

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2499 OF 2019

1. Shahbabu Education Society,
Patur Tahsil Patur, District
Akola, through its
Secretary Mr. Syed Ishaque
Syed Nabi, aged about 69 years,
C/O Shahababu High School,
Patur, District Akola.
2. Shahbabu High School (Hamza Plot)
Akola, Tahsil and District Akola,
through its Head Master.
3. Ku. Ghazala Parveen M. Zainulabedin,
Age about 28 years,
Occupation – Service, C/o
Shahababu High School, (Hamza
Plot), Akola, Tahsil and District
Akola.
4. Anisoddin Sk. Taiji Boddin,
Age about 36 years, Occupation-
Service C/o Shahababu High School,
(Hamza Plot), Akola, Tahsil and District
Akola.
5. Ku. Nikhat Anjum Syed Manzoor,
Age about 28 years, Occupation -
Service, C/o Shahababu High
School, (Hamza Plot), Akola, Tahsil
and District Akola.
6. Ku. Munazza Parveen Husain Khan,
Age about 25 years, Occupation -
Service, C/o Shahababu High School,
((Hamza Plot), Akola, Tahsil and District

Akola.

7. Syed Aatifuddin Syed Iftekharuddin,
Age about 30 years, Occupation-
Service, C/o Shahababu High School
(Hamza Plot), Akola, Tahsil
and District Akola.
8. Mohd. Aadil Mohd Aazam,
Aged about 26 years, Occupation
Service, C/o Shahababu High School,
(Hamza Plot), Akola, Tahsil
and District Akola.
9. Ku. Uzma Naaz Ghulam Anees,
Age about 24 years, Occupation -
Service, C/o Shahababu High
School, (Hamza Plot), Akola, Tahsil
and District Akola.

.... **PETITIONERS**

// **VERSUS** //

1. State of Maharashtra
Through, the Chief Secretary of
Department of School Education,
Mantralaya, Madam Cama Road,
Mumbai 400032.
2. Director of Education (Secondary
and Higher Secondary), Maharashtra
State, having his office at Central
Building, Pune, Maharashtra
3. Education Officer (Secondary),
Zilla Parishad, Akola, having his
Office at DIET Campus, behind
Santoshi Mata Mandir, Akola

.....**RESPONDENTS**

Shri A.A. Naik, learned counsel for Petitioners.
Shri I.G. Damle, learned AGP for respondents.

**CORAM : SUNIL B.SHUKRE &
AVINASH G. GHAROTE, JJ.**

DATE : 12.10.2020.

ORAL JUDGMENT (Per : Sunil B.Shukre , J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.
2. The petitioners are aggrieved by the order dated 16.11.2018 passed by respondent no.3, refusing grant of approval to the transfer of the teachers from un aided school to the aided school.
3. According to the learned counsel for the petitioners the impugned order is illegal as it does not follow the law settled by this Court in a bunch of writ petitions beginning with Writ Petition No.5313 of 2017, ***Ms. Devkar Dipali Kisan Vs. State of Maharashtra and others*** decided on 25.04.2019, wherein, this

Court has taken a view, by considering decisions of various Division Benches of this Court that transfer of a teacher from unaided post to aided post is permissible in law and equally transfer of an employee from unaided post to aided post in another school run by the same Management would also be permissible in law.

4. Shri. Damle, learned AGP for respondents submits that the impugned order is correct for the reason that the transfer of a teacher from non aided school to aided school is not permissible when the school from which such transfer is sought to be effected is the one which is a permanently non aided school.

5. On going through the judgment dated 25.04.2019 rendered in the case of Ms. Devkar Dipali Kisan (supra), we find that this court has already settled the issue by drawing strength from the provision of transferrability of school employees under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) regulation Rules, 1981(hereinafter referred to as 'MEPS rules'. It has held, following the view taken by another Division Bench at Aurangabad, that the circular dated

28.06.2016 prohibiting transfer of teachers from non aided school to aided school and vice versa would have no statutory force in law when Rule 41 of the MEPS Rules, 1981 granted liberty to the Management, running more than one school, to effect transfer of teaching and non teaching staff from one school to another, on the administrative grounds or request of the concerned employee or on the ground of promotion of the employee. If this is so, we do not think that merely because the school from where the teacher or the non teaching staff is being transferred to another school, is a school which has been granted permission on permanent non aided basis. It does not matter, whether the school is a permanently non aided school or the one which falls under the definition of self financed school as per the notification dated 08.06.2020, whereby amendments to the Maharashtra Employees of Private Schools Regulation Rules 1981 were introduced. One of the amendments pertained to the addition of the provisions relating to “ self financed school” which has been defined as the school established under the Maharashtra Self Finance School (Establishment and Regulations) Act, 2012, which is not receiving any grant in aid from the government or a local authority. The

other amendment relates to defining the expression “unaided school”. According to the definition provided by these amendments, an unaided school is the school other than an aided school which is not receiving any grant in aid from the government or local authority. These definitions of the expressions “self financed school” and “unaided school” would clearly show that they do not make any further distinction between the genus of the category of self financed school and the category of unaided school by laying down that within this category, there would be other categories like permanently or temporarily self financed school and/ permanently or temporarily unaided school. That apart, the aspect of school being aided or unaided is absolutely irrelevant when it comes to the power of the management to transfer the school employees from one school to another, in a case where the management runs more than one school, in terms of Rule 41 of the MEPS Rules, 1981. This is all the more so, when we consider the obligation of the management conducting more than one school to maintain a combined seniority list in terms of Rule 12 Schedule F, note 5. The aspects of maintenance of combined seniority list and the

power of transfer would cumulatively show that there is no prohibition imposed upon a management conducting more than one school to transfer some of its employees working in one school to other school and this power of transfer has no relation with the receipt or non receipt of grants in aid. This is how the whole issue has been considered by the Division Bench of this Court in the case Ms. Devkar Dipali Kisan (supra), and therefore, we find that there is no substance in the argument of learned AGP that the school from where the petitioner nos.3 to 9 were sought to be transferred was a school which was granted recognition on permanent non aided basis. This ground would no longer be available to the respondent no.3 to take recourse to for refusing approval of transfer of these petitioners to another school.

6. However, there were few more objections which are also taken by the respondent no.3 regarding the transfer of petitioner Nos. 3 to 9 to another school. These objections, are enumerated in the communication dated 05.08.2017 and they have been also replied to quite in details by the petitioner no.1 vide its communication dated 24.08.2018. The detailed

explanation so given by the petitioner nos.1 and 2 however, has not been considered in any manner by the Education Officer, as seen from the impugned order. For these reasons, we find that the impugned order would have to be quashed and set aside and the matter would have to be remanded back to the respondent no.3 for his fresh decision on the left out aspects of the objections taken by him.

7. In the result, the petition is allowed and the impugned order is hereby by quashed and set aside.

8. The matter be sent back to the respondent no.3 for its fresh consideration and decision in accordance with law by taking into consideration the detailed reply filed by the petitioner nos.1 and 2 to the objections taken by the respondent no.3. However, it is made clear that it would not be open for respondent no.3 to reject the approval on the ground that the petitioners nos. 3 to 9 are being or have been transferred from non aided school to aided school as this issue has already been resolved finally. The petitioners may appear before respondent

no.3 on 19.10.2020 and the respondent no.3 shall decide the issue in accordance with law within a period of two weeks from the date of the appearance of the petitioners before him .

9. Rule is made absolute accordingly. No costs.

JUDGE

JUDGE