

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 15520 OF 2023

Kadam Tushar Ramesh

Age : 38 years, Occ. Teacher

R/at : Ranand, Taluka – Man,

District – Satara

... Petitioner

V/s.

1. The State of Maharashtra
[Summons to be served on the
Learned Government Pleader appearing
for State of Maharashtra under Order XXVII
Rule 4, of the Code of Civil Procedure, 1908]

2. The Education Officer (Secondary),
Satara Zilla Parishad, Satara

3. The Deputy Director of Education,
Kolhapur Division, Kolhapur,
District – Kolhapur

4. The President,
Jaybhavani Education Society, Giravi,
At-Post – Giravi, Tal.- Faltan,
District – Satara

... Respondents

Mr. Kisan D. Dhamale for the Petitioner

Mr. P.P. Kakade, Govt. Pleader with Ms. Nisha Mehra, AGP for the
Respondents 1 to 3

Mr. Narendra V. Bandiwadekar, Senior Advocate appointed as Amicus Curiae

Mr. Tushar Mahajan, Deputy Secretary, School Education Department present

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 06 MAY 2024

Oral Judgment (Per Nitin Jamdar, J.) :-

Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioner has challenged the order passed by Respondent No.2 – Education Officer (Secondary), Zilla Parishad, Satara dated 4 August 2023, refusing to grant approval to the proposal of Respondent No. 4 - Management in respect of the transfer of the Petitioner.

3. The Petitioner is appointed in the school run by Respondent No.4 in the un-aided division. A proposal was submitted by Respondent No.4 on the retirement of one teacher on 30 June 2023 in the aided division as that post had become vacant. According to the Petitioner, the Respondent – Management took the decision as the Petitioner was the seniormost teacher in the school and a resolution to that effect was passed on 30 June 2023. Thereafter, the Petitioner joined the services of the aided school that

is Modern High School, Barad, Taluka – Faltan, District – Satara. When the proposal was submitted to Respondent No.2 – Education Officer, the same was rejected by the impugned order that the proposal cannot be accepted in the light of the Government Resolution dated 1 December 2022, which does not permit the transfer from unaided division to aided division. Thereafter, the Petitioner is before us with this challenge.

4. Heard the learned Counsel for the parties. At our request Mr. N.V. Bandiwadkar, learned Senior Advocate has assisted the Court as an *Amicus curie*.

5. Under the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 the Rules have been framed. These Rules have been amended to insert Rule 41A, which provides for conditions for the transfer of teachers from unaided to partially aided or aided school or division. The said amended Rule came into force on 8 June 2020 which reads thus:-

“41A (1). The management may transfer a teacher from un-aided school or partially aided school to the vacant post in partially aided school or aided school or division only if the following conditions are satisfied, namely –

(a)(i) the Management and Education Officer or Deputy Director shall, before making such transfer, verify that there is no surplus persons are available as

provided in sub-section (1) of section 5 of the Act;

(ii) if the surplus persons are available, the Management shall not make such transfer;

(b) the transfer shall not be made from the teachers of self-financed school of the Management;

(c) before making such transfer, the teacher should have completed minimum five years continuous service in un-aided school or division or partially aided school or division of the Management;

(d) the transfer shall be made in equal or same cadre. The transfer shall not be made from primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D.Ed. schools or vice-versa;

(e) the transfer shall be made only by following the seniority and as per the requirement of the subject;

(f) before making transfer of a teacher, his appointment should have been approved by the Education Officer or Deputy Director, as the case may be;

(g) the transfer shall be made on the vacant post;

(h) the transfer shall be subject to the approval of Education Officer or Deputy Director, as the case may be.

(2) If the post becomes vacant due to transfer, such vacant post shall be filled as per the procedure provided in rule 9.

(3) The transferred teacher shall be eligible for scale of

pay and allowances as decided by the Government, from time to time.”

6. A Government Resolution came to be issued on 1 December 2022, which effectively stayed the operation of Rule 41A of the Rules of 1981. The question arose before the Division Bench of this Court (Nagpur Bench) whether the operation of a statutory rule which is framed under the provisions of Section 16(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 would be stayed or suspended by issuing the instructions in the form of a circular. The Division Bench in Writ Petition No. 8215 of 2022 (*Friends Social Circle, Akola & Ors. v/s. State of Maharashtra & Ors.*) by judgment dated 21 July 2023 answered in negative and declared that the Circular dated 1 December 2022 to the extent it stays the operation of Rule 41A of the Rules of 1981 is set aside for want of power also the other part of the Circular was not stayed. This decision was rendered on 21 July 2023. However, the Education Officer kept on passing orders based on the same Government Resolution dated 1 December 2022. Taking cognizance of the same, a judgment was rendered in Writ Petition No. 204 of 2019 (*Nitin Tadge and Anr. v/s State of Maharashtra and others*) dated 16 April 2022 issuing various directions. One of the direction is as under :-

A. (i)..(iv)

B. ...

(ii) It is directed that if any legal position concerning the tripartite relationship between the employees, Management and the State Government in respect of the subject matter is laid down by this Court and if the said legal position is accepted by the State Government, then within a reasonable time the State Government shall issue circular/notification/government resolution instructing the Educational Authorities in consonance with the legal position so laid down.”

7. The learned Government Pleader has placed before us a Government Resolution dated 29 April 2024, which has been issued by the State Government dated In furtherance of the above directions issued in the case of *Nitin Tadge*. The learned Government Pleader states cognisance is taken of the position that in the light of the decision in the case of *Friends Social Circle* there is no stay of Rule 41A of the Rules of 1981 wherein orders have been issued by this Court that necessary action should be taken by the Education Officer.

8. The Government Resolution dated 29 April 2024 also contains a clause that in the cases wherein the matters are pending or why there is no decision taken on the proposal for transfer from unaided to aided division is concerned, the Education Officer should send such proposals to the State Government. To the query of the Court as to the reason for this clause, the learned Government Pleader on instructions, submits that the State Government has taken cognizance of various complaints which have been repeatedly

raised by the employees and the Management in the State of Maharashtra against the Education Officers resulting in contempt petitions leading to substantial litigation as noted in the decision of *Nitin Tagade* and therefore, the State Government is contemplating to divest the Education Officers and the Deputy Directors of their powers of taking decision on the proposals regarding transfer from unaided to aided division. The learned Government Pleader states that for that purpose, necessary steps are being taken to amend Rule 41A.

9. As to which authority of the State Government should decide the proposal submitted by the management is within the prerogative of the State. Therefore, it is for the State Government to take the necessary decision. Neither the managements nor the employees can insist that a particular officer must decide their proposal, especially when it is on the management and employee's complaints that the State Government has taken cognizance.

10. However, concern raised by the learned Amicus that this process should not delay the processing and grant of approvals, is legitimate. The learned Government Pleader states that due to the Code of Conduct, the final decision cannot be taken. That may be for the amendment of Rule 41A, but processing of a proposal for approval which otherwise would be done by the Education Officer, were not affected by the Code of Conduct and thus similar position

then apply for the authority who would be now taking a decision on the proposal. The State Government will ensure that the decisions are taken within a reasonable time and the employees and the management are not prejudiced by unwarranted delay.

11. As a result, the impugned order dated 4 August 2023 is quashed and set aside. The proposal forwarded to the State Government by the Respondent – management is restored to file. The concerned authority will take a decision within a period of eight weeks, subject to urgent public duties and earlier time-bound commitments.

12. The State Government will also consider issuing necessary instructions to the Education Officers and Deputy Director of Education to forward such pending proposals in the light of the Government Resolution dated 29 April 2024 to the State Government within a particular time period so that the decisions can be taken within a reasonable time.

13. Rule made absolute in above terms. Writ Petitions disposed of.

14. Assistance rendered by the learned amicus is appreciated.

M.M. SATHAYE, J.

NITIN JAMDAR, J.