



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

WRIT PETITION NO. 7436 of 2023

1. Vandaniya Rashtasant Tukdoji Maharaj
Bahuuddeshiya Shikshan Sanstha,
Chimur, District Chandrapur,
through its Secretary.
2. New Rashtriya Vidhyalaya, Chimur,
Tahsil Chimur, District Chandrapur.
Through its Head Mastedr.
3. Sameer s/o Gopal Biraje,
Aged about Years, Occu. Service,
R/o. New Rashtriya Vidhyalaya, Chimur,
Tahsil Chimur, District Chandrapur.

..... **PETITIONERS**

...V E R S U S...

1. State of Maharashtra,
through its Secretary,
Education and Sport Department, Mantralaya,
Mumbai-32.
2. Education Officer (Secondary),
Zilla Parishad, Chandrapur,
District Chandrapur.

..... **RESPONDENTS**

Shri Ram Karode, Advocate for petitioners.
Ms D. V. Sapkal, Assistant Government Pleader for respondents

CORAM :- A.S.CHANDURKAR AND ABHAY J. MANTRI, JJ.

DATE :- 2nd NOVEMBER, 2023.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith. The petition is heard
finally with the consent of the learned counsel for the parties.

2. The petitioner No.3 has been appointed on the post of Assistant Teacher at the petitioner No.2 School that is being run by the petitioner No.1-Public Trust. The appointment of the petitioner No.3 was made on an un-aided division of the School. His appointment on the said un-aided division was approved on 11.01.2016. The services of the petitioner were sought to be transferred from the un-aided division to the aided division of the School. Proposal in that regard was forwarded to the Education Officer (Secondary), who by the impugned order dated 21.07.2023 has rejected the same for two reasons. He has firstly held that since the proceedings under Section 41-D of the Maharashtra Public Trust Act, 1950 are pending, the proposal cannot be considered. He has further stated that since the Circular dated 01.12.2022 has been stayed, the transfer of the petitioner to the aided section cannot be approved.

3. After hearing the learned counsel for the parties, we find that the proposal seeking approval to the transfer of the petitioner requires re-consideration for the following reasons:

(a) Pendency of the proceedings under Section 41-D of the Act of 1950 cannot be a reason for non consideration of the proposal on its own merits. In this regard, the reference can be made to the decision in the case of *Navnath Narsing Gore Vs. State of Maharashtra* [2021(6) Mh.L.J. 118].

(b) The stay that was imposed on the Circular dated 01.12.2022 now stands vacated in the context of Rule 41-A of the Maharashtra Employees of Private Schools (Conditions Service) Rules, 1981. The reference in this regard can be made to the decision in **Writ Petition NO. 8215 of 2022** (*Friends Social Circle, Akola and ors. Vs. State of Maharashtra and ors.*) along with other connected matters.

4. For the aforesaid reasons, the interest of justice would be served by directing the Education Officer,(Secondary) to reconsider the aforesaid proposal in accordance with law and after giving an opportunity to the petitioner. To enable such reconsideration, the order dated 21.07.2023 passed by the respondent No.2 is set aside.

5. The petitioner shall appear before the Education Officer (Secondary) on 08.11.2023. Within a period of four weeks from that date, the Education Officer (Secondary) shall consider the proposal and take a decision thereon. The decision be communicated to the petitioners.

6. Rule is disposed of in the aforesaid terms. No costs

(ABHAY J. MANTRI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.