



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

WRIT PETITION NO. 2113 of 2021

1. Shahbabu Education Society, Patur,
District Akola, a Society registered under the
Societies Registration Act, 1860 and the
Bombay Public Trust Act, 1950,
Through its Secretary Mr. Syed Ishaque Syed Nabi.
 2. Shahbabu Higher Secondary School, Patur,
District Akola, through its Principal-
Mr. Mohd. Aslam Mohd. Iqbal, Aged about 54 years,
Occupation-Service,
R/o. Patur, District Akola.
 3. Shahbabu High School (Hamza Plot), Akola.
Through its Headmaster-Mr. Mohd. Arif Shaikh Madar,
Aged about 45 years, Occupation-Service,
R/o. Akola, District Akola.
 4. Miss. Rubina Ishaque Syed,
Aged about 30 years, Occupation-Service,
C/o. Shahbabu High School (Hamza Plot),
Akola District Akola. .
- **PETITIONERS**

...VERSUS...

1. The State of Maharashtra, through
the Secretary, School Education Department,
Mantralaya, Madam Cama Road,
Mumbai-400 032.
 2. The Education Officer (Secondary),
Zilla Parishad Akola, having his office at
Santoshi Mata Mandir, Akola-444 001.
- **RESPONDENTS**

Shri A.A.Naik, Advocate for petitioners.

Shri Amit Madiwale, Government Pleader for respondents.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE :- 5th OCTOBER, 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 26.03.2021 passed by the Education Officer (Secondary), Zilla Parishad, Akola thereby refusing to approve the transfer of the petitioner no.4 from the petitioner no.2-Higher Secondary School to the petitioner no.3-High School.

3. The petitioner no.1-a public Trust has been conferred the status of a religious and linguistic minority. It is conducting the Higher Secondary School at Patur which is being run on permanent no grant basis. From the Academic Session 2006-07 it has been permitted to impart instructions in the subject of Computer Science at the higher secondary level. The petitioner no.4 being duly qualified to be appointed on the post of 'Assistant Teacher' in the subject of Computer Science was accordingly appointed on 01.07.2015. The proposal seeking approval to the appointment of the petitioner no.4 was not accepted by the District Vocational Education and Training Officer on 18.03.2020 on the ground that it had been granted permission on permanent no grant basis and therefore the appointment of teachers was not required to be approved. A vacancy arose at the petitioner no. 3- High School in the post

of 'Assistant Teacher' for the subject of Science which required qualifications of B.Sc. (Biology) and B.Ed. The petitioner no.4 therefore submitted an application as well as her consent for being transferred on the said vacant post and accordingly by Resolution dated 30.03.2020 the services of the petitioner no.4 from the un-aided Higher Secondary School came to be transferred to the aided High School as Science teacher. This transfer was issued under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981). On approval to the transfer of the petitioner no.4 being sought, the same came to be refused by the Education Officer (Secondary) on 06.08.2020 on the ground that the petitioner no.4 was transferred from the un-aided school to the aided school. This order was the subject matter of challenge in Writ Petition No. 2401 of 2020 by the present petitioners. Vide order dated 17.02.2021 this Court directed the Education Officer (Secondary) to reconsider the matter by taking into consideration the communication dated 18.03.2020 issued by the District Vocational Education and Training Officer. Pursuant to the aforesaid direction the parties were heard and on 26.03.2021 the Education Officer (Secondary) refused to approve the transfer principally on the ground that the appointment of the petitioner no.4 was on an un-aided post and therefore transfer to an aided post was not permissible.

4. We have heard the learned counsel for the parties and we have perused the relevant documents on record. At the outset, it may be noted that the petitioner no.4 holds qualifications of Bachelor of Science (B.Sc.), Master of Computer Management (M.C.M.) and Bachelor of Education (B.Ed.). She was initially appointed as 'Assistant Teacher' to teach the subject of 'Computer Science'. When approval to her appointment was sought, the District Vocational Education and Training Officer on 18.03.2020 stated that since the petitioner no.4 was appointed on a post that was permanently on a no grant basis and the liability to pay salary was on the Management, there was no reason to seek approval of teachers appointed at such institution. In view of this communication, the issue with regard to the requirement of seeking approval to the appointment of the petitioner no.4 came to an end. It would therefore not now be permissible to seek to re-open this aspect.

5. As the post of Science teacher became vacant at the petitioner no.3-School, the services of the petitioner no.4 came to be transferred on the said vacant post on 31.03.2020. The same was under Rule 41 of the Rules of 1981. The transfer from an un-aided post in Junior College to an aided post in a Higher Secondary School run by the same Management being permissible has been held in *Rahul Prakash Nilgar vs. State of Maharashtra and another* [2021 SCC Online Bom 4558] that was relied upon by the learned counsel for the petitioners. After considering the provisions of

Section 2(24) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 alongwith Rule 41(1) of the Rules of 1981, it was held in paragraph 13 as under:

“13. On conjoint reading of Rule 41(1) with Section 2(24), i.e., definition of ‘school’, transfer of non-teaching staff from unaided post in junior college to aided post in higher secondary school run by the same Management is thus permissible, subject to the conditions prescribed under Rule 41(1) and Rule 41(2) of the MEPS Rules. It is not the case of the Education Officer in the impugned order that the other conditions prescribed under Rule 41(1) are not complied with by the Management. In our view, the impugned order is thus in violation of Rule 41(1) and Rule 41(2) of the MEPS Rules and deserves to be quashed and set aside.”

It thus becomes clear that the aspect of the institution being run on permanent no grant basis in the present context is not very relevant.

6. Coming to the aspect of qualifications required being possessed by the petitioner no.4 consequent upon her transfer, it is seen that when the petitioner no.4 was appointed to teach the subject of Computer Science she was possessing qualifications of B.Sc., M.C.M. and B.Ed. The qualifications prescribed for teaching the subject of Science at the High School were satisfied by the petitioner no.4 and therefore it cannot be said that she did not possess the requisite qualifications to teach subject of Science at the High School. While considering the issue with regard to approval to the order of transfer, the Education Officer (Secondary) would be primarily concerned

with the fact as to whether the post in question is a sanctioned post and whether the incumbent transferred has the requisite qualifications to teach the subject at the school where such transfer has been effected. As referred above these requirements are duly satisfied by the petitioner no.4. It is also to be noted that vocational courses conducted by the Department of Technical Education being un-aided, the same are also held to fall within the purview of 'School' as defined by Section 2(24) of the Act of 1977 as held in *Shekhar P. Deshmukh vs. Deputy Director Education and others [(2018) 6 BCR 408]* that was also relied upon by the learned counsel for the petitioners.

7. For aforesaid reasons, we find that the Education Officer (Secondary) failed to take into consideration these relevant aspects while refusing to approve the transfer of the petitioner no.4. He proceeded to observe that the qualifications of B.Sc.(Biology) with B.Ed. could not be the qualifications for teaching the subject of Computer Science when the petitioner no.4 was initially appointed. This ignores the fact that the petitioner no.4 was also possessing the qualification of Master of Computer Management (M.C.M.) and hence was competent to impart instructions in the subject of Computer Science. Moreover, vide communication dated 18.03.2020 the need for seeking approval to the petitioner's initial appointment was also not required as per the District Vocational Education

and Training Officer. Hence on these counts, the impugned order dated 26.03.2021 is liable to be set aside.

8. Accordingly, the following order is passed:

- (i) The order dated 26.03.2021 passed by the Education Officer(Secondary) is set aside.
 - (ii) The respondent no.2-Education Officer (Secondary), Zilla Parishad, Akola shall consider the observations made in the judgment and take necessary steps in the matter of grant of approval to the transfer of the petitioner no.4 to the petitioner no.3-High School within a period of four weeks of receiving copy of the judgment.
9. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..