



Judgment

wp5524.23

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

WRIT PETITION No. 5524 OF 2023.

1.Indira Dnyan Prasarak Mandal,
Neri Tahsil Chimur,
District Chandrapur,
through President.

2.Saraswati Kanya Vidyalaya, Neri,
Tahsil Chimur, District Chandrapur,
Through its Headmistress.

3.Nitesh Natthuji Kamdi,
Age 33 years, Occupation – Service,
c/o. Saraswati Kanya Vidyalaya,
Neri, Tahsil Chimur,
District Chandrapur. `

... **PETITIONERS.**

VERSUS

1.State of Maharashtra,
through Secretary, School Education
and Sports Department,
Mantralaya, Mumbai – 32.

2.Education Officer [Secondary]
Zilla Parishad, Chandrapur.

... **RESPONDENTS.**

Ms R.G. Bajaj, Advocate for Petitioners.
Shri I.J. Damle, A.G.P. for Respondents.

**CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.**

DATE : JUNE 10, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Rule. Rule is made returnable forthwith and by consent of the learned Counsel for the parties and the matter is taken up for final disposal.

2. The petitioner no.1 is a Society which runs two schools namely Saraswati Prathamik Vidyalaya and Saraswati Kanya Vidyalaya. Petitioner no.3 was appointed as an assistant teacher in Saraswati Prathamik Vidyalaya in the year 2013. It is submitted that due to reduction of strength of students in Saraswati Pathamik Vidyalaya, petitioner no.3 was declared surplus and therefore, he was transferred to another school under the same management i.e. Saraswati Kanya Vidyalaya, as vacancy arose in the said school.

3. Petitioners have applied for approval of transfer,

Rgd.

however, it was rejected by respondent no.2 vide order dated 09.06.2021 for the reason that the transfer is from primary school to secondary school. The said order of rejection was on the strength of condition no.4 incorporated in Government Resolution dated 01.04.2021.

4. Being aggrieved by the said rejection, petitioners approached to this Court by filing Writ Petition No.4608/2021. The management has clarified in the petition that vide resolution dated 08.03.2021, it was communicated that the transfer is on equivalent post and there is no change in the pay scale too. Having regard to the said position, this Court has set aside the earlier rejection dated 09.06.2021 and directed respondent no.2 to consider the representation of the petitioners afresh.

5. Petitioners once again moved a representation on 12.04.2022 with a specific clarification that the transfer is only from unaided school to an aided school, and there is no change in the cadre or pay scale, however, once again vide the impugned

communication dated 21.07.2023, the approval has been rejected for two reasons. The first ground of rejection is that the government resolution dated 01.04.2021 precludes the transfer vide condition no.4 from one cadre to another. Already the said objection has been explained and accepted by this Court in its earlier order clarifying that the transfer is in the same cadre, though it is in different school.

The second ground for rejection is about the stay to Rule 41[A], vide government resolution dated 01.12.2022. The learned Counsel for the petitioner has brought to our notice that in absence of power, the statutory rule cannot be stayed. This Court in bunch of writ petitions i.e. Writ Petition No.8215/2022 and others vide order dated 21.07.2023, has set aside the circular dated 01.12.2022 to the extent of staying the operation of Rule 41-A. Thus, apparently the said reason does not survive at all.

6. Rule 41-A permits the management to transfer a teacher from unaided school or partially aided school, to the vacant post at aided school or partially aided school, subject to the conditions laid therein. The Respondent no.2 has not rejected the approval for any

other breach of conditions, except the stay to Rule 41-A. We have already clarified that by virtue of the order of this Court in above Writ Petitions, the circular to that extent has been set aside. Thus there appears to be no embargo to transfer a teacher of same cadre from unaided to aided school. The respondent State has not pointed out any other justification for rejection of approval.

7. In view of above the impugned order dated 21.07.2023 passed by respondent no.2, is hereby quashed and set aside. The respondent no.2 is directed to accord approval to the services of petitioner no.3 on the said post, within a period of two weeks from the date of communication of this order.

8. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE