



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

WRIT PETITION NO. 3475 OF 2024

1. The Jalgaon Education Society
Jalgaon Jamod, District Buldhana
Regd.No.F-50, Buldhana 08/02/63,
Through its Secretary,
Tq.Jalgaon Jamod, District-Buldhana
2. The New Era High School,
Jalgaon Jamod, Tq. Jalgaon Jamod,
District Buldhana, through its Head
Master
3. Ku. Jayashri Janardan Wanare,
Aged about 29 years,
Occu : Service as Asst. Teacher,
C/o. The New Era High School,
Jalgaon Jamod, Tq.Jalgaon Jamod,
Distt.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

WRIT PETITION NO. 3629 OF 2024

1. The Jalgaon Education Society
Jalgaon Jamod, Distt. Buldhana
Regd.No.F-50, Buldhana 8/2/63,
Through its Secretary,
Tq.Jalgaon Jamod, District-Buldhana

2. The New Era High School, Jalgaon Jamod, Tq. Jalgaon Jamod, District Buldhana, through its Head Master
3. Lalsing S/o Jamsing Ningwal age about 41 years, Occu : 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, Advocate for Petitioners.

Mr. N.S. Rao, Assi. Govt. Pleader for respondent Nos.1 and 2.

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

RESERVED ON : 27/08/2024

PRONOUNCED ON : 03/09/2024

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

Rule. Rule is made returnable forthwith. Heard finally, with the consent of the learned counsel appearing for the parties.

(2) The petitioners are challenging the order/communication dated 08/04/2024 issued by respondent No.2 Education Officer(Secondary), Zilla Parishad, Buldhana, whereby the proposal forwarded by the petitioners for grant of approval to the services of petitioner No.3 in both the petitions from partially 20% aided division to 100% aided division has been rejected.

(3) Petitioner No.1 is the Education Society, which runs Petitioner No.2 School. Petitioner No.3 in both petitions is an employee of petitioner Nos.1 and 2 working on the post of 'Assistant Teacher'.

(4) Petitioner Jayashri, in Writ petition No.3475/2024, possesses H.Sc., D.Ed. qualification. By appointment order dated 26/06/2015, she was appointed as an assistant teacher on a no-grant basis with petitioner No.2 School for 5th Standard (unaided additional section). Similarly, petitioner Lalsing, in Writ Petition No.3629/2024, possesses a B.A. B.Ed. Qualification. By appointment order dated 26/06/2015, he was appointed as 'Assistant Teacher' on a no-grant basis with petitioner No.2 School on 6th to 8th Standard (unaided additional section).

(5) Respondent No.2, vide a communication dated 31/08/2015, approved the appointments of the petitioners to the

unaided section.

(6) As per the policy decision dated 12/02/2021 and 06/02/2023, respondent No.2 issued an order granting 20% grant-in-aid to Standard 5th to 10th with effect from 28/03/2023 and sanctioned 13 posts of teaching posts (teachers). It is further stated that one Surekha Devidas Daberao and Mohan Shivram Ingle, who were working as 'Assistant Teachers' in the 100% grant-in-aid section, were superannuated with effect from 30/11/2023 and 31/05/2023, respectively, as such, their posts become vacant. Due to the vacancy of two posts of Assistant Teachers, the Executive Body/School Committee of petitioner No.1, on 29/02/2024 had called a meeting and unanimously resolved to transfer both the petitioners in these petitions from 20% grant-in-aid division to 100% grant-in-aid division with effect from 01/03/2024 being the senior most teachers. Accordingly, they submitted a proposal to the respondent No.2 Education Officer (Secondary) on 26/03/2024. However, vide communication/order dated 08/04/2024, respondent No.2 informed the petitioner Nos.1 and 2 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 41-A of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 (hereinafter referred to as "**M.E.P.S. Rules 1981**"). Hence, these petitions.

(7) It is pertinent to note that despite the appearance of respondent Nos.1 and 2 on 26/06/2024, has failed to file a reply to these petitions.

(8) Mr. Ram Karode, learned Counsel for the petitioners, has vehemently argued that petitioners are duly appointed as 'Assistant Teachers' and have completed five years of services in the unaided division. Also, due to the retirement of two employees, petitioners, being seniormost teachers, have been transferred from the 20% grant-in-aid section to the 100% grant-in-aid section. The said transfers were legal and proper.

(9) He further canvassed that said issue is covered by the judgment of this Court in the case of ***Friends Social Circle, Akola and others vs. State of Maharashtra and others, 2023 SCC Online Bom. 1503***, as well as the judgment passed in Writ Petition No.1205/2024. Hence, he urges that petitions be allowed.

(10) As against above, Mr. Rao, learned Assistant Government Pleader, submitted that as per the Government Resolution dated 29/04/2024, the Government Resolution dated 01/12/2022 has been set aside. Respondent No.2 is ready to consider the petitioners' proposal. Hence, he has submitted that the Court may pass appropriate

orders.

(11) We have considered the rival contentions of the parties and perused the record, as well as the law laid down in the case of ***Friends Social Circle*** (supra) and Writ Petition No.1205/2024.

(12) At the outset, it reveals that petitioner No.3 in both petitions was appointed in the unaided division of the school with effect from 01/07/2015. Subsequently, as per the policy decisions dated 12/02/2021 and 06/02/2023, the petitioner No.2 School received a 20% grant-in-aid with effect from 28/03/2023.

(13) It is an undisputed fact that two 'Assistant Teachers' on 100% grant-in-aid division were superannuated on 31/05/2023 and 30/11/2023 respectively and therefore, the Executive Body/School Committee of petitioner No.1 vide Resolution dated 29/02/2024 unanimously resolved to transfer petitioner No.3 in both the petitions from 20% grant-in-aid division to 100% grant-in-aid division School, being the senior most teachers in the said School. The proposal was rejected solely on the ground that the state government has stayed the transfer of the teachers from the unaided division school to the aided division school vide Circular/Communication dated 01/12/2022.

(14) It is evident that the issue raised in both these petitions is no more *res integra*, as it is squarely covered by the judgment in the case of ***Friends Social Circle*** (supra) and other connected petitions. The Government Resolution dated 01/12/2022 has already been quashed and set aside, which stayed the operation of Rule 41-A of the M.E.P.S. Rules 1981. The said decision has been followed in subsequent petitions.

(15) Having considered the aforesaid facts, we are of the view that the issue is squarely covered by the judgment in the case of ***Friends Social Circle*** (supra), and therefore, we deem it appropriate to allow the petitions by passing the following order :-

ORDER

- A) The impugned order/communication dated 08/04/2024 passed/issued by respondent No.2 is hereby quashed and set aside.
- B) The proposal for grant of approval to the transfer of petitioner No.3 in both petitions from 20% grant-in-aid School to 100% 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 in both petitions, he/she 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 proposals of petitioner No.3 – Teacher respectively, after that 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, which shall be decided on its own merits and in accordance with the law.
- G) The said proposals 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; in that case, the aforesaid directions will not apply.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

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