

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

WRIT PETITION NO. 1510 OF 2022

Navyuwak Education Society,
New Babulkheda, Kunjilal Peth, Nagpur.
Through its President-
Smt. Birjulabai Pandurang Meshram,
Aged about 72 years, Occupation-Retired Head Mistress.

..... **PETITIONER**

...V E R S U S...

1. The Director of School Education,
Secondary and Higher Secondary,
State of Maharashtra, Pune.
2. The Divisional Deputy Director of Education,
Nagpur Division, Nagpur.
3. The Education Officer (Secondary),
Zilla Parishad, Nagpur.
4. Shri Dinesh D. Kamdi,
Aged about 40 years, Occupation-Service,
R/o. Plot No.318, Vinkar Colony,
28-B, Jaiprakash Nagar, Wardha Road,
Nagpur.
5. Sou. Shobha M. Khambadkar,
Aged about 52 years, Occupation-Service,
R/o. 47, Chikhali Layout,
New Subhedar Nagar, Nagpur.

..... **RESPONDENTS**

Shri A.Z.Jibhkate, Advocate for petitioner.
Shri D.P.Thakre, Additional Government Pleader for respondent nos. 1 to 3.
Shri B. G. Kulkarni, Advocate for respondent nos. 4 and 5.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- AUGUST 19, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 02.09.2021 passed by the Education Officer (Secondary) cancelling the transfer of respondent nos. 4 and 5 as made by the petitioner-Management and directing the Management to permit the respondent nos. 4 and 5 to resume their duties at their original school. A challenge is also raised to the order dated 21.02.2022 which is also passed by the Education Officer (Secondary) by which the directions issued earlier have been reiterated and the Management has been directed to comply with the same.

3. It is the case of the petitioner-Management that it is a Society registered under the provisions of the Maharashtra Public Trusts Act, 1950 (for short, the Act of 1950) and is running six schools in the districts of Nagpur, Bhandara and Gondia. A common seniority list of all the teaching and non-teaching staff in these schools has been maintained. On 06.08.2021 the Co-ordination Committee passed a resolution resolving to make transfers of certain Assistant Teachers considering the exigency of administration. On 09.08.2021 the services of the respondent no. 4 were transferred from the school at Babhulkheda, Nagpur to the High School and Junior College at Kesalwada, District Gondia. On the same day, the services of the

respondent no.5 were transferred from the High School at Nagpur to the High School at Arjuni, District Gondia. It appears that the respondent nos. 4 and 5 approached the Education Officer (Secondary) raising a grievance against the orders of transfer on the ground that the transfer orders were issued by one Smt. B.P.Meshram as a President of the Society when she was not holding the said post. The Education Officer (Secondary) conducted hearing on 02.04.2021 and held that prior permission of the Education Officer had not been taken before making such transfers and hence the same were illegal. After cancelling the orders of transfer the respondent nos. 4 and 5 were directed to re-join at the school where they were serving prior to their transfers.

4. On 02.11.2021 another resolution was passed by the Co-ordination Committee resolving to transfer the services of the respondent no. 4 from High School at Nagpur on a vacant post to the High School at Kesalwada, District Gondia. On the same day, the services of the respondent no. 5 were transferred from the High School at Nagpur to the High School at Arjuni, district Gondia. The respondent nos. 4 and 5 again raised a grievance against their transfers and the Education Officer (Secondary) conducted hearing on 21.02.2022 and it was held that it was not clear from the record as to which Management was in-charge of the affairs of the Society. He further directed that the respondent nos. 4 and 5 should be permitted to re-join their duties at the original school at Nagpur. Being aggrieved the Management has challenged the aforesaid orders.

5. Shri A. Z. Jibhkate, learned counsel for the Management submitted that the transfers of the respondent nos. 4 and 5 had been made in accordance with Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981). The transfer was from one school run by the Management to another school that is also run by the same Management. There was no question of absorption of the services of the respondent nos. 4 and 5 in the school of transfer. The Education Officer (Secondary) had no authority to examine the validity of the orders of transfer effected under Rule 41 of the Rules of 1981 and he could not have interfered in the same. Reliance in that regard was placed on the decision *Janta Shikshan Sanstha and another Vs. State of Maharashtra and others [2022 (2) All M R 498]*. Assuming that there was some dispute amongst the members of the Management, the same was beyond the purview of the Education Officer and he was not competent to go into that aspect. The transfers having been effected considering the need of the respondent nos. 4 and 5 at the schools where they were transferred, there was no reason for the Education Officer (Secondary) to have intervened in the matter. It was thus submitted that the impugned orders were liable to be set aside.

6. Shri D. P. Thakre, learned Additional Government Pleader for the respondent nos. 1 to 3 supported the impugned orders. It was submitted that the office bearers of the petitioner did not place before the Education Officer any record of the Charity Commissioner to indicate who was in charge of the affairs of the Society. Since the transfers were effected without obtaining prior permission of the

Education Officer, the same were rightly cancelled by him. After hearing all concerned parties, the impugned orders have been passed and hence there was no reason to interfere with the same.

Shri B.G.Kulkarni, learned counsel for the respondent nos. 4 and 5 also opposed the prayers made in the writ petition. It was submitted that the transfer orders were issued by the persons who were not authorised to do so. There was no change report in favour of the persons claiming to be the President and Secretary of the Society and hence the Education Officer was justified in interfering in the matter. Since the Education Officer had heard all the parties and had directed the respondent nos. 4 and 5 to re-join their duties at the original school, there was no reason to interfere in the impugned orders. The writ petition was thus liable to be dismissed.

7. We have heard the learned counsel for the parties and we have perused the documents on record. The question to be considered is as regards the jurisdiction of the Education Officer (Secondary) to entertain a grievance against an order of transfer presumably on the ground that the authority issuing the order of transfer was not empowered to do so. Before considering the said aspect, we may refer to the judgment of the Division Bench in *Murlidhar Janrao Kale and others Vs. State of Maharashtra and others* [2011 (1) Mh.L.J. 849] wherein it has been held by the Division Bench that the Deputy Director of Education has no authority, power or jurisdiction to decide which Board of Trustees or Trustees are entitled to run the Management of the public Trust and its schools. Such jurisdiction is with the

authorities under the Act of 1950. In *Janta Shikshan Sanstha* (supra) it has been held by the Division Bench that the Education Officer (Secondary) is not the competent authority to adjudicate upon the rival contentions of the parties on the issue of transfer effected under Rule 41 of the Rules of 1981 and cancelling the orders of transfer. It is also not in dispute that under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 or the Rules of 1981 there is no authority conferred on the Education Officer to examine the validity of an order of transfer effected in exercise of the powers under Rule 41 of the Rules of 1981. It is to be kept in mind that in the present case the transfer of the respondent nos.4 and 5 is from one school run by the Management to another school run by the same Management.

8. Perusal of the order dated 02.09.2021 indicates that the Education Officer has observed therein that the transfer orders were signed by Smt. B.P.Meshram who was not shown to be holding any post in Society. Similarly prior permission of the Education Officer had not been taken before effecting such transfers. We find that it was not permissible for the Education Officer to interfere with the orders of transfer on these counts. He had no authority to go into the question as to who was in Management of the public Trust for effecting the orders of transfer. The basis for seeking prior permission of the Education Officer before making an order of transfer has also not been indicated. On this ground the order dated 02.09.2021 is liable to be set aside.

9. Insofar as the order dated 21.02.2022 is concerned, the Education Officer has again gone into the question as to who was in Management of the affairs of the Society in the context of Schedule I of the Public Trust Register. He has further observed that since his earlier order dated 02.09.2021 had not been complied with, it was necessary for the Head Master to permit the respondent nos. 4 and 5 to resume their duties at the original school prior to their transfers. It is thus seen that even this subsequent order dated 21.02.2022 to the extent it interferes with the orders of transfer is without jurisdiction. The Education Officer has not indicated the source of power for him to interfere in an order of transfer issued by the Management transferring its employees from one of its own schools to another. He could not have gone into the question as to who was in charge of the affairs of the public Trust. On these grounds the order dated 21.02.2022 is also liable to be set aside.

10. Hence for aforesaid reasons it is held that the orders dated 02.09.2021 and 21.02.2022 whereby the Education Officer (Secondary) has interfered with the orders of transfer are quashed and set aside to that extent. The other directions issued on 21.02.2022 by the Education Officer (Secondary) in the matter of granting financial and administrative authority to Smt. C.S.Dongre, Assistant Teacher is not interfered with. It is open for the respondent nos. 4 and 5 to challenge the orders of transfer in accordance with law, if they are aggrieved by the same. It is clarified that this Court has not examined the reasons for effecting the orders of transfer and that

question is kept open. The statement made by the learned counsel for the petitioner as recorded in the order dated 28.03.2022 regarding payment of pending salary shall be complied with.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..