

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9839 OF 2024

Pramod Tukaram Naiknaware And Ors. ...Petitioners  
**Versus**  
The Education Officer (Sec.) And Ors. ...Respondents

WITH  
INTERIM APPLICATION (STAMP) NO. 13175 OF 2025  
IN  
WRIT PETITION NO. 9839 OF 2024

Nathaji Gowardhan Patil ...Applicant

IN THE MATTER BETWEEN

Pramod Tukaram Naiknaware And Ors. ...Petitioners  
**Versus**  
The Education Officer (Sec.) And Ors. ...Respondents

.....  
*Adv. Dinesh W. Bhosale a/w Adv. Ajay Parsekar, for Petitioners.*  
*Ms. Tejas Jayprakash Kapre, learned AGP for the Respondent-State.*  
.....

CORAM : MADHAV J. JAMDAR &  
PRAVIN S. PATIL, JJ.

DATE : 28<sup>th</sup> APRIL, 2026.

P.C. :

1. Heard.
2. The challenge is to the order dated 28<sup>th</sup> December 2022 passed by the Education Officer (Secondary), Zilla Parishad, Solapur, whereby

the proposal of transfer of services of petitioner No.1 from non-grant-in-aid post to grant-in-aid post was rejected on account that the post of Head Master does not fall under the definition of a teacher and secondly, by relying upon the Government Resolution dated 28<sup>th</sup> June 2016.

3. It is clear from the definition of a teacher under Section 2(26) of the M.E.P.S. Act that the post of Head Master comes under definition of a teacher. Hence, there is no impediment to transfer his services from non-grant-in-aid classes to grant-in-aid classes.

4. In respect of applicability of G.R. dated 28<sup>th</sup> June 2016, the Co-ordinate Bench of this Court, by judgment dated 24<sup>th</sup> August 2021 in Writ Petition No. 14234 of 2018 observed in paragraph No. 15 as under:

*“15. Having considered these submissions, it is apparent from the decisions of this Court in the compilation tendered by the learned Counsel for the Petitioner that the Issue arising in this Petition is no longer res integra. It is clear from the decisions of the Division Bench of this Court in **Miss. Devkar Dipali Kisan** (supra) that the Government Circular dated 28th June 2016 and in particular, Clause 3 of Sub-Clauses 1 and 2 has been held to have no statutory force in law. The relevant Clauses of the Government Circular of which the impugned order is passed read as under :-*

*“3. Since the seniority list of the Management is common, it is necessary to take a policy decision for grant of approval to transfers made on such posts falling vacant only due to retirement. Therefore, the approval may be granted to the transfer from un-aided School of the Management to the aided School of the same Management subject to following conditions:-*

*1. Before making such appointment it should be ascertained by the concerned Competent Authority that there are no surplus Teachers as per the provisions of 5[1] of the*

*MEPS Act, 1977.*

*2. If surplus Teacher is available at the time of appointment, then approval should not be granted to the transfer of Teacher from un-aided School to aided School."*

5. It is pertinent to note that under Rule 41A of the M.E.P.S. Rules, the legislature has prescribed the procedure as to how the proposal is to be considered by the Education Officer for the transfer of a teacher from non-grant-in-aid post to grant-in-aid post. However, there is no consideration to all these material aspects in the matter.

6. Accordingly, we direct the Education Officer to reconsider the proposal dated 8<sup>th</sup> June 2020 in the light of the provisions of Rule 41A of M.E.P.S. Rules by granting hearing opportunity to the petitioners as well as to all stakeholders and decide the proposal within a period of eight weeks from the date of appearance of the parties before him.

7. The parties are directed to appear before the Education Officer on 6<sup>th</sup> May 2026.

8. All the issues raised by the parties in the petition are expressly kept open.

9. Accordingly, the Writ Petition stands disposed of.

10. In view of disposal of Writ Petition, the pending interim application also stands disposed of.

[ PRAVIN S. PATIL, J.]

[MADHAV J. JAMDAR, J.]