



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

WRIT PETITION NO. 5730 OF 2025

- 1) **Lok Shikshan Sanstha, Kingaonraja,**
Tq. Shindkhedraja, Dist. Buldhana,
through its President.
- 2) **Nutun Madhyamik Vidyalaya, Kingaonraja,**
Tq. Shindkhedraja, Dist. Buldhana,
through its Headmaster.
- 3) **Siddheshwar Madhyamik Vidyalaya,**
Hatta, Tq. Vasmat, Dist. Hingoli,
through its Headmaster.
- 4) **Suresh Yatiram Kangale,**
Aged about 45 years, Occu. Service,
C/o. At Post Hatta,
Tq. Vasmat, Dist. Hingoli.

.... **PETITIONERS**

// **VERSUS** //

- 1) **State of Maharashtra**
through its Secretary,
Department of Education
and Sports, Mantralaya, Mumbai.
- 2) **The Education Officer (Sec.)**
Zilla Parishad, Buldhana,
District - Buldhana.
- 3) **The Deputy Director of Education,**
Amravati Division, Amravati.

.... **RESPONDENTS**

Mr. R. D. Karode, Advocate for the Petitioners.
Mr. N. R. Patil, Assistant Government Pleader for
the Respondents.

**CORAM : MRS. M. S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

**DATE ON RESERVING THE JUDGMENT : 05.03.2026
DATE ON PRONOUNCING THE JUDGMENT : 01.04.2026**

JUDGMENT : (Per – M. S. JAWALKAR, J.)

1. Heard. **Rule.** Rule is made returnable forthwith. Matter is taken up for final hearing at the stage of admission by consent and request of the parties.

2. By this Petition, the Petitioners are challenging the order dated 09.06.2025 issued by Respondent No. 2- Education Officer (Secondary), Zilla Parishad, Buldhana. The Petitioners are further seeking directions to Respondent No.2 to decide the proposal dated 01.01.2025, submitted by the Petitioners for grant approval to the transfer of Petitioner No. 4 from partially aided division (40% grant-in-aid) to aided division (100% grant-in-aid) i.e., from Petitioner No. 3 School to Petitioner No. 2 School along with all consequential benefits of service.

3. It is submitted that the Petitioner No.4 was appointed on the post of Junior Clerk in the Petitioner No.3 School, run by Petitioner No.1 Society, on no grant-in-aid basis, vide appointment order dated 28.06.2004, thereafter the said school

started receiving 40% of grant-in-aid. That, after the superannuation of one Subhash Vinayak Jadhav, who was working as Senior Clerk on 100% grant-in-aid basis in Petitioner No. 2 School, the Petitioner No. 4 came to be promoted and transferred to the said post as per the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as MEPS Rules).

4. It is further submitted that the Headmaster of the Petitioner No. 3 School relieved the Petitioner No. 4 and accordingly the proposal dated 06.01.2024 for grant of approval to the transfer came to be forwarded to the Respondent No. 2 Education Officer. However, the Respondent No. 2 rejected the said proposal vide its order dated 27.02.2024 on the ground that vide Government Resolution dated 01.12.2022 the State Government has imposed ban on such transfer.

5. It is pertinent to note here that, this Court in Writ Petition No. 8215/2022 has set aside the Government Resolution dated 01.12.2022. Owing to this, the Petitioner No. 4 again forwarded the proposal to Respondent No.2 vide a letter dated 22.04.2024. However, again the proposal of the Petitioner

No. 4 came to be rejected by the Respondent No. 2, vide its order dated 21.08.2024, on the ground that the relevant posts are not available.

6. Subsequently, the Petitioner No. 4 pointed out that the relevant posts are available and further requested the Respondent No. 2 to consider the proposal of the Petitioner No. 4. However, the Respondent No. 2, vide its impugned order dated 09.06.2025, directed the Petitioner No. 4 to submit the proposal to the State Government as per the provisions of Government Resolution dated 29.04.2024. Aggrieved by this, the Petitioners have filed the present petition.

7. The Petitioners have relied on the judgment of this Court in **Writ Petition No. 5862/2024 (Friends Social Circle, Akola vs. State of Maharashtra)**, dated 08.04.2025, wherein this Court has set aside the clause No. 2 of the Government Resolution dated 29.04.2024.

8. The Learned Council for Petitioners have relied on following citations in support of their claim:

- (i) ***Writ Petition No. 2113/2021, Shahbabu Education Society, Patur and others vs. The State of Maharashtra & another***, dated 05/10/2023;
- (ii) ***Rahul Prakash Nilgar vs. State of Maharashtra & Anr., 2021 SCC OnLine Bom 4558*** and
- (iii) ***Friends Social Circle Akola vs. State of Maharashtra, 2025(3) Mh.L.J. 279.***

9. *Per Contra*, the learned Assistant Government Pleader for Respondent made oral submissions opposing the present petition.

10. Heard the submissions of both parties at length, examined the documents filed on record and considered the authorities relied upon by the learned Counsel for the Petitioners.

11. There is no dispute that the Petition No.4 – Suresh Kangale came to be appointed on 28.06.2004 as a Junior Clerk and the Education Officer, Zilla Parishad, Hingoli also granted approval on no grant-in-basis. The Petitioner No.3 School started receiving 20% grant-in-aid and thereafter 40% grant-in-aid on 22.11.2024 and the Management vide a Resolution, unanimously resolved to transfer the services of the Petitioner No.4 from Petitioner No.3 School to Petitioner No.2 School i.e.

from partially aided to 100% aided division, on account of superannuation of one Senior Clerk Shri Subhash Jadhav. The said transfer is on promotion. The headmaster relieved the Petitioner No.4 on 06.01.2024 and the proposal for grant of approval to the transfer of Petitioner No.4 was forwarded to the Education Officer, which came to be rejected on 27.02.2024 on the ground that the State Government had imposed ban on such transfer vide Government Resolution dated 01.12.2022. The learned Counsel for the Petitioners relied on Judgment in **Writ Petition No. 8215/2022 (Friends Social Circle, Akola vs. State of Maharashtra)**, dated 21.07.2023, whereby this Court set aside the said G.R. dated 01.12.2022.

12. The learned Counsel for the Petitioners also placed reliance on Judgment in **Shahbabu Education Society, Patur** (supra), wherein this Court in para 5 held as under :

*“5. As the post of Science teacher became vacant at the petitioner no.3-School, the services of the petitioner no.4 came to be transferred on the said vacant post on 31.03.2020. The same was under Rule 41 of the Rules of 1981. The transfer from an un-aided post in Junior College to an aided post in a Higher Secondary School run by the same Management being permissible has been held in **Rahul Prakash Nilgar vs. State of Maharashtra and another [2021 SCC Online***

Bom 4558] that was relied upon by the learned counsel for the petitioners. After considering the provisions of Section 2(24) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 alongwith Rule 41(1) of the Rules of 1981, it was held in paragraph 13 as under:

“13. On conjoint reading of Rule 41(1) with Section 2(24), i.e., definition of ‘school’, transfer of non-teaching staff from unaided post in junior college to aided post in higher secondary school run by the same Management is thus permissible, subject to the conditions prescribed under Rule 41(1) and Rule 41(2) of the MEPS Rules. It is not the case of the Education Officer in the impugned order that the other conditions prescribed under Rule 41(1) are not complied with by the Management. In our view, the impugned order is thus in violation of Rule 41(1) and Rule 41(2) of the MEPS Rules and deserves to be quashed and set aside.”

It thus becomes clear that the aspect of the institution being run on permanent no grant basis in the present context is not very relevant.”

13. The contention of the petitioners is that again a proposal was forwarded to grant approval for transfer, however, fresh proposal was returned on the ground that post is not available. It is further contention of the Petitioners that on perusal of Staffing Pattern would reveal that the post is very much available. The Respondent No.1 State issued a Circular dated 29.04.2024 and 03.10.2024, thereby directed all the

Education Officer not to take any decision on the proposal submitted for grant of approval from unaided to aided division, however, the said circular came to be challenged before this Court in **Writ Petition No. 5862/2024 (Friends Social Circle, Akola vs. State of Maharashtra)** and this Court has set aside the said circular by which the Divisional Director of Education, Education Officer and Deputy Director of Education, before whom the proposal for approval of transfer are pending be forwarded to the State for its approval. It appears that thereafter, there was an amendment in the Maharashtra Employees of Private Schools (Conditions of Rules) Regulation act, 1977 in Section 41A (1)(h) on 13th November, 2025, thereby amending the clause by substituting words “the Education Officer or Deputy Director, as the case may be” by words “Commissioner (Education), State of Maharashtra, Pune”.

14. The learned Assistant Government Pleader submitted that in view of this amendment, the proposal is required to be approved by the Commissioner (Education), State of Maharashtra, Pune. In view of this amendment in the Act itself, in our considered opinion, the proposal for grant of approval of

transfer is required now to be forwarded to Commissioner (Education), State of Maharashtra, Pune as he has the competent authority to decide the same. Though, there is no such reference in the impugned order about the amendment, as the said communication is prior to amendment of Section 41A (1)(h). We do not see any prejudice is going to cause to the Petitioners if the proposal for transfer is decided by the Commissioner (Education), State of Maharashtra, Pune being competent Authority in view of amendment. The amendment is subsequent to transfer and the proposal was not sanctioned by any competent authority till date, therefore, in view of the amendment, the Commissioner (Education), State of Maharashtra, Pune is the competent authority. The Petitioners may forward the proposal for approval of transfer of Petitioner No.4 to the Commissioner (Education), State of Maharashtra, Pune. As the Petition is devoid of merit, the petition stands **dismissed**. No order as to costs.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)