

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12297 OF 2016

Dagde Ramesh Sadashiv and another	Petitioners
versus	
The State of Maharashtra and another	Respondents

Mr.N.V.Bandiwadekar for Petitioners.

Ms.R.M.Shinde, AGP, for Respondent nos.1 and 2.

CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.

DATE : 22nd March 2017

PC :

With consent of the learned counsel for the parties, the matter is heard finally.

2. Petitioner no.1 who is Headmaster with the school run by Petitioner no.2 management, was transferred from partially aided school at Mardhe to fully aided school at Nele Kidgaon vide transfer order dated 23rd May 2016 (Exhibit-H-4 to the petition) with effect from 1st June 2016. Thereafter, a proposal was sent by Petitioner no.2 to Respondent no.2 Education Officer for approval of the said transfer order. However, the said proposal was rejected by Respondent no.2 vide order dated 15th October 2016 (Exhibit-R) on the ground that there is no Government Resolution for transfer of Headmaster from partially aided school to fully aided school. Feeling aggrieved, the Petitioners have filed this petition.

3. According to the Petitioners, similarly placed Headmaster of Petitioner no.2 management had filed Writ Petition No.11312 of 2013 before this Court. The said writ petition was disposed of vide order dated 10th January 2014 (Exhibit-S) directing the Education Officer to decide the proposal for approval of transfer of the said Headmaster as early as possible. In terms of the said order, the Education Officer on 4th March 2014 approved the proposal for transfer of said writ petitioner of Writ Petitioner No.11312 of 2013. In the circumstances, it is the case of the Petitioners that the reason stated while rejecting the Petitioners' proposal cannot be accepted and the Respondent no.2 cannot apply different yard stick to similarly placed persons.

4. It is also the case of the Petitioners that in view of Rule 41 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('Rules of 1981' for short), the Petitioner no.1 being employee of Petitioner no.2, his case for transfer requires to be considered even if there is no specific Government Resolution.

5. Learned counsel for Petitioners submits that reliance of Respondents-State on Government Resolutions dated 27th June 2016 and 28th June 2016 is wholly misconceived, as both the Government Resolutions are not at all attracted to the present case, as the proposal for approval of transfer was made much prior to coming into force of said Government Resolutions, as also the said Resolutions relate to absorption of surplus teachers and are not related to the transfer of the Headmasters.

6. Having considered the submissions made by learned counsel for parties and having gone through the reply filed by the State as also Government Resolutions as aforesaid, we are of the view that the impugned order cannot be sustained. In our considered view, both the Government Resolutions dated 27th June 2016 and 28th June 2016 on which reliance has been placed by the State, are not applicable for grant of approval to the transfer of Headmasters of partially aided schools to fully aided schools, but they relate to absorption of surplus teachers. The reasons assigned for the rejection of Petitioners' proposal for approval that there is no Government Resolution to that effect, is also unsustainable, in view of the fact that even if there is no Government Resolution, Rule 41 of the Rules of 1981 empowers the management to transfer any of its employees on the grounds mentioned in Rule 41 of the Rules of 1981. It also cannot be overlooked that transfer of similarly placed Headmaster of Petitioner no.2 was approved by the Respondents and the Petitioner no.1 is being treated differently on the pretext that there is no Government Resolution for approval of such transfer.

7. Having regard to the aforesaid, we set aside the impugned order dated 15th October 2016 (Exhibit-R to the petition) and direct Respondent no.2 Education Officer to consider and decide the proposal sent by Petitioner no.2 for grant of approval to the transfer of Petitioner no.1 afresh, in accordance with law keeping in view the observations made hereinabove.

8. The decision as aforesaid be taken by Respondent no.2 Education Officer within two months from the date of receipt of a copy of this order.

9. It is made clear that interim order passed by this Court on 10th January 2017 to the extent of prayer clause (d) shall continue to remain in operation till Respondent no.2 decides the proposal, as directed above.

10. The petition is disposed of.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)

MST