



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

WRIT PETITION NO. 307 OF 2024

- 1) Yawali Shahid Smarak Samiti,
Yawali, through its President
Shri Panditrao V. Yawalikar,
R/o Hollywood Colony, Kathora Road,
Amravati, Tahsil, and District Amravati.
- 2) Shahid Smarak Vidyalaya,
Yawali its Headmaster, Yawali,
Tahsil and District Amravati.
- 3) Ku. Yogita d/o Subhashrao Yawalikar,
Aged about 44 years, Occ- Service,
R/o Yawali, Tahsil and District
Amravati.

.... PETITIONERS

VERSUS

- 1) State of Maharashtra,
through its Secretary, School Education
Department, Mantralaya,
Mumbai – 400 032.
- 2) Education Officer (Secondary),
Zilla Parishad, Amravati,
Tahsil and District Amravati.

.... RESPONDENTS

Mr. I.N. Choudhari, Counsel for the petitioners,
Mr. S.M. Ghodeswar, A.G.P for the respondents.

CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.
DATE : 25-04-2024

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

Heard. **Rule.** Rule is made returnable forthwith with
consent of the learned Counsel for the parties.

2. The petitioners are challenging the impugned order/communication dated 01-12-2023 passed/issued by respondent No.2-Education Officer (Secondary), Zilla Parishad, Amravati, thereby refusing to approve the transfer of petitioner No.3 on the post of Assistant Teacher from unaided section of Shahid Smruti Vidyalaya, Kathora to aided section of petitioner No.2-Shahid Smarak Vidyalaya, Yawali.

3. Petitioner No.1 is the education society and runs Petitioner No.2 School. Petitioner No.3 was appointed to the post of Assistant Teacher in the secondary section of Shahid Smruti Vidyalaya, Kathora on 05-8-2008 under the Open category on an unaided basis. Respondent No.2 vide order dated 13-07-2014 granted approval to the appointment of petitioner No.3.

4. After February 2022, petitioner No.3 was senior-most in the Shahid Smruti Vidyalaya, Kathora. Since Mr. Eknath Vitthal Jogdande working as an Assistant Teacher in petitioner No.3 died on 30-12-2022, one post of Assistant Teacher in petitioner No.2 school became vacant. In addition to that, another post of Assistant Teacher in petitioner No.2 school was vacant. Thus to fill up the said vacant posts, petitioner No.1 in an executive body meeting dated 09-09-2023 passed resolution No.5-A, thereby resolving to transfer petitioner No.3 from an

unaided section of Shahid Smruti Vidyalaya, Kathora to the aided section of petitioner No.2 school. Pursuant to the resolution, petitioner No.1 management issued an appointment order dated 13-09-2023 to petitioner No.3 thereby transferring her from an unaided section of Shahid Smruti Vidyalaya, Kathora to an aided section of petitioner No.2 school. Accordingly, petitioner No.3 joined the duties as Assistant Teacher in petitioner No.2 school on 21-09-2023.

5. Petitioner Nos.1 and 2 submitted the proposal of petitioner No.3 for grant of approval to her transfer from the unaided section to the aided section on the post of Assistant Teacher vide proposal dated 05-10-2023. However, respondent No.2 vide impugned order/communication dated 01-12-2023 informed petitioner Nos.1 and 2 that there are some deficiencies in the proposal dated 05-10-2023 and vide Government Circular dated 01-12-2023 the State Government has granted stay to the transfer from unaided section to aided section. Therefore, rejected the said proposal. Hence, this petition.

6. Mr. I.N. Choudhari, learned Counsel for the petitioners has submitted 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 and set aside the impugned order passed by respondent No.2.

7. 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. 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 for the post of Assistant Teacher on an unaided basis school.

10. It further appears that vide order dated 21-07-2023 passed in Writ Petition No.8215/2022 along with other connected matters, the Coordinate Bench of this Court has quashed and set aside the Government Resolution dated 01-12-2022 to the extent it stays the operation of Rule 41A of the Rules of 1981. Thus, it emerges that the genesis to pass the impugned order/communication dated 01-12-2023 did not subsist on the day of passing the impugned order. Consequently, it reveals that respondent No.2 erred in rejecting to approve the proposal submitted by petitioner Nos.1 and 2 on the ground that operation of Rule 41A of the Maharashtra Employees of Private Service (Conditions of Service) Rules, 1981 has been stayed. Moreover, the said decision has been followed by this Court in subsequent writ petitions.

11. In view of 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)*. As such, we deem it appropriate to allow the petition by passing the following order.

- (a) The impugned order/communication dated 01-12-2023 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 section to an aided section 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-Assistant 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.)