



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

WRIT PETITION NO. 7000 of 2023

Ku.Kolila d/o Krushnaji Mahajan and others **PETITIONERS**

versus

The State of Maharashtra, through its Secretary,
School Education and Sports Department,
Mumbai and others.

RESPONDENTS

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Shri S.U.Ghude, Advocate for petitioners.

Ms N. P. Mehta, Additional Government Pleader for respondent nos.1 and 2.

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CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 29th NOVEMBER, 2023

P. C.

We have heard Shri S.U.Ghude, learned counsel for the petitioners and Ms N. P. Mehta, learned Additional Government Pleader for respondent nos. 1 and 2.

2. The petitioner no.1 is an employee. The petitioner no.2, is a society registered under the Societies Registration Act and a public trust which is managing the petitioner no.3-educational institution. By this petition, the petitioners have prayed for quashing and setting aside of the impugned order dated September 12, 2023 passed by the respondent no.2-Education Officer (Secondary), Zilla Parishad, Wardha. The petitioners have further prayed for issuance of direction to the Education Officer (Secondary) to re-consider the proposal dated May 15, 2023 for grant of approval to the transfer of the petitioner no.1.

3. The facts necessary for deciding the present writ petition are as under:

(i) The petitioner no.1 who is having qualifications of H.Sc. D.Ed., came to be appointed as a 'Shikshan Sevak' in the primary school with effect from 01.08.2008 to 31.07.2011 by the petitioner no.2. The Education Officer(Primary)-respondent no.3 granted prior approval to the appointment of the petitioner no.1 as a Shikshan Sevek and thereafter as a probationary Assistant Teacher. She being the senior-most teacher, she was accorded

authorization to submit pay bills of the other staff.

(ii) The petitioner no.2 on April 24, 2023 approached the respondent no.3-Education Officer (Primary) seeking prior approval to the transfer of the petitioner no.1 from the existing primary school which was receiving 20% grant-in-aid to that of secondary school which was on 100% grant basis. Such an approval was sought as the seat meant for OBC category fell vacant.

(iii) In the aforesaid background, the respondent no.3 granted prior approval for transfer of services of the petitioner no.1 to secondary school from primary school vide its order dated May 08, 2023.

(iv) Subsequent thereto, the respondent no.2-Education Officer (Secondary) vide impugned communication dated September 12, 2023 refused to grant approval to the transfer of the petitioner no.1 in view of the contents of the Government Circular dated December 01, 2022 whereby the Notification dated June 08, 2020 and the Government Resolution dated April 01, 2021 came to be stayed.

(v) Vide aforesaid impugned communication the respondent no.2-Education Officer has refused to grant approval to the transfer of the petitioner no.1 prompted the petitioners to prefer this writ petition.

4. It is the contention of the counsel for the petitioners that the issue as regards legality of the Government Circular dated December 01, 2022 was subject matter of challenge in Writ Petition No.8215 of 2022 with connected writ petitions which was allowed by this Court vide judgment and order dated July 21, 2023. According to him, the Division Bench has set aside for want of lawful authority the Government Circular dated December 01, 2022 to the extent of staying the operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as 'the Rules of 1981'). In the aforesaid background, according to him, the impugned order dated September 12, 2023 is liable to be quashed and set aside with a further direction to the Education Officer (Secondary) to re-consider the said proposal.

5. Learned Additional Government Pleader Ms N. P. Mehta would urge that only part of the Government Circular dated December 01, 2022 is

set aside. However, according to her, the Court may pass an appropriate order thereby directing to re-consider the claim of the petitioner in the light of the judgment dated July 21, 2023 delivered in Writ Petition No.8215 of 2022 with connected writ petitions.

6. Having appreciated the aforesaid submissions what can be noticed is that the respondent no.3-Education Officer (Primary) granted prior approval to the transfer of services of the petitioner no.1 from the primary school which was receiving 20% grant in aid to the secondary school which was receiving 100% grant. As a sequel of above, the petitioner no.2 has forwarded proposal for approval to the transfer of the petitioner no.1 which was rejected by the respondent no.2-Education Officer (Secondary) vide impugned order dated September 12, 2023 based on the contents of the Government Circular dated December 01, 2022.

7. The fact remains that the power to issue Circular dated December 01, 2022 was the subject matter of challenge in Writ Petition No.8215 of 2022 with connected writ petitions decided on July 21, 2023. This Court has held that the provisions of Rule 41A of the Rules of 1981 cannot be kept in abeyance by issuing the Circular and as such the Government Circular dated December 01, 2022 to the said extent is held to be unsustainable which was accordingly quashed.

8. The very foundation for issuing the impugned order viz. the above Circular as such is held to be illegal. In such an eventuality the issue canvassed by the petitioners before us about the legality of the impugned order dated September 12, 2023 to be contrary to the judgment of this Court referred to above, appears to be justified submission. That being so, the impugned order dated September 12, 2023 is hereby quashed and set aside with a direction to the respondent no.2-Education Officer (Secondary) to re-consider the proposal forwarded by the petitioner no.2 about grant of approval to the transfer of the petitioner no.1 dated May 15, 2023 afresh in the light of the judgment of this Court delivered in Writ Petition No.8215 of 2022 with connected writ petitions on July 21, 2023. We direct the respondent no.2-Education Officer (Secondary), Zilla Parishad, Wardha

to deal with the said proposal afresh and communicate its decision to the petitioner nos. 1 and 2 as expeditiously as possible and in any case within a period of six weeks from the date of production of copy of this order before it.

9. The writ petition stands allowed in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.