



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 202 OF 2024

Sarika d/o Madhukarrao Paturde
(after marriage, Sarika w/o Satish Aghadte),
aged about 44 years,
Occ. Service, R/o. Panjabrao Colony,
Near Hanuman Mandir Samarth Nagar,
Tq. Dariyapur, District Amravati

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra,
School Education and Sports Department,
Mantralaya, Mumbai, through its Secretary,

2. Education Officer (Secondary),
Zilla Parishad, Amravati

3. Bhagyashree Shikshan Sanstha, Amravati,
through its President,
At P.B. Turkhade's Wada, Subodh Colony,
V.M.V. Road, Amravati

4. Bhagyashree Madhyamik and
Bapurao Patil Turkhade Uccha Madhyamik
Vidyala, Asadpur, Tah. Achalpur,
Dist Amravati, through its Headmaster.

5. Bhagyashree Madhyamik and Uccha
Madhyamik Vidyalaya, Surbhi Vihar,
Amravati,
through its Headmaster.

...**RESPONDENTS**

Mr. H.A. Deshpande, Advocate for Petitioner.

Mr. A.M. Kadukar, AGP, for respondent Nos.1 & 2/State.

CORAM:- AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.

DATE : 05.05.2025

JUDGMENT (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Heard finally with the consent of the learned Advocate for the parties.

2. The petitioner seeks direction to the respondent No. 2 Education Officer, Zilla Parishad, Amravati, to decide the proposal dated 09.06.2021 (page 92) and further to grant approval to her services and transfer from unaided school/division to aided school/division and to release her entire salary from the State exchequer w.e.f. 03.10.2019.

3. The petitioner was initially appointed as an Assistant Teacher on a non-grant-in section in the respondent No. 4 school from 01.07.2008. Respondent No. 2 has already approved her appointment on a non-grant basis vide order dated 16.01.2009 (page 79) from 01.07.2008 until further orders. Thereafter, the petitioner was transferred to the respondent No. 5 school on a non-granted basis vide order dated 20.06.2014 (page 82).

4. Mrs. S.P. Turkhade, headmaster, retired on 30.06.2018; hence, Senior Assistant Teacher Mr. Kharalekar was promoted as

Headmaster, and thus, one post of Assistant Teacher fell vacant. Therefore, in its meeting dated 02.10.2019, the education society unanimously resolved to transfer the services of the petitioner, the senior-most teacher, from the unaided division to the aided division of the respondent No. 5 School. Accordingly, a transfer order was issued on 03.10.2019, with the condition that the petitioner will receive a proportionate salary from the State and the institution. Pursuant to said order, her bond/undertaking was obtained to that effect. That being so, the headmaster of respondent No. 5 School forwarded her proposal to respondent No. 2 to grant approval to transfer the petitioner from the non-grant section to the grant section vide letter dated 03.11.2020 (page 88). Respondent No. 2 vide letter dated 11.11.2000 has refused to grant approval due to certain discrepancies appearing in the proposal and informed the school about the responsibility of payment of the petitioner. After removing the discrepancies, the headmaster of respondent No. 5 School submitted a proposal afresh with an explanation and documents to respondent No. 2 vide letter dated 09.06.2021 (page 92). However, respondent No. 2 has neither responded to the said proposal nor taken any decision. Therefore, vide communication 28.03.2023, the headmaster of respondent No. 5 school again reminded and requested to respondent

No. 2 about the consideration of the proposal dated 09.06.2021, but till the filing of the petition, respondent No. 2 did not take any decision on the said proposal nor responded about the same, hence, this petition.

5. Mr. Deshpande, learned Counsel for the petitioner, vehemently contended that despite submitting a proposal dated 09.06.2021 by the headmaster of respondent No. 5 School, respondent No. 2 failed to take a decision for a long period and thereby caused injustice to the rights of the petitioner. In fact, Rule 41 of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 (for short, “**Rules**”) permits the management who runs more than one school, to transfer any of its employee from one school to another on administrative grounds, due to promotion or at the request of the employee concerned, provided, that the transfer doesn’t affect the pay scale of the employee concerned and doesn’t result into loss of pensionary benefit admissible to the employee.

6. He further argued that the issue of transfer of an employee is considered by this Court in various cases and held that transfer of an employee from an unaided to an aided school is permissible under the

law. Therefore, non-consideration of approval by respondent No. 2 is not justified and is contrary to the settled position of the law. Hence, he urges that a direction be issued against respondent No. 2 to decide the proposal and grant approval to it.

7. The learned Counsel to substantiate his contention relied on the decision in *Writ petition No. 6114/2018 dated 14.01.2019* and drew our attention to paragraph No. 16 therein. In the said decision, the Coordinate Bench of this Court has held that sub-clauses 1, 3 and 4 of clause 3 of the Government Circular dated 28.06.2016 are in conformity with law. In contrast, sub-clause 5(B) of Clause 3 of the circular will be applicable when the government sanctions a new post on an aided basis and will not apply to the old post already receiving 100% grant in aid. Therefore, he submitted that the non-takeover decision by respondent No. 2 is contrary to the mandate laid down by this Court. Consequently, it would be proper to direct respondent No. 2 to decide the proposal dated 09.06.2021 and grant approval.

8. *Per contra*, Mr. Madiwale, learned AGP, strongly opposes the petition contending that vide order dated 11.11.2020, respondent No. 2 has rejected the proposal submitted by the headmaster of respondent

No. 5 school, and therefore, there is no need to take a decision on the proposal resubmitted on 09.06.2021. Hence, he urges dismissal of the petition. However, he does not dispute the mandate laid down in ***Writ Petition No. 6114/2018***.

9. We have appreciated the rival contentions of the parties and have gone through the record and the judgment in Writ Petition No. 6114/2018. Vide communication dated 11.11.2020 (page 91), respondent No. 2 has informed about the refusal of the proposal due to some discrepancies that appeared in it. The said discrepancies were removed by the headmaster of respondent No.5 School, and a fresh proposal dated 09.06.2021 was submitted; however, since then till the filing of the petition, respondent No. 2 has not decided the said proposal nor responded to the same despite issuance of a reminder vide communication dated 28.02.2023. We would like to reproduce paragraph 16 of the judgment in Writ Petition No. 6114/2018, as under:

“16. The sub clause 1,3 and 4 of Clause 3 of the Government Circular dated 28th June, 2016, reproduced herein above, are in conformity with the discussion made herein above. But sub-clause 2 of Clause 3 of the said Circular is that, till the surplus teachers are absorbed, no approval should be granted for the transfer of the Assistant Teacher from an unaided school to an aided school of the same institution. In our opinion said clause runs contrary to the ratio laid down in the aforesaid Judgments of the High Court”.

A perusal of paragraph 16 reveals that sub-clauses 1, 3, and 4 of Clause 3 of the Government Circular dated 28.06.2016 are held contrary to the ratio laid down by the Coordinate Bench of this Court. Therefore, there does not impede in considering the proposal dated 09.06.2021 submitted by respondent No. 5 School with respondent No. 2 in view of the mandate laid down in Writ Petition Nos. 6114/2018 dated 14.1.2019 and in Writ Petition No. 2960/2012 dated 11.10.2012.

10. It is to be noted that Rule 41-A of the Rules came to be amended in the year 2020 whereas transfer of the petitioner was effected on 03.10.2019, the proposal for approval was returned by respondent No. 2 to remove discrepancies and after removing the same, the proposal was submitted afresh on 09.06.2021 that doesn't mean that after coming into force Rule 41-A, the proposal was received to respondent No. 2 School.

11. Thus, for the foregoing reasons and the mandate laid down in the Writ Petition Nos. 6114/2018, we are of the opinion that it would not be justified on the part of respondent No. 2 not to consider

the proposal dated 09.06.2021 to grant approval to transfer the petitioner from the unaided division to the aided division and her services in the aided school without any cogent reason. On the contrary, it was incumbent on the part of respondent No. 2 to consider the proposal submitted by respondent No. 5 school, in view of the mandate laid down by this Court and in view of the Government Circular dated 28.06.2016.

In such an eventuality, we partly allow the petition by directing respondent No. 2, Education Officer (Secondary), Zilla Parishad, Amravati, to consider the proposal dated 09.06.2021 and take a decision on it within a period of eight weeks from the date of receipt of a copy of this judgment. Rule is partly made absolute in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)