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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2547 OF 2021

Rahul Prakash Nilgar
Age : 35 years, Occ. Service,
Address : Shri. S.S. Shelke Prashala
& Junior College, Vagdari, Tal - Akkalkot,
Dist - Solapur.

... Petitioner

Vs.

1. State of Maharashtra

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

... Respondents

Mr. Rahul S. Kadam for the Petitioner.
Mr.S.B. Kalel, AGP for the State.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**

DATE : 29TH NOVEMBER, 2021

ORAL JUDGMENT : (PER R.D. DHANUKA, J.)

1. Rule. Rule made returnable forthwith. Mr.S.B. Kalel, learned AGP for the State waives service.
2. By consent of the parties, Petition is heard finally.

3. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 7th April, 2021 passed by Respondent No.2-Education Officer rejecting the proposal made by the Management, thereby transferring the Petitioner from unaided post of Lab Attendant in junior college to aided post in secondary school on the post of Lab Attendant run by the same Management on the ground that there is no provision under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('the MEPS Rules') for such transfer.

4. Mr. Kadam, learned counsel for the Petitioner invited our attention to the impugned order passed by the Education Officer and would submit that the said impugned order is contrary to Rule 41(5)(a) and 41(5)(b) of the MEPS Rules. Rule 41 reads thus :-

"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 transfers do not result into loss in the pensionary benefits as admissible to them.

(4) The expenditure on Traveling 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. In support of this submission, learned counsel for the Petitioner placed reliance on the judgments of this Court in cases of **Vidya Vikas Samiti, Paratwada And Another Vs. Presiding Officer, School Tribunal, Amravati Division, Amravati and Others; [1998(1) Mh.L.J. 462, Sudha Anant Gandhi Vs. Gokhale Education Society And Another; 2001 SCC OnLine Bom 1267, Sau. Kalpana w/o Jayant Kolarkar (maiden name Ku. Kalpana d/o Gopalrao Jatkar) Vs. State of Maharashtra, Through the Secretary & Ors.; 2010 SCC OnLine Bom 1397 and Rajaram S. Mandale and Another Vs. State of Maharashtra, Through Secretary, School Education Dept. and Another; 2020 SCC OnLine Bom 7507.**

6. In his alternate submission, it is submitted by the learned counsel for the Petitioner that the transfer is permissible from unaided junior college post to aided secondary school post under Rule 41(1) of the said MEPS Rules. He submits that the said provision under Rule 41(1) is very wide. He relied upon the definition of 'School' under Section 2(24) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('the MEPS Regulations') and would submit that the definition of school includes the junior college. The said definition reads thus :

"2(24) "School" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level."

7. The learned AGP, on the other hand, strongly placed reliance on the definition of 'Junior College of Education' under Section 2(10) of the MEPS Act, which reads thus:-

“2(10) “Junior College of Education” means a school imparting teacher education to persons for being appointed as teachers [and [Assistant Teacher (Probationary)] in pre-school centres or primary schools”

8. The learned AGP also placed reliance on Rule 41A of the MEPS Rules and would submit that in view of the said provision, which came to be added with effect from 8th June, 2020, the transfer from unaided junior college to aided secondary school is not permissible. Rule 41A of the MEPS Rules reads thus :-

“41A. Conditions for transfer of teacher from un-aided to partially aided or aided school or division. -

(1) The management may transfer a teacher from un-aided school or partially aided school to the vacant post in partially aided school or aided school or division only if the following conditions are satisfied, namely:-

- (a) (i) the Management and Education Officer or Deputy Director shall, before making such transfer, verify that there is no surplus persons are available as provided in sub-section (1) of section 5 of the Act;*
- (ii) if the surplus persons are available, the Management shall not make such transfer;*
- (b) the transfer shall not be made from the teachers of self-financed school of the Management;*
- (c) before making such transfer, the teacher should have completed minimum five years continuous service in un-aided school or division or partially aided school or division of the Management;*
- (d) the transfer shall be made in equal or same*

cadre. The transfer shall not be made from primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. schools or vice-versa;

(e) the transfer shall be made only by following the seniority and as per the requirement of the subject;

(f) before making transfer of a teacher, his appointment should have been approved by the Education Officer or Deputy Director, as the case may be;

(g) the transfer shall be made on the vacant post;

(h) the transfer shall be subject to the approval of Education Officer or Deputy Director, as the case may be.

(2) If the post becomes vacant due to transfer, such vacant post shall be filled as per the procedure provided in Rule 9.

(3) The transferred teacher shall be eligible for scale of pay and allowances as decided by the Government, from time to time.”

9. A perusal of the record indicates that it is an admitted position that the Petitioner was appointed as a Lab Attendant in a junior college run by the same Management, running the secondary school to which the Petitioner was transferred. The Petitioner was a non-teaching staff.

10. A perusal of Rule 41(5) clearly indicates that where a Management runs a secondary school and a junior college of

education, teachers in a junior college of education cannot be transferred to a secondary school against their will and subject to various conditions. In our view, Rule 41(5) would not apply to the transfer from junior college to secondary school though run by the same Management in case of a non-teaching staff.

11. Insofar as the judgments of this Court relied upon by the learned counsel for the Petitioner, in case of **Vidya Vikas Samiti, Paratwada And Another (supra), Sudha Anant Gandhi (supra), Sau. Kalpana w/o Jayant Kolarkar (maiden name Ku. Kalpana d/o Gopalrao Jatkar) (supra)** and **Rajaram S. Mandale and Another (supra)** are concerned, in all these judgments, this Court had considered the transfer of a teacher from one school to another school. In our view, none of these judgments would thus assist the case of the Petitioner seeking transfer under Rule 41(5) not applicable to non-teaching staff.

12. The next question that arises for consideration of this Court is whether a transfer from an unaided post in a junior college to aided post in secondary school of a non-teaching staff is permissible under Rule 41(1) of the MEPS Rules or not? A perusal

of Rule 41(1) clearly indicates that the said provision applies not only to the school, but also to the junior college and the transfer from one school to another and also to non-teaching staff except on administrative grounds. Rule 41(1) has to be read with the definition of 'school' provided under Section 2(24) of the MEPS Act, which includes junior college of education. The expression junior college of education is further defined under Section 2(10) of the MEPS Act which means a school imparting teacher education to persons for being appointed as teachers and Assistant Teacher (Probationary) in pre-school centres or primary schools. However, the definition of school under Section 2(24) is very wide and includes junior college of education. Section 2(24) has to be read with Rule 41(1) of the MEPS Rules.

13. On conjoint reading of Rule 41(1) with Section 2(24), i.e., definition of 'school', transfer of non-teaching staff from unaided post in junior college to aided post in higher secondary school run by the same Management is thus permissible, subject to the conditions prescribed under Rule 41(1) and Rule 41(2) of the MEPS Rules. It is not the case of the Education Officer in the impugned order that the other conditions prescribed under Rule 41(1) are not

complied with by the Management. In our view, the impugned order is thus in violation of Rule 41(1) and Rule 41(2) of the MEPS Rules and deserves to be quashed and set aside.

14. Writ Petition is made absolute in terms of prayer clause [A].

15. The Education Officer is directed to grant approval to the said transfer within a period of four weeks from today and shall release grant-in-aid in favour of the Management in respect of such transfer from the date of transfer within a period of four weeks thereafter.

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

17. Parties to act upon the authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)