



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

WRIT PETITION NO.275 OF 2024

New Lokhit Shikshan Sanstha, Rohana, Rah. Arvi, Dist. Wardha and anr.

-vs-

State of Maharashtra, Thr. Chief Secretary, School Education and Sports Dept. Mantralaya,
Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri A. Z. Jigbhkate, Advocate for petitioners.

Shri J. Y. Ghurde, Assistant Government Pleader for respondents.

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

DATE : June 18, 2024

P. C.

1. Heard.

2. It is the contention of Shri A. Z. Jibhkate, learned counsel for the petitioners that petitioner No.2 was appointed in a school run and managed by petitioner No.1-Society on permanent no grant-in-aid section with effect from 01/10/2008. In absence of surplus teachers available for absorption with the respondents and the petitioner No.2 having acquired requisite B.Ed qualification, in view of Government Resolution dated 01/04/2021 and in exercise of powers conferred under Rule 41(A) of the Maharashtra Employees of Private Schools Rules, 1981 (for short, MEPS Rules, 1981), the Management transferred the services of petitioner No.2 from permanent no grant-in-aid section to 100% grant-in-aid section. A proposal for approval in that regard was sent to the Education Officer on 19/05/2022. Same was rejected by the impugned order dated 22/11/2023. As such this petition.

3. It is the contention of the learned counsel for the petitioners that the issue is covered by the judgment dated 21/07/2023 delivered in Writ Petition No.8215/2022 (*Friends Social Circle, Akola and ors. vs. State of Maharashtra and ors. with connected writ petitions*). According to him once the powers are vested in the Management for transferring the services of an employee within the schools which are managed by the very same management, the same has to be in accordance with Rule 41(A) of MEPS Rules, 1981. MEPS Rules, 1981 cannot be given go-by by issuing administrative circulars by the Government. He would claim that the issue is squarely covered by the aforesaid judgment.

4. Apart from above, he would claim that the appointment of petitioner No.2 can be considered from Scheduled Caste category as he holds validity certificate issued on 24/06/2011. Copy of which is taken on record and marked 'X' for identification.

5. The learned Assistant Government Pleader Shri J. Y. Ghurde for the respondents would claim that while passing the order impugned, perhaps respondent No.4-Education Officer (Secondary), Zilla Parishad, Wardha has not taken into account the aforesaid law laid down by the Division Bench in Writ Petition No.8215/2022. As such he submits that the Court may pass appropriate orders in the matter.

6. We have perused the judgment in above writ petition.

7. The petitioner No.2 was appointed on 01/10/2008 on the un-aided post as Trained Graduate Teacher. With effect from 12/11/2021 he was transferred to aided post. Hence it can be said that petitioner No.1 transferred the service of petitioner No.2 to grant-in-aid category after following due process.

8. In the aforesaid background we are of the prima facie view that the issue is squarely covered by the judgment in Writ Petition No.8512/2022 (supra).
7. Accordingly the following order is passed :
- (a) The impugned order dated 22/11/2023 passed by respondent No.4- Education Officer (Secondary), Zilla Parishad, Wardha is hereby quashed and set aside.
 - (b) The said Education Officer shall pass a reasoned order by reconsidering the proposal dated 19/05/2022 for grant of approval to the appointment of petitioner No.2 as an employee of petitioner No.1 in the light of judgment dated 21/07/2023 in Writ Petition No.8215/2022 (*Friends Social Circle, Akola and ors. vs. State of Maharashtra and ors. with connected writ petitions*).
 - (c) For said purpose, both the petitioners are directed to appear before respondent No.4-Education Officer (Secondary), Zilla Parishad, Wardha on 11/07/2024 with all relevant documents.
 - (d) After giving an opportunity to the petitioners, a fresh decision be taken by the Education Officer in any case within a period of four weeks from 11/07/2024 and shall be communicated to the petitioners.
8. The writ petition is partly allowed and disposed of in aforesaid terms. No costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)