



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

WRIT PETITION NO.5486 OF 2023

Gandhi Vidyalaya Shikshan Sanstha, Kondha, Tah. Pauni, Dist. Bhandara and anr.

-vs-

State of Maharashtra, Thr. Secretary, School Education & Sports Dept. Mantralaya, Mumbai and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri P. A. Jibhkate, Advocate for petitioners.

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

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

DATE : August 25, 2023

P. C.

1. Rule.

2. Learned Assistant Government Pleader waives notice for the respondents.

3. The petitioner No.2 who came to be appointed as Assistant Teacher in the subject of History and was serving on 20% aided post came to be transferred on 100% aided post under Rule 41A of the Maharashtra Employees of Private Schools Rules 1981 with effect from 01/03/2022. Approval to such transfer came to be initially refused on 03/06/2022. This was for the reason that the staff justification had not been finalised. After the staff justification was finalised, a fresh application was made by the petitioners on 05/01/2023. The same was again rejected on 16/01/2023 in view of notification dated 08/06/2020 and Government Resolution dated 01/04/2021. According to the petitioners in view of judgment of this Court in Writ Petition

No.8215/2022 (*Friends Social Circle, Akola and ors. vs. State of Maharashtra, Thr. Secretary, Education and Sport Department, Mantralaya, Mumbai and ors.*) with connected writ petitions decided on 29/07/2023, the request made by the petitioner No.1 for seeking approval to the transfer of petitioner No.2 deserves to be re-considered. In that regard, the petitioner No.1 has moved a fresh application dated 01/06/2023 before the respondent No.2.

4. In the light of the fact that Circular dated 01/12/2022 staying operation of Rule 41A of the Rules of 1981 to that extent has been set aside, it will be necessary for respondent No.2 to re-consider the petitioners' proposal dated 01/06/2023 seeking approval to the transfer of petitioner No.2.

5. In this backdrop, following order would serve the interests of justice :

- (i) The impugned communications dated 03/06/2022 and 16/01/2023 are set aside to enable the respondent No.2 to re-consider the petitioners' application dated 01/06/2023 seeking approval to the transfer of petitioner No.2.
- (ii) The said proposal be decided in accordance with law after giving due opportunity to the petitioners within a period of four weeks of receipt of copy of this order.

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

(Mrs Vrushali V. Joshi, J.)

(A. S. Chandurkar, J.)