

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

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WRIT PETITION NO. 2505/2020

- 1) Bansraj Singh Thakur Education Society
2, Tilak Nagar, Amravati Road, Nagpur
Through its Secretary
Suryakant s/o Gendasingh Thakur
- 2) Nirata High School
Hansapuri Central Avenue, Nagpur
Through its Head Mistress
Ms. Preeti Premnarayan Pande
- 3) Nirala Convent
Hansapuri, Central Avenue, Nagpur
Through its Head Mistress
Ms. Anuradha Narendra Dubey

..PETITIONERS

v e r s u s

- 1) The State of Maharashtra
Through its Secretary
Department of Education
Mantralaya, Mumbai-32.
- 2) The Deputy Director of Education
Nagpur Division, Nagpur.
- 3) The Education Officer (Secondary)
Zilla Parishad, Nagpur.
- 4) The Superintendent,
Pay and Provident Fund Unit
(Secondary)
Zilla Parishad, Nagpur.

.. RESPONDENTS

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Mr. Sunil Manohar, Senior Advocate a/w S/Shri Nitin Jachak
Advocate for petitioners
Mrs. K. J. Joshi, Govt. Pleader for respondents 1 to 4
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CORAM: SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ
DATED : 2nd December, 2021.

ORAL JUDGMENT: (PER SUNIL B.SHUKRE, J.)

1. Heard.
2. **Rule.** Rule, returnable forthwith. Heard finally by consent.
3. Submission is that the transfer of four Assistant Teachers from unaided schools to aided schools run by the same management is permissible.
4. Mr. Sunil Manohar, learned senior Advocate, in order to support the contention, relied upon the view taken by this Court in Writ Petition No.8556/2019 (Bansilal Kanoje vs. State of maharashtra and others), decided along with other connected matters, on 5th October, 2021. He further relied upon the Division Bench judgment dated 8th April, 2005 in Writ Petition No. 138/2003, in the case of Shri Gajpal Udgave Trust and others vs. State of Maharashtra. The law cited before this Court, in fact, makes the position clear and therefore it has to be held that the law squarely covers the issue involved in this petition.
5. The learned Government Pleader also agrees.
6. Firstly, we must appreciate that even though the

respondent no.3-school run by petitioner no.1 may be on permanent no-grant basis, it would have to be understood as explained in the case of Shri Gajpal Udgave Trust and others vs. State of Maharashtra (*supra*) where this Court has held that it only means a school which is subject to consideration of grant-in-aid in accordance with the law and the policy that may be formulated by the State Government on improvement of the State's financial condition and other relevant considerations.

7. Secondly, this Court in the case of Bansilal Kanoje vs. State of Maharashtra (*supra*) has made it clear that when Maharashtra Employees of Private Schools (Conditions of Service) Act, 1981 does not prohibit transfer of Shikshan Sevak /Assistant Teacher from unaided post to aided post within the same school or to a different school, which is run by the same management, rather it permits transfer of teachers from one school to another school, when both schools are run by the same management, there is no gainsaying that the transfer of the teachers *inter se* schools of the same management is not permissible.

8. In view of the legal position expounded in the aforesaid cases which is squarely applicable to the facts of the present case, we are inclined to allow the petition.

9. In the result, the Writ Petition is allowed in terms of prayer clauses (i) and (ii) of the Petition.

10. Rule is made absolute in the aforesaid terms. No costs.

JUDGE

JUDGE

sahare