IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

District: Kolhapur

WRIT PETITION NO. 6810 OF 2024

Parshuram Umaji Dalavi,]
Age 40 years, Occu : Service,]
R/O at : Kalasgade, Post :Tillarinagar,]
Taluka : Chandgad, Dist : Kolhapur.] **...Petitioner.**

Versus

1] The State of Maharashtra]
Through the Secretary, School Education &]
Sports Department, Mantralaya,]
Mumbai – 400 032.]

2] The Deputy Director of Education,]
Kolhapur Region, Kolhapur.]

3] Nav Maharashtra Shikshan Mandal,]
Mangaon, Taluka : Chandgad,]
District : Solapur.]

4] Shri Ramling High School & Junior]
College, Tudave, Taluka : Chandgad, Kolhapur] **...Respondents.**

Mr. Prashant Bhavake for the Petitioner.
Mr. V. M. Mali, AGP for the Respondent-State.

Coram : R. G. Avachat &
Ajit B. Kadethankar, JJ.

Date : February 3, 2026.

Oral Judgment [Per Ajit B. Kadethankar, J.]:

1. Subject Matter : Despite the petitioner having been appointed on a fully aided post of Assistant Teacher by due process of law, the Deputy Director of Education while granting approval,

approved the release of salary grants partially at the rate of 20% for the first year and thereafter increasing the same by 20% for every subsequent year.

The Petitioner seeks directions to the Deputy Director of Education to modify the approval order thereby making the salary grants payable to the Petitioner 100% effective from the date of his transfer on the subject matter fully aided post.

2. **Rule.** Rule made returnable forthwith. Considering the subject matter of petition and the facts demonstrated in the petition, we heard the matter for final disposal.

3. **Facts in brief :**

3.1. We find the facts are uncontroverted. The Petitioner holds qualification of M.A., B.Ed. and as such he is qualified to be appointed on the post of Assistant Teacher.

3.2. In the year 2008, one unaided post of assistant teacher had fallen vacant in Shri. Chha. Shivaji High School and Junior College, Mangaon run by the Respondent No.3–management. It is not disputed that said post was already sanctioned one and was not a newly created one. By following due process of law, the management appointed the Petitioner on the said post. In due course of time, the Deputy Director of Education also granted approval to the Petitioner's appointment vide order dated 25th July 2014.

3.3. In the year 2017, one fully aided post of assistant teacher had fallen vacant in Respondent No.4 – junior college run and administered by the Respondent No.3-management. Hence, taking recourse to Rule 41 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [for short, ***"MEPS Rules"***], the management 'transferred' Petitioner from the unaided post of assistant teacher to the fully aided post of assistant teacher in Respondent No.4 – junior college.

3.4. Consequent to Petitioner's transfer, a proposal seeking approval to the transfer was moved by the management to the Deputy Director of Education. On 25th April 2018, the Deputy Director of Education issued an approval to the Petitioner's transfer holding him entitled only for 20% grant-in-aid with effect from 1st July 2017.

3.5. On 23rd August 2023, the Deputy Director of Education, vide impugned order revised the approval thereby holding the Petitioner entitled with a rise of 20% grant-in-aid salary benefit increasing annually and making it 100% salary grant admissible from the 5th year.

3.6. The Petitioner is aggrieved by a partial release of salary grant without there being any rational reason behind it and has therefore, preferred the present petition.

4. Submissions :

Petitioner's Submissions :

4.1. Mr. Bhavake, learned Counsel for the Petitioner would submit that there is no objection by any authority as regards the qualification of petitioner, vacancy of the subject matter post, as also to the Petitioner's transfer to the subject matter post. He submits that he has completed atleast 9 years on the unaided post of Assistant Teacher.

4.2. He would further submit that the Petitioner fails to understand why the Deputy Director of Education has applied a formula of partial release of salary grant, making it fully aided only with effect from the fifth year from the date of his transfer.

4.3. He would further submit that in fact once the Petitioner is held to be eligible to occupy the fully aided post of assistant teacher, without there being any impediment, the Petitioner is absolutely entitled for 100% salary grant right from the date of his transfer on the subject matter post.

4.4. As such, Mr. Bhavake, learned Counsel for the Petitioner prays to allow the petition and seeks directions to the Deputy Director of Education.

Assistant Government Pleader's submissions :

4.5. Mr. Mali, learned Assistant Government Pleader refers to Government Resolution dated 28th June 2016 which prescribes a policy

for granting approval to the transfers in the private schools from the unaided post. For the sake of convenience, the said Government Resolution / Circular dated 28th June 2016 is reproduced as follows :

"<u>परिपत्रक</u>

विना अनुदान तत्वावरील शाळांमधून अनुदानित तत्वावरील शाळेतील पदावर बदलीबाबत मा. उच्च न्यायालयात दाखल झालेल्या प्रकरणी मा. उच्च न्यायालयाच्या आदेशानुसार बदल्यांना मान्यता देताना विना अनुदान तत्वावरील शाळांतील संस्थेच्या शिक्षकास अनुदानित शाळेवर नियुक्ती देण्याचे प्रकार वाढत आहेत.

२. या मान्यता देताना सदर विनाअनुदानित तत्वावरील शाळेतील शिक्षक विना अनुदानित शाळेवर सेवाज्येष्ठ आहेत किंवा कसे हे तपासले आहे किंवा कसे हे निश्चितपणे सांगता येत नाही. यापूर्वी विना अनुदानित तत्वावरील शाळेतून अनुदानित तत्वावरील शाळेत बदलीबाबत खालील प्रकरणे दाखल झाली आहेत व मा. उच्च न्यायालयाने अशा बदल्यांना मान्यता दिली आहे.

१) रिट याचिका क्र.७८१३/२०१५, ७८/२०१५, ७८१६/२०१५, ७८२७/२०१५, ७९०९/२०१५, ८१११/२०१५, ८११२/२०१५, ८११३/२०१५ मधील दि.९.९.२०१५ चा निर्णय.
२) रिट याचिका क्र. ५२२८/२०१२ मधील दि.१२.९.२०१२ चा निर्णय
३) रिट याचिका क्र. २९६०/२०१२ मधील दि.११.१०.२०१२ चा निर्णय
४) रिट याचिका क्र. ३९७९/२०१५ मधील दि. १८.४.२०१५ चा निर्णय

३. संस्थेची ज्येष्ठतासूची एकत्रित असल्यामुळे सेवाज्येष्ठतेच्या अधीन राहून केवळ सेवानिवृत्तीमुळे रिक्त होणाऱ्या पदावर अशा बदल्यांना मान्यता देण्याबाबत धोरणात्मक निर्णय घेणे आवश्यक आहे. यास्तव विनाअनुदानित तत्वावरील संस्थेच्या शाळांमधून त्याच संस्थेच्या अनुदान तत्वावरील शाळेतील बदलीस खालील अटींस अधीन राहून मान्यता प्रदान करण्यात यावी.

१) अशी नियुक्ती करण्यापूर्वी महाराष्ट्र खाजगी शाळातील कर्मचारी (सेवेच्या शर्ती) अधिनियम १९७७ कलम ५ (१) मधील तरतुदीनुसार अतिरिक्त शिक्षक नसतील याबाबत संबंधित सक्षम प्राधिकाऱ्याने खात्री करावी.

२) नियुक्तीच्या वेळेस अतिरिक्त शिक्षक उपलब्ध असल्यास विनाअनुदानित तत्यावरील शिक्षकांच्या अनुदानित शाळेवरील बदलीस मान्यता देण्यात येऊ नये.

३) संस्थेच्या विना अनुदानित तत्वावरील शाळेतील सर्वात ज्येष्ठ असलेल्या शिक्षकास त्याच संस्थेतील अनुदान तत्वावरील शाळेतील सेवानिवृत्तीमुळे रिक्त होणाऱ्या पदावर बदलीने नियुक्ती देण्यात यावी व त्याप्रमाणे सेवाज्येष्ठतेच्या तत्वाचे पाल करण्यात यावे.

४) विना अनुदानित शाळेवरील शिक्षकांच्या नियुक्तीस संबंधित सक्षम प्राधिका-यांने वैयक्तिक मान्यता प्रदान केलेली असावी.

५) सदर शिक्षकांची बदलीने नियुक्ती करण्यापूर्वी त्यांचेकडून खालीलपैकी एक विकल्प घ्यावा :-

अ) विनाअनुदानित तत्वावर शिक्षकाची नियुक्ती होऊन ५ वर्षापेक्षा कमी कालावधी झाला असेल व अशा शिक्षकाची बदलीने अनुदानित शाळेवर नियुक्ती करावयाची असेल तर त्याचेकडून तो शिक्षण सेवक म्हणून ३ वर्षे मानधनावर काम करण्यास तयार असल्याचा विकल्प घ्यावा.

ब) विनाअनुदान तत्वावरील शाळेमध्ये ५ वर्षे किंवा त्यापेक्षा जास्त सेवा झालेल्या शिक्षकास अनुदान तत्वावरील शाळेमध्ये बदलीने नियुक्ती द्यावयाची झाल्यास तो खालील दराने वेतन घेण्यास तयार असल्याचे बंधपत्र त्याचेकडून घेण्यात यावे :-

(१) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर प्रथम वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या २०% अनुदान शासन देईल उर्वरीत ८०% अनुदान संबंधित संस्था देईल.

(२) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर दुस-या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या ४०% अनुदान शासन देईल उर्वरीत ६० % अनुदान संबंधित संस्था देईल.

(३) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर तिस-या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या ६०% अनुदान शासन देईल उर्वरीत ४०% अनुदान संबंधित संस्था देईल.

(४) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर चौथ्या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या ८०% अनुदान शासन देईल उर्वरीत २००% अनुदान संबंधित संस्था देईल.

(५) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर पाचव्या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील १००% टक्के अनुदान शासन देईल.

४. सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेताक २०१६०६२८१६२६०८८१२१ असा आहे. हे परिपत्रक डिजीटल स्वाक्षरीने साक्षांकित करुन काढण्यात येत आहे."

4.6. Mr. Mali, learned Assistant Government Pleader would urge to test the Petitioner's case on its own merits and to pass appropriate orders.

5. <u>CONSIDERATION :</u>

5.1. We have heard the parties at length and also have gone through the concerned legal position as also the contents of Government Resolution dated 28th June 2016.

5.2. It would be necessary to refer to Rule 41 of the MEPS Rules, 1981, which is re-produced as follows :

> "**41. Transfers.**
>
> (1) Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned, if it is administratively convenient to do so.
>
> (2) Save in exceptional cases, and unless reasons are recorded in writing by the Management, such transfers shall not be effected in the middle of the term.
>
> (3) The Management shall see that the transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfer do not result into loss in the pensionary benefits as admissible to them.
>
> (4) The expenditure on Travelling allowance and Daily allowance, if any, at the rates applicable to the Government

employees of the comparable status, shall be borne by the Management. If the transfer is at the request of the employee, this expenditure shall be borne by the employee concerned:

Provided that the transfer involves change of headquarters, the joining time to be allowed to an employee shall be limited to six days (excluding Sunday) and actual days of journey. Subject to this limit, the period of joining time shall be treated as "duty" for all purposes:

Provided that, an employee shall not be entitled to joining time, if transfer is effected during the vacation.

(5) Where a Management runs a secondary school or secondary schools and a Junior College of Education -

(a) Teachers in a Junior College of Education shall not be transferred to a secondary school against their will. Such transfers may, however, be made if they are at employees own requests, subject to availability of vacancies in secondary schools. In the event of such a transfer, the pay drawn by the teacher in the Junior College of Education shall not be protected. He shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly refixed on his joining the secondary school.

(b) Teachers in secondary school shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made if they are at the employees' own requests, subject to the following conditions, namely :

(i) Vacancies should be available in the Junior College of Education;

(ii) The concerned employee shall retain the same place in the common seniority list; and

(iii) Their pay in the Junior College of Education shall be fixed at the same stage of pay as their existing pay or at the minimum of the scale of pay in the Junior College of Education, whichever is higher."

5.3. It is apparent that school managements can transfer any of its employee from one school / junior college to another school / junior college on administrative ground, promotion or at the request of the concerned employee if it is administratively convenient to do so. Another stipulation in the rules is that any transfer made under the rule must not adversely affect the pay or pay scale of the employee concerned and that such transfer does not result into loss in the pensionary benefits as admissible to the concerned employee.

5.4. There can be no dispute by now that an employee working on unaided post in one school / junior college run by the management can be transferred to a fully aided post in another school / junior college run by the same management. As such the Petitioner's transfer on the subject matter post cannot be said to be illegal or in exception to law.

5.5. The act on the part of Deputy Director of Education in approving the Petitioner's transfer itself demonstrates that subject matter transfer is not at all questionable. What is material is release of salary grant partially in the increasing rate of 20% per annum.

5.6. As a matter of record, the Petitioner was initially appointed on 15th June 2008 on an unaided post of assistant teacher. He was transferred to the subject matter fully aided post of assistant teacher on 28th June 2017. As such he has completed at least 9 years of continuous service on the unaided post of assistant teacher.

5.7. The State Government has approved the policy of accepting transfer of employee in private schools from unaided post vide Government Resolution dated 28th June 2016. However, we have reservations as regards to the constraints put in the said Government Resolution on the concerned employee to submit an undertaking to accept the partial salary grant even after standing eligible for such transfer as per policy. The objectionable part in Government Resolution / Circular dated 28th June 2016 we find in Clause 3(5)(b), which reads thus :

> "ब) विनाअनुदान तत्वावरील शाळेमध्ये ५ वर्षे किंवा त्यापेक्षा जास्त सेवा झालेल्या शिक्षकास अनुदान तत्वावरील शाळेमध्ये बदलीने नियुक्ती द्यावयाची झाल्यास तो खालील दराने वेतन घेण्यास तयार असल्याचे बंधपत्र त्याचेकडून घेण्यात यावे :-
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> (१) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर प्रथम वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या २०% अनुदान शासन देईल उर्वरीत ८०% अनुदान संबंधित संस्था देईल.
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> (२) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर दुस-या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या ४०% अनुदान शासन देईल उर्वरीत ६० % अनुदान संबंधित संस्था देईल.
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> (३) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर तिस-या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या ६०% अनुदान शासन देईल उर्वरीत ४०% अनुदान संबंधित संस्था देईल.
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> (४) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर चौथ्या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील एकूण वेतनाच्या ८०% अनुदान शासन देईल उर्वरीत २००% अनुदान संबंधित संस्था देईल.
>
> (५) ५ वर्षे पूर्ण झालेल्या शिक्षकास बदलीनंतर पाचव्या वर्षी त्यास देय होणा-या नियमित वेतनश्रेणीतील १००% टक्के अनुदान शासन देईल."

5.8. If the subject matter transferee post is a fully aided and already sanctioned post, we find no rational behind imposing such condition or depriving an employee from getting the full salary grants from the date of transfer, if the appointment by transfer itself is held to be valid one as is in the present case. This is not a case of fresh appointment. It is merely a transfer of such employee who has already served in the same management for five years. In such case, the State Government is not at all justified in securing any undertaking from the concerned employee that he concedes for partial grant starting with the slab of 20%. In such cases, the partial grants policy shall not be applicable. Such candidate is entitled for 100% salary grant w.e.f. his/her transfer on the post of fully aided post.

5.9. Our logic is well guided by an earlier decision of this Court in the case of ***Sagar Harichandra Bhande v. State of Maharashtra*** [Writ Petition (St) No.93919 of 2020, decided on 12th March 2021], wherein the Division Bench of this Court in paragraphs 13 and 14 of the said judgment has held as under :-

> "*13. When there is a vacant post in an aided school, the Institution can transfer senior most qualified Assistant Teacher working on an unaided post to fill up the said vacancy, and if such senior most teacher is available in the same school, such post on aided basis can be offered to him. When the management can legally transfer an Assistant Teacher serving in an unaided school under the same management to aided school, there is no reason to obtain an undertaking for such transfer as stated in sub clause 5(B) of clause 3 of the aforesaid Circular. However, in case the State Government sanctions new post/posts on aided basis, and those are to be filled*

in afresh by giving fresh appointment/appointments, the State Government can make applicable the formula / percentage of proportionate salary to be disbursed by the State Government and the concerned Institutions in the manner stated in sub clause 5 (B) of Clause 3 of the said Circular.

14 Upon perusal of sub clause 5 (A) of clause 3 of the said Circular, which provides that, if a teacher appointed on unaided basis, has rendered less than 5 years on service, in case the management wishes to transfer such teacher from unaided school to aided school, in that case, an undertaking should be obtained from such teacher to work as Shikshan Sevak on consolidated pay, prima facie such provision appears to be attractive. However, in case the candidate is appointed on the post of Assistant Teacher after following the mandate of Section 5 of the MEPS Act, 1977, and on completion of probation period, if the Education Officer has granted approval to his appointment on regular basis, and in case he is the senior most teacher serving on unaided basis in a school run by the same Institution, he requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he has already completed 3 years' period, there is no justifiable reason to ask him to work again as Shikshan Sevak on a consolidated pay for three years. Sub-clause 5 (A) of clause 3 of the said Circular can be invoked when a teacher has not completed three years period after his appointment in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis."

5.10. We have another reason to say so. The subject matter accommodation of Petitioner is not a fresh appointment but it is a transfer within the meaning of Rule 41 of the MEPS Rules, 1981. This Court in another case of ***Sandip Dilip Thorat v. State of Maharashtra*** [Writ Petition No. 168 of 2021 decided on dated 22nd July 2021] has in paragraph No. 17, 18 and 19 observed as follows :

"17. We have considered the submissions and we find that the issue arising in both the Petitions have been squarely covered by the judgment of this Court in **Sagar S/o. Harichandra Bhande & Anr**. (supra). The said judgment has referred to decisions of various Division

Benches of this Court where it has been clearly held that a transfer from an unaided post to an aided post is not a fresh appointment. It is a transfer within the meaning of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1977. The Division Bench of this Court in paragraphs 13 and 14 of the said judgment has held as under :-

> "*13. When there is a vacant post in an aided school, the Institution can transfer senior most qualified Assistant Teacher working on an unaided post to fill up the said vacancy, and if such senior most teacher is available in the same school, such post on aided basis can be offered to him. When the management can legally transfer an Assistant Teacher serving in an unaided school under the same management to aided school, there is no reason to obtain an undertaking for such transfer as stated in sub clause 5(B) of clause 3 of the aforesaid Circular. However, in case the State Government sanctions new post/posts on aided basis, and those are to be filled in afresh by giving fresh appointment/appointments, the State Government can make applicable the formula / percentage of proportionate salary to be disbursed by the State Government and the concerned Institutions in the manner stated in sub clause 5 (B) of Clause 3 of the said Circular.*
>
> *14 Upon perusal of sub clause 5 (A) of clause 3 of the said Circular, which provides that, if a teacher appointed on unaided basis, has rendered less than 5 years on service, in case the management wishes to transfer such teacher from unaided school to aided school, in that case, an undertaking should be obtained from such teacher to work as Shikshan Sevak on consolidated pay, prima facie such provision appears to be attractive. However, in case the candidate is appointed on the post of Assistant Teacher after following the mandate of Section 5 of the MEPS Act, 1977, and on completion of probation period, if the Education Officer has granted approval to his appointment on regular basis, and in case he is the senior most teacher serving on unaided basis in a school run by the same Institution, he requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he has already completed 3 years' period, there is no justifiable reason to ask him to work again as Shikshan Sevak on a consolidated pay for three years. Sub-clause 5 (A) of clause 3 of the said Circular can be invoked when a teacher has not completed three years period after his appointment in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis.*"

> 18. It is thus, clear from the said judgment that Sub-Clause 5 (B) of Clause 3 of the said Government Circular can apply only in a case where the Government sanctions new post/posts on aided basis, which are to be filled in afresh by giving fresh appointment/ appointments. It is only then that the State Government can make applicable the formula/percentage of proportionate salary to be disbursed by the State Government and the concerned institutions in the manner stated in Sub-Clause 5(B) of Clause 3 of the said Circular.
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> 19. It is clear from these Petitions that the respective Petitioners had rendered service on unaided basis as Assistant Teacher in the respective Secondary Schools and were transferred to the aided division of the respective Secondary Schools on the basic sanctioned post which had become vacant on the said aided division and the said post was already on 100% grant-in-aid basis. It has been clearly held by the Division Bench of this Court in the case of **Sagar S/o. Harichandra Bhande & Anr**. (supra), where the Assistant Teacher had already completed three years period, there is no justifiable reason to ask the Assistant Teacher to work again as Shikshan Sevak on consolidated pay for three years. Sub-Clause 5(A) of Clause 3 of the said Government Circular can be invoked only where the Assistant teacher has not completed three years period after his appointment in the school on unaided basis and that he has not received approval to his services as an Assistant Teacher on regular basis."

6. In view of this and for the reasons recorded above, we are satisfied that Petitioner has made out a successful case for seeking modification in the impugned approval order. The policy of partial salary grants relying upon the Government Resolution dated 28th June 2016 would not be applicable to the present case.

Hence, we pass following order :

-: O R D E R :-

(i) Writ petition is allowed.

(ii) The impugned order dated 23rd August 2023 is quashed and set aside.

(iii) Within eight weeks from today, the Deputy Director of Education shall issue a fresh approval order approving the Petitioner's transfer on the subject matter fully aided post of assistant teacher in Respondent No.4– college, approving full salary grants from the date of his transfer.

(iv) Rule made absolute in above terms.

(v) Writ petition stands disposed of.

[Ajit B. Kadethankar, J.] **[R. G. Avachat, J.]**