



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

WRIT PETITION NO. 3630 OF 2024

- 1) The Jalgaon Education Society,
Jalgaon Jamod, District Buldhana,
Regd. No. F-50, Buldhana 8/2/1963,
through its Secretary,
Tq. Jalgaon Jamod, District Buldhana.
- 2) The New Era High School,
Jalgaon Jamod, Tq. Jalgaon Jamod,
District Buldhana, through its
Headmaster.
- 3) Sau. Sharda Sanjay Bhujbal,
Aged about 44 years,
Occupation – Service as Asst. Teacher,
C/o The New Era High School, Jalgaon
Jamod, Tq. Jalgaon Jamod, District
Buldhana.

.... **PETITIONERS**

VERSUS

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

.... **RESPONDENTS**

Mr. Ram Karode, Counsel for the petitioners,
Mr. S.M. Ghodeswar, AGP for the respondents.

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

DATED : 19th AUGUST, 2024

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

Rule. Rule is made returnable forthwith by consent of the learned Counsel appearing for the parties.

2. The petitioner assails the order/communication dated 08-04-2024 issued by respondent No.2-Education Officer, Zilla Parishad, Buldhana, whereby the proposal forwarded by petitioner No.1-society for grant of approval to the transfer of services of petitioner No.3 from 20% aided division to 100% aided division has been rejected.

3. Petitioner No.1 is a 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 Assistant Teacher.

4. Petitioner No.3 possesses a B.A. B.Ed. qualification. By appointment order dated 26-06-2015, she was appointed to the post of Assistant Teacher with effect from 01-07-2015 in petitioner No.2's school on 9th and 10th Standards (unaided additional section).

5. As per the policy decisions of 12-02-2021 and 06-02-2023, respondent No.2 issued order granting 20% grant-in-aid to 9th and 10th Standards of petitioner No.2 school with effect from 28-03-2023.

6. It is further averred that Shri Abhijit Suresh Kulkarni, who was working on the 100% grant-in-aid section, was promoted to the post of Supervisor with effect from 01-12-2023 in Janta Vidyalaya Jamod, run by petitioner No.1-Society. Therefore, the post which he occupied became vacant. As a sequel, as per the seniority, petitioner No.3, working on the 20% grant-in-aid division of 9th and 10th Standard, was eligible to transfer to the 100% grant-in-aid division. Accordingly, the Executive Body/School Committee of petitioner No.1 on 29-02-2024 unanimously passed the resolution to transfer petitioner No.3 from 20% grant-in-aid division to 100% grant-in-aid division with effect from 01-03-2024. Pursuant to the said resolution, on 26-03-2024, petitioner No.1 forwarded the proposal for the grant of approval to transfer of petitioner No.3. However, vide communication dated 08-04-2024 respondent No.2 rejected the proposal on the ground that respondent No.1-State Government has issued Circular dated 01-12-2022 thereby granted stay to the provisions of Section 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "*the Rules of 1981*"). Being aggrieved by the said communication/order, the petitioners have preferred this petition.

7. Mr. R.D. Karode, learned Counsel appearing for the petitioners, has vehemently argued that petitioner No.3 had completed five years of service on an unaided section as contemplated under Rule

41 of the Rules of 1981. Petitioner No.3, being the senior-most teacher working in a 20% grant-in-aid school, was eligible to transfer to a 100% grant-in-aid school as the post in the said school became vacant. He has further canvassed 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 for allowing the petition.

8. As against, Mr. S.M. Ghodeswar, learned Assistant Government Pleader appearing for the respondents, has argued that respondent No.1 issued a Government Resolution on 29-04-2024 regarding cancelling the stay granted under G.R. dated 01-12-2022. Thus, he submitted that respondent No.2 is ready to reconsider the petitioners' application to grant approval from a partially 20% grant-in-aid school/division to a 100% grant-in-aid school/division as per the Government rules. Accordingly, he has submitted that an appropriate order may be passed.

9. We have appreciated the rival submissions, perused the impugned order and record, as well as the law laid down in the case of *Friends Social Circle, Akola & Ors. (cited supra)*.

10. At the outset, the issue raised in this petition is no more *res integra* as the same is squarely covered by the judgment in the case of ***Friends Social Circle, Akola & Ors.*** (*cited supra*). It clearly appears from the record that petitioner No.3 has completed five years of service in an unaided division/school. After arising of the vacancy in Janta Vidyalaya Jamod run by petitioner No.1-society from 01-12-2023, the Executive Body/School Committee of petitioner No.1, on 29-02-2024, has resolved to transfer petitioner No.3 from 20% grant-in-aid section to 100% grant-in-aid section with effect from 01-03-2024 as she was the senior-most teacher working on 20% aided section. The respondents do not controvert the said fact. Moreover, respondent No.2, in reply, admitted that by the Government Resolution dated 29-04-2024, respondent No.1-State Government has set aside the Circular dated 01-12-2022, and respondent No.2 is ready to reconsider the proposal of the petitioners to grant approval for transfer of petitioner No.3 from partially 20% grant-in-aid to 100% grant-in-aid school as per the Government Rules.

11. In the background above, it is evident that based on the law laid down in the case of ***Friends Social Circle, Akola & Ors.*** and the Government Resolution dated 29-04-2024, petitioner No.3 is entitled to transfer from partially 20% grant-in-aid division to 100% grant-in-aid

division/school. Hence, we deem it appropriate to allow the petition by passing the following order.

- (i) The impugned order/communication dated 08-04-2024 issued by respondent No.2-Education Officer is hereby quashed and set aside.
- (ii) The proposal for a grant of approval to transfer petitioner No.3 from a partially 20% grant-in-aid division to a 100% grant-in-aid Division/school is hereby restored.
- (iii) It is clarified that 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 petitioner No.3 within a period of four weeks from the date of production of a copy of this Judgment.
- (iv) Respondent No.2 is directed to decide the proposal of petitioner No.3 within a period of eight weeks by dealing with the explanation submitted by the petitioners.
- (v) We have not expressed any opinion on the proposal of petitioner No.3, and the same shall be decided on its own merits and in accordance with law.
- (vi) Needless to clarify, if respondent No.2 proceeds to grant the proposal of petitioner No.3 as prayed, the consequential

benefits will follow, and in that case, the aforesaid directions will not apply.

12. Rule is made absolute in the above terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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