

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

WRIT PETITION NO. 1592 OF 2023

1. The Janasevak Shikshan Sanstha,
through its Secretary, At Post Ridhora,
Tah. Katol, Dist. Nagpur – 441103.
2. Gramvikas Vidyalaya & Junior College,
through its Principal, At Post Met Panjara,
Tah. Katol, Dist. Nagpur – 441103.
3. Shri Vinod s/o Bhaskarrao Tarte,
aged about 38 years, Occ. Service,
R/o At Post Ridhora, Tah. Katol,
Dist. Nagpur.
4. Shri Pravin s/o Bhimraoji Kinarkar,
aged about 42 years, Occ. Service,
R/o At Post Met Panjara, Tah. Katol,
Dist. Nagpur.

PETITIONERS

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary, Department of Education,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Nagpur Division, Nagpur – 440001.
3. The Education Officer (Secondary),
Zilla Parishad, Nagpur.
4. The Enquiry Officer & Divisional Secretary,
Maharashtra State Board of Secondary and Higher Secondary
Education, Amravati Division, Amravati.

RESPONDENTS

Shri K.S. Chiwarkar, Advocate for the petitioners.
Shri A.S. Fulzele, Additional Government Pleader for respondent nos. 1 to 3.

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATED : AUGUST 7, 2023

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

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

2] The petitioners are aggrieved by the order dated 1/2/2023 passed by respondent no.4 whereby the transfer of petitioner nos. 3 and 4 from an unaided post to an aided post has not been accepted as valid and being contrary to the Government Notification dated 8/6/2020 and Resolution dated 1/4/2021.

3] Petitioner nos. 3 and 4 came to be appointed on 27/4/2015 on the posts of Assistant Teacher in the subject of Social Science and Marathi on an unaided higher secondary section of petitioner no.2 School and Junior College. On 10/9/2021, their services were transferred from an unaided higher secondary division to an aided secondary division of the School and the same was approved by the Education Officer (Secondary) on 28/1/2022. At the instance of respondent no.4, notice was issued to the petitioners seeking to grant them an opportunity of hearing for considering the validity of the order of transfer. Pursuant thereto, the impugned order dated 1/2/2023 came to be passed wherein respondent no.4 held that by virtue of such transfer from an unaided section to an aided section, financial burden would be fastened on the State Government. Since this was contrary to the Circular dated 1/4/2021, it was held that petitioner nos. 3 and 4 were not entitled for

benefits of the order of transfer.

4] After hearing the learned Counsel for the parties and after perusing the documents on record, it is seen that insofar as the Notification dated 8/6/2020 is concerned, this Court in *Writ Petition No. 8215/2022 (Friends Social Circle, Akola & Ors. Vs. State of Maharashtra & Ors.* decided on 21/7/2023) with other connected matters has held that the Circular dated 1/12/2022 staying the operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “Rules of 1981”) was not legal. It is seen that on 28/1/2022, the Education Officer (Secondary) has approved the order of transfer of petitioner nos. 3 and 4 as Assistant Teachers with effect from 15/9/2021. The impugned order indicates that by virtue of such transfer, additional financial burden would be fastened on the State exchequer. It is further seen that though petitioner nos. 3 and 4 have submitted undertakings to the Management that pursuant to such transfer they would not seek any higher salary from the Management, these undertakings were not before respondent no.4 when the impugned order was passed. The learned Counsel for the petitioners submits that even today, petitioner nos. 3 and 4 are willing to abide by the undertakings given by them. As a result of such undertakings, the apprehension expressed in the impugned order would not now survive since petitioner nos. 3 and 4 do not seek additional financial benefits in the

form of higher salary pursuant to the same. The said undertakings are accordingly accepted for being considered by respondent no.4.

5] Since the provisions of Rule 41A of the Rules of 1981 permit transfer from an unaided section to an aided section, the matter can be considered subject to the Government Resolution dated 1/4/2021. Since petitioner nos. 3 and 4 have submitted their undertakings as referred to hereinabove, it is found necessary that respondent no.4 shall re-consider the matter in the light of the notice given by the said respondent to the petitioners. It is noted that on 2/3/2022, the office of the Deputy Director of Education has already permitted inclusion of the names of the petitioners in the Shalarth ID. Effect thereof will also have to be considered by respondent no.4.

6] For the aforesaid reasons, the order dated 1/2/2023 passed by respondent no.4 is set aside. Respondent no.4 shall re-consider the matter in the light of the decision of this Court in *Friends Social Circle, Akola (supra)* and the Government Resolution dated 1/4/2021. He shall also take into consideration the undertakings submitted by petitioner nos. 3 and 4 which shall be placed before respondent no.4 by the petitioners. After giving due opportunity of hearing to the petitioners, respondent no.4 shall pass a fresh order and communicate the same to the petitioners. The entire exercise be completed within a period of six

weeks from today. In the meanwhile, petitioner nos. 3 and 4 be paid their regular salaries in accordance with the undertakings submitted by them.

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

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Sumit