government Resolution requires compliance with various aspects including those under The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act). Thus, the Authorities under the said Government Resolution are required to independently assess such proposals submitted for their approval. The said Government Resolution 03.10.2024 covers transfer proposals pending before the Court in which no orders are passed or proposals in which no court case is pending.

12. Case of the petitioner would be covered under the said Government Resolution dated 03.10.2024. We are, therefore, inclined to accept the suggestion of the Respondent No.2 to the effect that the Management be directed to submit the proposal in compliance with the requirements of the Government Resolution dated 03.10.2024, which proposal upon receipt by the Respondent No.2, would be forwarded to the State Government for necessary sanction.

13. **The petition is partly allowed.** Impugned order is set aside. The Respondent Nos.3 and 4 shall submit the proposal seeking approval to the transfer of the Petitioner from Unaided to Aided Division, to the Respondent No.2 within a period of 15 days from today. Respondent Nos.3 and 4 shall remove defects if any, notified, within 7 days. Respondent No.2 shall thereafter forward the same to the State Government for sanction. The Competent Authority/State Government shall dispose off the said request, keeping in mind the observations of this Court in its order dated 03.10.2022 passed in Writ Petition No.5169 of 2022, within a period of 06 weeks, from the receipt of the proposal.

13. There shall be no order as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)