

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

WRIT PETITION NO.12198 OF 2019

1. Janta Shikshan Sanstha, Pune)
C/o. Swami Vivekanand Vidya Mandir,)
Dapodi, Pune)
Through its President)
Mr.Sanjay Narayan Wadekar)
Age about 56 years, Occ. Service.)

2. Janta Shikshan Sanstha, Pune)
C/o. Swami Vivekanand Vidya Mandir,)
Dapodi, Pune)
Through its General Secretary)
Mr.Subhash Namdeo Gargote)
Age about 54 years, Occ. Service.)

.. Petitioners

Versus

1. State of Maharashtra)
Education Department)
Mantralaya, Mumbai.)
through its Principal Secretary)

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

3. Rajanikant Chandrakant Patange)
age about 55 yrs, Occ.Promoted Headmaster)
Swami Vivekanand Vidya Mandir,)
& D.T. Patil Junior College, Dapodi Pune)
R/o. Survey No.66/1/5, Dhone Farm,)
Behind Bharat Bakery,)

4. Headmaster,)
Shripati Baba Maharaj Madhyamik Vidyalaya,)
Mahalunge Ingale, Taluka Khed,)
District Pune.)

5. Ramchandra Maruti Gonte)
 Age about 53 years,)
 Occ. Headmaster,)
 R/o.“Krishnai Park” Sahyadri Park,)
 Pimple Gurav, Pune- 411 061.)
6. Smt. Anjali Ajit Ghodke,)
 age about 55 yrs, Occ.Assistant Teacher)
 Swami Vivekanand Vidya Mandir,)
 & D.T. Patil Junior College, Dapodi Pune) .. Respondents

**ALONG WITH
 WRIT PETITION (ST.) NO.3568 OF 2021**

1. Ramchandra Maruti Gonte)
 Age about 52 years,)
 Occ. Headmaster,)
 R/at. Harshada, B-17, Vidya Nagar)
 Lane No. 2, Pimple Gurav,)
 Pune- 411 061.) .. Petitioner

Versus

1. The State of Maharashtra)
2. The Education Officer (Secondary))
 Pune Zilla Parishad, Pune.)
3. Janata Shikshan Sanstha)
 having address at)
 Swami Vivekanand Vidya Mandir,)
 Dapodi, Pune)
 Through its President)
 Mr.Popat Vyankatrao Deokar)
 Age 57 years, Occ. Service.)
4. Subhash Namdeo Gargote)
 Age about 56 years, Occ. Head Master &)
 also General Secondary of respondent no.3)
 having address at Janata Shikshan Sanstha)
 Swami Vivekanand Vidya Mandir,)
 Dapodi, Pune)

Mr.Dilip Bodake a/w Ms.Shraddha Pawar for the petitioners in Writ Petition No.12198 of 2019.

Mr.M.L. Patil for the petitioner in Writ Petition Stamp No.3568 of 2021 and for the respondent no.5 in Writ Petition No.12198 of 2019.

Mr.N.K. Rajpurohit, AGP for the respondent nos.1 & 2 in Writ Petition No.12198 of 2019.

Ms.S.S. Bhende, AGP for the respondent nos.1 & 2 in Writ Petition Stamp No.3568 of 2021.

Mr.S.T. Bhosale for the respondent nos.3 & 4 in Writ Petition No.12198 of 2019.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**
RESERVED ON : 15th November 2021
PRONOUNCED ON : 2nd December 2021

Judgment :- (per R.D.Dhanuka, J.)

. Rule in both the petitions. Learned counsel appearing for the respondents waives service. By consent of parties, both the petitions are heard finally.

2. Learned counsel for the parties jointly state that since the facts in both these petitions are identical, both these petitions be heard together and be disposed of finally by this common order. Statement is accepted. Both these petitions were heard together and are being disposed of finally by common order.

3. Parties before this Court have addressed this Court in Writ Petition No.12198 of 2019 and the facts in the said writ petition are summarised as under :-

4. In Writ Petition No.12198 of 2019, the petitioners have prayed for writ of certiorari for quashing and setting aside the impugned letter/communication dated 17th September 2019 issued by the Education Officer (Secondary), Zilla Parishad, Pune. The petitioners have also prayed for a writ of mandamus against the respondent no.2 to grant sanction and accord permission to the respondent no.3 for submitting the pay bills and signing authority etc. as a Headmaster of the respondent no.3 and for various other reliefs.

5. In Writ Petition (St.) No.3568 of 2021, the petitioner has prayed for a writ of certiorari for quashing and setting aside the impugned order dated 31st May 2019 issued by the management thereby transferring the petitioner from Dapodi School to Shripati Baba Maharaj Madhyamik Vidyalaya, Mahalunge Ingale, Taluka Khed, District Pune w.e.f. 1st June 2019 which is Rural area.

Facts in Writ Petition No.12189 of 2019 :-

6. It is the case of the petitioners that the petitioner no.1 is a

President and the petitioner no.2 is a General Secretary of Janta Shikshan Sanstha, Pune which is a Charitable Trust registered under the Maharashtra Public Trust Act, 1950 (for short “the said Trust Act”) as also under the provisions of Societies Registration Act, 1860. The Petitioners Trust is running 17 schools in the State of Maharashtra. As per the routine, in the meeting of the Governing Council of the Petitioner Society held on 25th June 2019, there was an agenda in respect of promotion and inter-se transfers of the Headmasters in the schools run by the Petitioner no.1.

7. It was resolved that there was vacancy in Hinjewadi school. There was also requisition/ demand to have a Headmaster having experience and good in administration at the Mahalunge Ingale School. It was resolved to make certain transfers. It was further resolved that Respondent No. 5 Gonte R.M. who was working as a Headmaster at Swami Vivekanand Vidya Mandir and D.T. Patil Junior College, Dapodi be transferred to Shripati Baba Maharaj Madhyamik Vidyalaya, Mahalunge Ingale w.e.f. 1st June 2019. It was further resolved to promote Shri Rajanikant C. Patange – Assistant Headmaster (Junior College) to Headmaster at Swami Vivekanand Vidya Mandir and D.T. Patil Junior College, Dapodi.

8. On 31st May 2019, the petitioner no.1 issued a transfer order thereby transferring the Respondent No.5 from Swami Vivekanand Vidya Mandir and D.T. Patil Junior College, Dapodi to Shripati Baba Maharaj Madhyamik Vidyalaya, Mahalunge-Ingale, Tal. Khed, District: Pune. The Respondent No.5 was informed that he should be relieved immediately and the relieving and joining reports should be forwarded to the petitioner no.1. No representation and cancellation would be entertained from the respondent no.5. Copy of the said order was forwarded to the concerned Headmaster of the school for necessary action.

9. It is the case of the petitioners that in pursuance of the said transfer order, the Respondent No. 5 has been relieved on 1st June 2019 from the Respondent No. 3 School to join the Respondent No. 4 School. Copy of the said relieving order has also been forwarded to the Education Officer (Secondary), Zilla Parishad, Pune and the Respondent No. 4 for information and necessary action.

10. It is the case of the petitioners that in pursuance of the said transfer order dated 31st May 2019, the Petitioner no.1 submitted proposal dated 1st June 2019 addressed to the Education Officer (Secondary) Zilla

Parishad, Pune for seeking authority to Shri Patange R.C. from 1st June 2019 at Respondent No.3 School as the signing authority. The Respondent No. 5 did not join the Respondent No. 4 School though was served with transfer order dated 31st May 2019 and relieving order dated 1st June 2019. The petitioners vide letter dated 1st June 2019, reminder letters dated 12th June 2019, 23rd August 2019 and 23rd September 2019 addressed to the Respondent No. 5 made it clear that if the transfer order would not be obeyed, the same would be amount to indiscipline on the part of the respondent no.5.

11. Since the Respondent No. 5 did not resume/ join the respondent no.4 school, the Petitioner no.1 vide letter dated 21st June 2019 appointed the senior most Assistant Teacher Mr. Yuvraj Das Gholve as In-charge Headmaster of Respondent No. 4 School and requested him to submit his joining report to the Petitioner no.1.

12. It is the case of the petitioners that in pursuance of the said letter dated 21st June 2019, the said Mr. Yuvraj Das Gholve took charge of In-charge Headmaster of Respondent No. 4 School and submitted the report dated 21st June 2019 to the Petitioner no.1. The petitioner no.1 vide letter dated 4th July 2019 addressed to the Education Officer

(Secondary) Zilla Parishad, Pune, applied for authorising the said Mr. Yuvraj Das Gholve as signing authority w.e.f. 21st June 2019. The Education Officer (Secondary), Zilla Parishad, Pune, vide letter dated 25th July 2019 informed the Petitioner no.1 that Shri Yuvraj Das Gholve was the signing authority from 21st June 2019 to 31st December 2019 of the Respondent No. 4 School. On 29th June 2019, the respondent no.2 addressed a letter to the petitioner no.1 directing to submit the existing information regarding Trusts Governing Council recorded with the Joint Charity Commissioner, Pune.

13. The petitioners thereafter informed the Education Officer (Secondary), Zilla Parishad, Pune about the judgment and order passed by this Court in First Appeal No. 262 of 2019 which was in favour of the Petitioner no.1 thereby allowing the First Appeal No. 262 of 2019 filed by the petitioner no.1 and impugning the order dated 29th June 2019 passed by the Joint Charity Commissioner, Pune Region under Section 41-E of the Maharashtra Public Trusts Act, 1950. The Joint Charity Commissioner restrained the petitioner no.1 from holding meeting of General Body on 26th March 2017 or any time thereafter without issuing notices of the General Body Meeting to all the confirmed teachers, who had been confirmed in service in any of the branches of the Trust prior to

issuing date of such notices. The Joint Charity Commissioner also directed the petitioner no.1 to hold meeting of the Governing Council of the Petitioner Society as expeditiously as possible and in any event within a period of two months from the date of the said order.

14. The petitioner no.1 requested the Education Officer to take decision on the proposals submitted by the petitioners for granting various approvals of transfers and promotions.

15. The Respondent No.3 has joined as Headmaster of the Respondent No. 3 School and submitted a written application dated 2nd July 2019 to the Superintendent, Pay and Provident Fund Squad, Pune Zilla Parishad for sanctioning the pay bills for the month of June, 2019. The Respondent No. 3 also requested to include the names of the transferred employees of the Respondent No. 3 School in the Online Pay Bill Software (Shaley Pranali). Though the petitioner no.1 submitted various reminders to the Director of Education, Pune, Deputy Director of Education, Pune and Education Officer (Secondary) Zilla Parishad, Pune etc. inter alia praying for granting signing authority to the Respondent No. 3 to avoid further inconvenience to all the employees of the school, no such order is however passed.

16. In the meeting of the Governing Council, the petitioner no.1 passed a Resolution dated 25th May 2019 for issuance of transfer order dated 31st May 2019 of Headmaster Shri Otari Atul S. working at Shripati Baba Maharaj Madhyamik Vidyalaya, Mahalunge Ingale, Tal. Khed, District: Pune at Headmaster New English School and Junior School, Hinjawadi, Tal. Mulashi, District: Pune effective from 1st June 2019. Copy of the said transfer order and relieving order has been served to Shri Otari Atul.

17. The petitioner no.1 thereafter submitted the proposal to the Education Officer (Secondary), Zilla Parishad, Pune, thereby seeking signing authority to Shri Otari A.S. Headmaster of New English School and Junior College, Hinjawadi as signing authority w.e.f. 1st June 2019. The Education Officer (Secondary), Zilla Parishad, Pune, vide letter dated 12th July 2019 accorded the signing authority to Shri Otari Atul as a Headmaster of New English School & Junior College, Hinjewadi from 6th June 2019 to 30th November 2019. The petitioner no.1 also issued two transfer orders dated 26th June 2019 of Headmaster Shri Gore Dilip D. working at Shri Shivaji Vidya Mandir, Ambale, Tal. Purandar at Headmaster of Radhakrishna Vidyalaya, Perane, Tal. Haveli, District: Pune and Headmaster Shri Inamdar Ajamuddin J. working at New

English School, Khalate Vasti (Late), Tal. Baramati at Headmaster of Punyashlok Ahilyadevi Vidyamandir and A.C. HuneKari Jr. College, Jejuri, Tal. Purandar effective on 1st July 2019. Copy of the said transfer orders along with relieving orders have been served to Shri Gore Dilip D.

18. The petitioner no.1 thereafter submitted proposal to the Education Officer for granting signing authority to the said Headmaster. The Education Officer (Secondary), Zilla Parishad, Pune accorded the sanction to the said transfer to the said Headmaster. The Education Officer (Secondary), Zilla Parishad, Pune vide letter dated 7th August 2019 addressed to the Headmaster of Respondent No. 3 School and informed that Respondent No. 6 Smt. Anjali Ajit Ghodke, the senior most Assistant Teacher have been accorded the signing authority to submit the pay-bills and school administration from 1st June 2019 to 31st December 2019.

19. On 17th September 2019, the Education Officer (Secondary), Zilla Parishad, Pune informed the petitioners that in pursuance of the order passed by this Court, in First Appeal No.262 of 2019, the tenure of the Managing Committee came to an end and therefore they should not take any policy decisions. By the said order dated 7th August 2019, the

signing authority given was cancelled on the ground that transfer order of Respondent No.5 fell within the policy decisions and therefore Respondent No. 5 would work as a Headmaster as he was working earlier at Respondent No. 3 School.

20. It is the case of the petitioners that pursuant to the said letter/ communication, the Respondent No. 5 forcibly took keys of the Office and cupboards of the Headmaster of Respondent No.3 School and further forcibly signed the muster as if he was present from 1st June 2019 and issued further illegal direction to the members of staff.

21. It is the case of the petitioners that some alleged members of the Petitioner Trust submitted Application No.15 of 2017 under section 41-E of the Maharashtra Public Trust Act, 1950 before the Joint Charity Commissioner, Pune Region, Pune, praying for restraining the office bearers of the Trustees of the Petitioner Trust from holding meeting of General Body on 26th March 2017 or any time thereafter without issuing notices of the General Body Meeting to all the confirmed teachers, who had been confirmed in service in any of the branches of the Trust prior to issuing date of such notices. By order dated 9th February 2018, the Joint Charity Commissioner, Pune Region, Pune allowed the said application

filed by some of so-called members of the Petitioner Trust.

22. The petitioner no.1 trust filed the First Appeal No. 262 of 2019 alongwith Civil Application No. 989 of 2019 before this Court. On 16th August 2019, this Court delivered a Judgment thereby allowing the said First Appeal and setting aside the Order dated 9th February 2018 passed by the Joint Charity Commissioner and granting liberty to the Respondents therein to prefer an application for declaring them as a members of the Trust as per its Constitution according to law and also passed certain further orders.

23. Being aggrieved by the said communication dated 17th September 2019 passed by the Education Officer (Secondary), the petitioners have filed this writ petition.

24. Mr. Bodake, learned counsel for the petitioners invited our attention to some of the exhibits annexed to the writ petition and also to the order dated 17th September 2019 passed by the Education Officer (Secondary), Zilla Parishad, Pune and would submit that the Education Officer (Secondary) had no jurisdiction to set aside the transfer order passed by the petitioners by holding that the said transfer of the

respondent no.5 was not as per the policy decision of the petitioner no.1 and also consequently cancelling the earlier letter dated 7th August 2019 granting signing authority to the respondent no.6.

25. It is submitted that this Court in its judgment dated 16th August 2019 passed in First Appeal filed by the petitioners has set aside the order passed by the Joint Charity Commissioner on 9th February 2018. The said Application No.15 of 2017 filed by some of the alleged Members was under Section 41-E of the said Trust Act. The dispute involved in the said application under Section 41-E of the said Trust Act was in respect of becoming members of the Trust of the petitioner no.1 as per its Constitution and election of the Governing Council. There was no direction or order passed by the Joint Charity Commissioner that the petitioner Institution should not take any policy decision till new Governing Council is duly elected as per the Constitution of the Trust.

26. Learned counsel for the petitioners submits that the impugned order passed by the Education Officer (Secondary) is contrary to his own earlier order granting approval to the transfer of other employees carried out by the petitioner no.1. In pursuance of the

resolution passed in the meeting of Governing Council dated 25th June 2019, all such orders effected by the petitioner no.1 were routine transfers and promotion orders of the employees and not by way of any policy decision of the petitioner no.1 trust. No opportunity was granted by the Education Officer to the petitioners of being heard before setting aside the transfer orders effected by the petitioner no.1 in routine course.

27. Learned counsel for the petitioners invited our attention to the Agenda of the Meeting of Governing Council proposed to be held on 25th June 2019 and also the Minutes of Meeting and would submit that two of the Headmasters were transferred in the said meeting. He strongly placed reliance on clause of Constitution of Trust of the petitioner no.1 dealing with 'Governing Council' at page 65 of the petition and would submit that under the said clause, till new Governing Council was appointed by holding election, the old council was allowed to carry out functions as Governing Council. It is submitted by the learned counsel that the order passed by the Joint Charity Commissioner was ex facie illegal and was set aside by this Court by the said judgment and Order dated 16th August 2019. The said order was passed by this Court prior to the date of the impugned order dated 17th September 2019 passed by the Education Officer (Secondary).

28. Mr.Patil, learned counsel for the petitioners in Writ Petition (St.) No.3568 of 2021 and for the respondent no.5 in Writ Petition No.12198 of 2019, on the other hand, submits that the petitioner no.2 who was working as a Headmaster at Shri Shivaji Vidyamandir and C.Patole Junior College, Chakan is also a General Secretary of the petitioner no.1 and is vindictive against his client. Out of 6 schools Junior Colleges run by the petitioner no.1, schools at Dapodi and Aundh are in urban area and rest of the schools are in rural area. He submits that his client being the senior most Headmaster amongst all the 11 Headmasters could not have been transferred by the impugned decision taken by the petitioner no.1.

29. Learned counsel for the respondent no.5 placed reliance on the order passed by the Joint Charity Commissioner and would submit that when the petitioner no.1 passed a resolution transferring various employees including the respondent no.5, interim injunction granted by the Joint Charity Commissioner against the petitioner no.1 was in force. Upon raising a query by this Court, as to how his client was affected by the impugned transfer, learned counsel contended that house rent allowance being paid to the Headmaster in urban area is more than what is paid to the Headmaster working in rural area. He urged

that the total pay packet of the respondent no.5 would be seriously affected in view of the impugned transfer.

30. Learned counsel for the respondent no.5 placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Mohammad Swalleh & Ors. Vs. Third Addl. District Judge, Meerut & Anr., (1988) 1 SCC 40*** and in particular paragraph 7 in support of the aforesaid submission. In support of this submission, he also placed reliance on the judgment of the Hon'ble Supreme Court in case of ***P.C. Wadhwa Vs. Union of India & Anr., AIR 1964 SC 423*** and in particular paragraph 15 thereof. He submits that the order of transfer passed by the petitioner no.1 is punitive in this case in view of reduction in salary of the respondent no.5.

31. The respondent State did not file reply in any of these petitions but supported the impugned order passed by the Education Officer (Secondary) by inviting our attention to the said order.

32. Mr.Bodake, learned counsel for the petitioners in his rejoinder arguments disputed the statement of the learned counsel for the respondent no.5 that in view of the order of transfer of the respondent

no.5 from Dapodi School to Shripati Baba Maharaj Madhyamik Vidyalaya, Mahalunge Ingale, Tal. Khed, District. Pune w.e.f. 1st June 2019, the total salary payable to the respondent no.5 is drastically reduced. He submits that the basic salary of the respondent no.5 was not affected at all. The house rent allowance was also paid according to the service condition. The respondent no.5 having been transferred to the rural area could not have been paid the house rent allowance payable in case of teacher working in urban area.

33. It is submitted by the learned counsel that by the resolution passed by the petitioner no.1 from time to time, several orders were passed also in favour of the respondent no.5 by the same management including the promotional order. The respondent no.5 had not alleged any malafide against the petitioners for transferring the respondent no.5 by the resolution in question.

34. A question that arises for consideration of this Court is whether the Education Officer (Secondary) is empowered to set aside the transfer order issued by the petitioners by exercising powers conferred under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short the said MEPS Rules,

1981”) and if yes, whether he can set aside the transfer effected on administrative ground and being a routine transfer.

35. It is not in dispute that the respondent no.5 did not challenge the said impugned transfer in any Competent Court of law but approached the Education Officer (Secondary) for seeking intervention in the matter and for cancelling the transfer order. In our view, the Education Officer has no power to set aside the order of transfer effected after complying with the provisions of MEPS Rules, 1981. By the said resolution passed by the petitioner no.1, several transfers and promotions were effected. If the respondent no.5 was aggrieved by the said order of transfer, the respondent no.5 ought to have filed appropriate proceedings for impugning such transfer in accordance with law. The Education Officer (Secondary) is not a competent authority to adjudicate upon the rival contentions of the parties on the issue of transfer effected under Rule 41 of the MEPS Rules, 1981 and to cancel the order of transfer.

36. In so far as the reliance placed by the respondent no.5 on the order passed by the Joint Charity Commissioner, Pune on 9th February 2018 is concerned, the said judgment was delivered on an application filed by five persons who claimed to be the members of the petitioner

no.1 trust by invoking Section 41-E of the said Trust Act inter alia praying for granting temporary injunction against the members of Governing Council, their agents, servants, assigns etc. from holding the meeting of the General Body on 26th August 2019 or any time thereafter without issuing the notices of the General Body Meeting to all the confirmed teachers, who had been confirmed in service in any of the branches of the petitioner no.1 prior to 26th July 2016 and for issuing mandatory injunction directing the petitioner no.1 to take the voting by secret ballot in the meeting of the General Body and not by show of hands.

37. The Joint Charity Commissioner in the said order rendered a finding that the said application filed under Section 41-E of the said Trust Act was maintainable and that the applicant therein had made out a case for grant of temporary injunction. The Joint Charity Commissioner restrained the Governing Council of the petitioner no.1 from holding the meeting of the General Body on 26th August 2019 or any time thereafter without issuing the notices of the General Body Meeting to all the confirmed teachers, who had been confirmed in service in any of the branches of the petitioner no.1 prior to issuance of the said notice.

38. A learned Single Judge of this Court in the said judgment dated 16th August 2019 in First Appeal filed by the petitioner no.1 against the said order passed by the Joint Charity Commissioner has held that in the said application filed by the applicant therein, there was prayer to restrain the petitioner no.1 from holding General Body Meeting without issuing the notices to all the confirmed teachers, who had been confirmed in service in any of the branches of the petitioner no.1 prior to 26th July 2016. There was no prayer for injunction restraining the members/society from wasting any trust's property. This Court has held that at the most, the Joint Charity Commissioner under Section 41-E of the said Trust Act could pass suo moto order only in respect of protection of charities. For granting any relief under Section 41-E of the said Trust Act by way of injunction, there has to be an essential requisite and prima facie case to show such eminent danger in respect of the property of the trust.

39. This Court accordingly held that the Joint Charity Commissioner has no power under Section 41-E of the said Trust Act to direct the trust to hold election. This Court accordingly was pleased to quash and set aside the order dated 9th February 2018 passed by the Joint Charity Commissioner. This Court has however granted liberty to

the applicant therein, if they so desired, to prefer appropriate application for declaring them as General Members of Janata Shikshan Sanstha, Pune as per its Constitution according to law. In our view, since the said order passed by the Joint Charity Commissioner was totally perverse and without jurisdiction, learned Single Judge of this Court rightly set aside the said order. No reliance thus could be placed by the respondent no.5 on the order passed by the Joint Charity Commissioner.

40. Be that as it may, even if the tenure of Governing Council would have expired and no fresh elections were immediately held, the constitution of the petitioner no.1 trust permitted the existing Governing Council to continue till new Governing Council was elected. There is thus no merit in the submission of the learned counsel for the respondent no.5 that the Governing Council of the petitioner no.1 could not have passed any such resolution thereby transferring the respondent no.5. In our view, the impugned order passed by the Education Officer (secondary) is without jurisdiction, perverse and contrary to Rule 41 of the MEPS Rules and thus deserves to be quashed and set aside.

41. In so far as the submission of the learned counsel for the respondent no.5 that there was monetary loss to the respondent no.5 by

virtue of reduction of house rent allowance in view of transfer from urban area to rural area and thus the impugned transfer being punitive is concerned, there is no merit in this submission of the learned counsel for the respondent no.5. In our view, the house rent allowance may be different in case of employees working in urban area and in rural area. The Headmaster or teachers working in rural area cannot demand house rent allowance payable to the Headmaster or teacher working in urban area. It is not the case of the respondent no.5 that house rent allowance paid to a Headmaster working in rural area is not paid as per conditions of transfer. In our view, lesser amount of house rent allowance payable as per service condition to the Headmaster working in rural area on transfer cannot be held punitive transfer nor would it attract Rule 41(3) of MEPS Rules.

42. In so far as the judgment of the Supreme Court in case of ***Mohammad Swalleh & Ors. (supra)*** relied upon by the learned counsel for the respondent no.5 in support of his submission is concerned, in our view, the said judgment would not apply to the facts of this case even remotely.

43. In so far as the judgment of the Supreme Court in case of

P.C. Wadhwa Vs. Union of India & Anr. (supra) relied upon by the learned counsel for the respondent no.5 is concerned, in our view, the said judgment also would not advance the case of the respondent no.5. In this case there is neither any reduction of house rent allowance then payable nor any reduction of basic salary. The difference, if any, in total pay packet may be due to lesser rate of house rent allowance in view of the respondent no.5 having been transferred to rural area considering the cost of living being on lower side in comparison in cost of living in urban area. There is thus no merit in the contention of the respondent no.5 that transfer was contrary to Section 41 of the said MEPS Rules.

44. In our view, the resolution passed by the petitioner no.1 to transfer some of the employees including the respondent no.5 and also promote one or the other employees was a routine transfer effected on administrative ground and thus no interference of Education Officer with such order of transfer even otherwise would be permissible.

45. We accordingly pass the following order :-

(i) Rule is made absolute in terms of prayer clause (b) to (d) of the Writ Petition No.12198 of 2019.

(ii) The Education Officer (Secondary), Zilla Parishad, Pune shall grant, sanction and accord permission to the respondent no.3 for submitting the pay bills and signing authority etc. as a Headmaster of the respondent no.3 within four weeks from the date of communication of this order.

(iii) For the reasons recorded aforesaid, Writ Petition (St.) No.3568 of 2021 is dismissed. Rule is discharged. No order as to costs.

(iv) Parties to act on the authenticated copy of this order.

ABHAY AHUJA, J.

R.D. DHANUKA J.