



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

WRIT PETITION NO. 5971 OF 2024

Ashish Kuwarlal Bisen
Aged about : 40 Years; Occu : Service; R/o
Soni, Tahsil Goregaon, District Gondia.

... PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.
2. Education Officer (Secondary)
Zilla Parishad, Gondia, Tahsil and District
Gondia.
3. Shri Chakkradhar Bahuuddeshiya Shikshan
and Vikas Sanstha, Gondia, Through its
Secretary, Office at : Ganesh Nagar, Gondia,
Tahsil and District Gondia.
4. Manibhai Ishwarbhai Patel High School and
Junior College, Soni, Tahsil Goregaon,
District Gondia, through its Head Master.

... RESPONDENTS

Mr. I. N. Choudhari, Advocate for Petitioner.
Mr. P. N. Shende, Advocate for Respondent No.4.
Ms. D. V. Sapkal, AGP for Respondent Nos.1 and 2.
None for the Respondent No.3.

CORAM : SMT. M. S. JAWALKAR AND PRAVIN S. PATIL, JJ.
DATE : AUGUST 21, 2025.

ORAL JUDGMENT [PER PRAVIN S. PATIL, J.]

. Heard. **Rule.** Rule made returnable forthwith by consent of the parties.

2. By this Petition, the Petitioner is seeking direction against the Respondent No.2/Education Officer to release 100% salary on grant in aid basis to the Petitioner No.3 with effect from 7/9/2018 to 6/9/2022 against the Post of Assistant Teacher with further direction to release the amount of difference and make necessary correction in Shalarth Pranali.

3. The brief facts which are not disputed are as under :

On 1/10/2010 the Petitioner came to be appointed as an Assistant Teacher on unaided basis at Smt. Chanchalben Manibhai Patel High School, Gidhadi run by the Respondent No.3/Management. After his appointment, Respondent No.2, on 10/2/2011 granted approval to the appointment of Petitioner as Assistant Teacher on unaided basis.

4. It is stated by the Petitioner that in terms of the Government policy and the provisions of Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 services of the Petitioner was

transferred from unaided school of Smt. Chanchalben Manibhai Patel High School, Gidhadi to aided section of the same School. Initially, the said transfer was not approved by the Education Officer, hence Writ Petition No. 2047/2018 came to be filed for issuing directions to the Education Officer to grant approval to his transfer. This Court, vide order dated 4/10/2019, directed the Education Officer to take decision in the matter of approval of the Petitioner. Accordingly, a decision has been taken by the Respondent No.2 and granted approval with effect from 7/9/2018, but on 20% salary.

5. It is also pointed out by the Petitioner that on 21/2/2020 the Respondent No.3 issued further transfer order to the Petitioner and thereby services of the Petitioner was transferred to Respondent No.4/School run by the same Management. According to the Petitioner, the School where his services were transferred, is receiving 100% grant in aid. Accordingly, the Petitioner joined the Respondent No.2/School on 25/2/2020. After joining the services by Petitioner at Respondent No.4/School, the proposal was again forwarded to the Respondent No.2 for grant of approval to the transfer of Petitioner. The Respondent No.2, on 5/5/2020, issued modified approval order thereby granting the salary from 7/9/2018 initially @ 20% and subsequently

in the phase-wise manner as per the Government Resolution dated 28/6/2016, which is under challenge.

6. According to the Petitioner, the approval which is granted by relying upon the Government Resolution dated 28/6/2016, runs contrary to the law laid down by this Court in an identical matter. The Petitioner has relied upon the Judgment delivered by this Court in ***Writ Petition No.7651/2023 (Vivek Jyoti Shikshan Sanstha, Ranera & Ors. V/s State of Maharashtra & Anr.)***. This Court, while considering the Government Circular dated 28/6/2016, held that same is not in consonance with the law laid down by this Court in other Judgments. Accordingly, the specific averments are made in paragraph Nos.5 and 6, which are as under :

“5. It is apparent on the face of record that the approval has been granted in phase-wise manner relying upon Circular dated 28/6/2016. It is pertinent to note at this stage that the similar question fell for consideration in Sandhya D/o Balkrushna Teli and Ors. V/s State of Maharashtra and Ors. reported in 2021(4) Mh.L.J. 465 and Sandip s/o Dilip Thorat V/s The State of Maharashtra and Ors., reported in 2022(1) ALL MR 322. In these cases, the Circular dated 28/6/2016 was relied upon. Both the Petitions were allowed. It has been held that approval in a phase-wise manner cannot be granted.

6. In this case, transfer of the Petitioner No.3 has been approved by the Education Officer (Secondary). It is indicative of the fact that Education Officer (Secondary) had no doubt about the qualification of the Petitioner No.3, roster and the seniority. Despite having been satisfied the Education Officer (Secondary) granted the approval on grant-in-aid post in a phase-wise manner. The Petitioner No.3 has already worked on unaided post for five years. In our view, therefore, order passed by the Education Officer (Secondary) granting approval on 20% grant-in post in phase-wise manner dated 06/05/2020 is required to be quashed and set aside.”

7. In view of above factual position, the learned AGP stated that the action of the Education Officer was in consonance with the Government Circular dated 28/6/2016 and there is no illegality on his part while following the Government Circular. However, considering the law laid down by this Court, wherein it is specifically held that grant of approval by relying upon the Government Circular dated 28/6/2016 is not permissible, she is not in a position to make any submission and fairly concedes with the settled position of law.

8. Here we notice the fact that Respondent No.4/School is receiving 100% grant in aid from the State of Maharashtra and this fact is not disputed by any of the Respondents. In view of abovesaid factual position, we are of the considered opinion that the impugned order passed by the Respondent

No.2/Education Officer of granting approval on phase-wise manner is illegal, and accordingly, Respondent No.2/Education Officer is hereby directed to grant approval to the Petitioner with effect from 7/9/2018 on 100% salary on grant in aid basis and also release the amount of difference so payable to the Petitioner within a period of three months.

9. Rule is made absolute in above terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[SMT. M. S. JAWALKAR, J.]

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