



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

WRIT PETITION NO. 1205 OF 2024

- 1) Late Bhivaji Warbhe Bahuuddeshiya
Sanstha, Chandrapur, Om Nagar,
Near Mahakali Mandir, Mahakali Ward,
Tq. and District Chandrapur, through
its Chairman.
- 2) Matoshri Warbhe Uccha Madhyamik
Vidhyalaya, Pawna, Tahsil Bhadrawati,
District Chandrapur, through its
Headmaster.
- 3) Ku. Geeta Vasantao Padole,
Aged about years, Occupation – Service,
C/o Matoshri Warbhe Uccha Madhyamik
Vidhyalaya, Pawna, Tahsil – Bhadrawati,
District – Chandrapur.

.... **PETITIONERS**

VERSUS

- 1) The State of Maharashtra,
through its Secretary, the Ministry of Education
and Sports Department, Mantralaya,
Mumbai – 32.
- 2) The Deputy Director of Education,
Nagpur Division, Nagpur.

.... **RESPONDENTS**

Mr. R.D. Karode, Counsel for the petitioners,
Mr. S.M. Ghodeswar, A.G.P for the respondents.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATE OF RESERVING THE JUDGMENT : 17th APRIL, 2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 24th APRIL, 2024

JUDGMENT : (Per : Abhay J. Mantri, J.)

The present petition assails the order/communication dated 09-10-2023 passed/issued by respondent No.2-Deputy Directory of Education, Nagpur, whereby the proposal forwarded by the petitioners for grant of approval to the service of petitioner No.3 from unaided school to 20% grant-in-aid school has been rejected.

2. Petitioner No. 1 is the Education Society and runs Petitioner No.2 School. Petitioner No.3 is the employee of petitioner Nos.1 and 2 and is working on the post of Teacher.

3. On 01-07-2014 petitioner No.3 was appointed to the post of Teacher on no grant basis with Higher Secondary School, Bothali. On 16-03-2020 respondent No.2 granted approval to the said appointment.

4. It is contended that since one post in petitioner No.2 School became vacant, the Executive Body of petitioner No.1 vide Resolution dated 02-08-2023 and subsequent Resolution of the Committee dated 04-08-2023 had transferred the services of petitioner No.3 from unaided school to 20% grant-in-aid school as petitioner No.3 is the senior-most Teacher working in the unaided school.

5. Accordingly, vide letter dated 11-09-2023 petitioner No.2 has forwarded the said proposal to respondent No.2 for grant of approval to the said appointment. However, vide communication/order dated 09-10-2023 respondent No.2 informed the petitioners that the said proposal has been rejected in view of the Circular dated 01-12-2022 issued by the State Government granting a stay to the provisions of Rule 41A of the Maharashtra Employees of Private Service (Conditions of Service) Rules, 1981 (for short "*Rules of 1981*"). Hence, this petition.

6. Mr. R.D. Karode, learned Counsel for the petitioners has vehemently argued that the said issue is covered by the judgment of this Court in *Friends Social Circle, Akola & Ors. v. State of Maharashtra & Ors.*, 2023 SCC Online Bom. 1503, as well as the judgment in Writ Petition No.16078/2023 (Mangaon Taluka Education Society & Ors. v. The State of Maharashtra and Anr.) along with other connected matters, decided on **01-03-2024**. Hence he urged that, in view of the law laid down by this Court in the case of *Friends Social Circle (Supra)*, this petition be allowed by setting aside the impugned order passed by respondent No.2.

7. *Per contra*, Shri S.M. Ghodeswar, learned Assistant Government Pleader has submitted that as per the Government

Resolution dated 01-12-2022, the operation of Rule 41A of the Rules of 1981 has been stayed. Consequently, the State has stayed the notification dated 08-06-2020 and the Government Resolution dated 01-04-2021, and, therefore, the petitioners are not entitled to claim the relief as prayed and urge to dismiss the petition.

8. We have appreciated the submissions of learned counsel for both parties. Perused the impugned order as well as the law laid down in the cases of *Friends Social Circle (Supra)* and *Writ Petition No. 16078/2023 (Mangaon Taluka Education Society & Ors. v. The State of Maharashtra and Anr.)*.

9. It seems that the respondents have not disputed the appointment of petitioner No.3 and the grant of approval to her on the post of Teacher on no grant-in-aid basis school. Moreover, in reply, respondent No.2 has stated that vide order dated 21-07-2023 passed in Writ Petition No.8215/2022 this Court has quashed and set aside the Government Resolution dated 01-12-2022. However, it is contended that inadvertently, the impugned order dated 09-10-2023 has been passed. Therefore, respondent No.2 has tendered an unequivocal apology for the same. The said averment itself justifies the case of the petitioner.

10. On perusal of the impugned order, it seems that the refusal and return of the proposal of petitioner No.3-Teacher is solely based on the Government Circular dated 01-12-2022. However, it is further evident that by the order dated 21-07-2023, the said Government Resolution has already been quashed and set aside to the extent it stays the operation of Rule 41A of the Rules of 1981. The said decision has been followed by this Court in various subsequent writ petitions.

11. Having considered the aforesaid facts, we are of the opinion that this issue is squarely covered by the judgment in the case of *Friends Social Circle (Supra)* and therefore, we deem it appropriate to allow the petition by passing the following order.

- (a) The impugned order/communication dated 09-10-2023 passed/issued by respondent No.2 is hereby quashed and set aside.
- (b) The proposal for a grant of approval to the transfer of petitioner No.3 from an unaided school to a 20% grant-in-aid school is hereby restored.
- (c) Needless to clarify, if there are any other grounds on which respondent No.2 intends to return or reject the proposal of petitioner No.3, he is directed to communicate the same to the petitioners within four weeks from the production of a copy of this judgment.

- (d) The petitioners thereafter shall submit their explanation to the proposed grounds along with supporting material including the Government Resolution, case laws, orders of this Court, etc., if relied upon.
- (e) Respondent No.2 is directed to decide the said proposal of petitioner No.3-Teacher thereafter within a period of eight weeks by dealing with the explanation submitted by the petitioners and also dealing with the case laws, orders of this Court, by passing a reasoned order subject to other time-bound directions.
- (f) We have not expressed any opinion on petitioner No.3's proposal and the same shall be decided on its own merits and in accordance with law.
- (g) The said proposal will not be rejected on the grounds of a Government Resolution dated 01-12-2022.
- (h) Needless to mention that if respondent No.2 proceeds to grant petitioner No.3's proposal as prayed, the consequential benefits will follow and in that case, the aforesaid directions will not apply.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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