

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

WRIT PETITION NO.4608 OF 2021

1. Indira Dnyan Prasarak Mandal, Neri
Tah. Chimur, Distt. Chandrapur,
Through President
2. Saraswati Kanya Vidyalaya, Neri,
Tah. Chimur, Distt. Chandrapur,
Through its Headmistress
3. Nitesh Natthuji Kamdi,
Age 31 years, Occ. Service,
C/o Saraswati Kanya Vidyalaya,
Neri, Tah. Chimur, Distt. Chandrapur, ... Petitioners

-vs-

1. State of Maharashtra
Through Secretary, School Education and
Sports Department, Mantralaya, Mumbai-32
2. Education Officer (Secondary),
Zilla Parishad, Chandrapur ... Respondents

Ms Radhika Bajaj, Advocate for petitioners.

Shri A. A. Madiwale, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE : March 24, 2023

Oral Judgment (Per : A. S. Chandurkar, J.)

Considering the short issue involved, the writ petition is taken up for final hearing by issuing Rule and making the same returnable forthwith.

The petitioner No.3 came to be appointed as Assistant Teacher at the petitioner No.2 School on 19/11/2013. On account of reduction in

number of students, the petitioner No.2 informed the petitioner No.3 that his services were rendered surplus as on 11/01/2021. According to the petitioners, the petitioner No.3 continued to serve at the same school till the issuance of order of transfer dated 07/03/2021. The services of the petitioner No.3 came to be transferred in the school being run by the same Management for teaching to classes V to VIII. Approval to his transfer has been rejected by order dated 09/06/2021 which is impugned in this writ petition. The ground mentioned in the impugned order is that since the transfer is from primary school section to the secondary school section, the same is not in accordance with the Government Resolution dated 01/04/2021.

2. We have heard the learned counsel for the parties and we have perused affidavit in reply filed by respondent No.2. The only reason that has been mentioned in the impugned order is that transfer of petitioner No.3 is not on a similar/equivalent post. Our attention has been invited to the resolution passed by the Management dated 08/03/2021 under which the services of the petitioner No.3 came to be transferred. The effort on the part of the petitioners is to indicate that the post of petitioner No.3 on which he was transferred is a similar post being equivalent and there is no change in the emoluments being paid to the petitioner No.3. It is stated that petitioner No.3 is serving at a primary

section of the said school after transfer.

3. In aforesaid facts we find that the impugned order dated 09/06/2021 has not taken into consideration the resolution passed by the Management on 08/03/2021 which indicates that the transfer is on an equivalent post. That being the only reason for the refusal to approve the transfer of petitioner No.3, we are inclined to relegate the petitioners to seek re-consideration of their application by the Education Officer (Secondary).

4. For aforesaid reasons, the following order is passed :

- (i) The order dated 09/06/2021 passed by the Education Officer (Secondary) is set aside to enable re-consideration of the petitioners' proposal dated 15/04/2021.
- (ii) The petitioners are at liberty to place before the Education Officer (Secondary) additional documents in support of their request for grant of approval.
- (iii) The Education Officer (Secondary) shall consider the documents and after granting an opportunity of hearing to the petitioners, take a decision on the said proposal.
- (iv) The entire exercise be completed within a period of eight weeks from today.

With these directions the writ petition is partly allowed with no order as to costs.