



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

WRIT PETITION NO. 2030 OF 2024

- 1) Shikshan Vikas Mandir,
Kuralpurna, Tahsil – Chandur Bazar,
District – Amravati, through its
President.
- 2) Anand Primary School,
Chandur Bazar, Tq. Chandur Bazar,
District Amravati, through its
Head Mistress.
- 3) Gajendra Madhukarrao Mural,
Aged about 48 years,
Occupation – Service,
R/o Prabhag No.5, Chandur Bazar,
District – Amravati.

.... **PETITIONERS**

VERSUS

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

.... **RESPONDENTS**

Mr. Ram Karode, Counsel for the petitioners,
Mr. A.V. Palshikar, A.G.P. for respondent No.1,
Mr. J.B. Kasat, Counsel for respondent No.2.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATE OF RESERVING THE JUDGMENT : 20-01-2025

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 23-01-2025

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

Rule. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioners challenge the order/communication dated 12-03-2024 issued by respondent No.2-Education Officer (Primary), Zilla Parishad, Amravati, whereby the proposal forwarded by petitioner No.1-society for grant of approval to the transfer of services of petitioner No.3 from 60% 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 26-04-2012, he was appointed to the post of Teacher with effect from 26-04-2012 in petitioner No.2's school on no grant basis, which was approved by respondent No.2-Education Officer vide order/communication dated 26-06-2013.

5. As per the policy decision of 12-10-2023 respondent No.2 issued order granting 60% grant-in-aid to 4th and 7th Standards of petitioner No.2 school with effect from 01-01-2023.

6. It is further averred that Shri Dipak Keshavrao Kalamkhede, who was working on the 100% grant-in-aid section, was superannuated with effect from 31-01-2024 in petitioner No.2-School, 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 60% grant-in-aid division of 4th and 7th Standard, was eligible to transfer to the 100% grant-in-aid division. Accordingly, the Executive Body/School Committee of petitioner No.1 on 06-02-2024 unanimously passed the resolution to transfer petitioner No.3 from 60% grant-in-aid division to 100% grant-in-aid division with effect from 01-02-2024. Pursuant to the said resolution, on 22-02-2024, petitioner No.2 forwarded the proposal for the grant of approval to transfer of petitioner No.3. However, vide communication dated 12-03-2024, respondent No.2 rejected the proposal on the ground that respondent No.1-State Government has issued Circular dated 01-12-2022 and thereby granted stay to the G.R. dated 08/06/2020 and G.R. dated 01/04/2021 i.e. 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. Therefore, he submits that the issue in the case is squarely 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 and followed in Writ Petition No.3630/2024, vide order dated 19-08-2024. Therefore, it is contended that the petitioner is entitled to the relief as prayed. Accordingly, he urged for allowing the petition.

8. As against, Mr. A.V. Palshikar, learned Assistant Government Pleader, has gone through the said judgments and submitted that the said judgments cover the issue in the case and, therefore, 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. and W.P. No.3630/2024 (cited supra)*.

10. At the outset, it seems that 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/partially aided division/school. After arising of the vacancy in petitioner No.2-School run by petitioner No.1-society from 31-01-2024, the Executive Body/School Committee of petitioner No.1, on 06-02-2024, has resolved to transfer petitioner No.3 from 60% grant-in-aid section to 100% grant-in-aid section with effect from 01-02-2024 as he was the senior-most teacher working on 60% aided section. The respondents do not controvert the said facts. Moreover, by the Government Resolution dated 29-04-2024, respondent No.1-State Government has set aside the Circular dated 01-12-2022. Similarly, despite granting opportunities, the respondents failed to file replies.

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, petitioners No.1 and 2 are entitled to transfer petitioner No.3 from partially 60% grant-in-aid division to 100% grant-in-aid division. Hence, we deem it appropriate to allow the petition by passing the following order.

- (i) The impugned order/communication dated 12-03-2024 issued by respondent No.2-Education Officer (primary) is hereby quashed and set aside.

- (ii) The proposal for a grant of approval to transfer petitioner No.3 from a partially 60% 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 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 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 the 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.)

(AVINASH G. GHAROTE, J.)