

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

WRIT PETITION NO. 15143 OF 2024

Surekha Rajaram Khot.

...Petitioner.

Versus

The State of Maharashtra and Others.

...Respondents.

Mr. Prashant Bhavake for the Petitioner.

Mr. R. P. Kadam, B Panel counsel for the Respondent-State.

Mr. Utkarsh Desai for the Respondent No. 5 and 6.

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

Date : February 3, 2026.

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

1. Facts of the case are not at all in dispute. Petitioner is well qualified to be appointed as Shikshan Sevak / Assistant Teacher. By following due process, Petitioner came to be appointed as Assistant Teacher on unaided post 16th June 2014. Petitioner completed 3 years of probation and subsequently a fully aided post of Assistant Teacher had fallen vacant due to superannuation of its earlier employee. The school management found the Petitioner to be suitable for transfer to the said post. Accordingly, vide order dated 30th June 2018, Petitioner came to be transferred on the fully aided post of Assistant Teacher with effect from 1st July 2018. In terms of these facts, the Petitioner

ought to have been given salary grant of fully aided post with effect from his appointment or transfer on the fully aided post. However, Deputy Director of Education has granted approval on the post of Shikshan Sevak.

2. Mr. Bhavake, learned Counsel for the Petitioner would rely on the observations made by this Court in the case of **Sandip Dilip Thorat v. State of Maharashtra** [Writ Petition No. 168 of 2021 decided on dated 22nd July 2021]. Paragraph No. 17, 18 and 19 of the said decision read thus :

“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.

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.”

3. Mr. Bhavake, learned Counsel for the Petitioner would submit that since the Petitioner has already completed more than 3 years service as Assistant Teacher on unaided post, the Deputy Director was not justified in passing the impugned order.

4. Mr. Kadam, learned AGP would fairly agree with the legal position.

5. In view of this, we find that the Petitioner has made out a case for indulgence of this Court. Hence, Writ Petition is allowed in terms of prayer clause (b), which reads thus :

“(b) By suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 12-9-2018 qua granting approval to the transfer of the Petitioner in the post of Shikshan Sevak (Asst. Teacher-Probationary) instead of Asst. Teacher in regular pay-scale and accordingly, be pleased to further direct the Respondent No.4-Dy. Director to approve transfer of the by issuing revised order by approving transfer of Petitioner as Asst. teacher and accordingly grant full pay-scale admissible to the Petitioner w.e.f. 1-7-2018 from Government's grant-in-aid within four weeks and accordingly, to pay all arrears of salary difference from the date of transfer of the Petitioner on aided post within period of 8 weeks or any other period which this Hon'ble Court deems fit and proper.

6. Deputy Director of Education shall issue modified approval order accordingly.

7. Writ petition stands disposed of.

[Ajit B. Kadethankar, J.]

[R. G. Avachat, J.]