

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7040 OF 2019

Dr. Babasaheb Ambedkar Smarak Samiti
Shikshan Prasarak Sanstha and others

-- Petitioners

vs.

State of Maharashtra and others

--Respondents

Mr. N. S. Warulkar, Advocate for the Petitioners.

Mr. A. A. Fulzele, Addl. G. P. for the Respondent Nos.1 to 3.

CORAM : NITIN JAMDAR &
ANIL S. KILOR, JJ.

DATED : 03 FEBRUARY 2021

P. C. :

Heard learned counsel for the parties.

2. The Petitioners are aggrieved by the order passed by the Respondent No.3 Education Officer (Secondary) Zilla Parishad, Chandrapur dated 07 December 2017 and 11 December 2018. The Petition is filed by the Educational Institute and two teachers who are transferred from unaided section to the aided section within the Petitioner – institution. The ground for rejection of approval of Petitioner Nos.3 and 4 was that there is a surplus teacher in the school and relying on Government Resolution dated 28 June 2016, the approval cannot be granted.

3. This position was examined by Division Bench of this Court in Writ Petition No.5313 of 2017 and others by Judgment dated 25 April 2019, after referring to earlier decision, the Court observed that such transfer would be an internal transfer and in view of Rule 41 of the *Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981*, such transfer would be permissible and on that ground alone an approval cannot be refused.

4. In view of the settled position, the impugned order is quashed and set aside to the extent it is based on the Government Resolution dated 28 June 2016.

5. The Education Officer will accordingly grant the necessary approval, if there is no other impediment, within a period of six weeks from today and upon grant of such approval release the salary bills from the date of the transfer.

6. The Writ Petition is accordingly disposed of.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]