

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**45 WRIT PETITION NO.1619 OF 2023**

**SANJAY RAMNATH JADHAV  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH  
THE PRINCIPAL SECRETARY AND OTHERS**

**AND  
78 WRIT PETITION NO.1698 OF 2023**

**MANDA RAMESH LANDGE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH  
THE PRINCIPAL SECRETARY AND OTHERS**

**AND  
86 WRIT PETITION NO.1711 OF 2023**

**BHANGARE SHRIRAM LAHANU AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH  
THE PRINCIPAL SECRETARY AND OTHERS**

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Advocate for Petitioners : Mr. Shelke Shivaji T.  
AGP for Respondents/State : S/Shri S.G. Sangle, S.K. Tambe, V.M. Kagne  
Advocate for R/4 : Mr. S.S. Wagh

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**CORAM : RAVINDRA V. GHUGE &  
SANJAY A. DESHMUKH, JJ.  
DATE : 13<sup>th</sup> February, 2023**

**PC. :-**

1. All these petitioners are identically placed. All of them have put forth prayer clause-B as under:

*“B) Quash and set aside the order dt. 09.12.2022 at Exh. E passed by the Education Officer (Secondary), ZP, Ahmednagar thereby rejecting the proposal seeking approval to the transfer of the petitioner on 100% aided post from 40% aided post and direct the Education Officer to grant approval to the transfer of the petitioner as per the proposal of the management at Exh. C and for that purpose issue necessary writ or order;”*

2. We have considered the submissions of the learned advocate for the petitioners and the learned AGP on behalf of the respondent-authorities.

3. The impugned order indicates that the proposal seeking approval to the transfer of the petitioners from 40% aided posts to 100% aided posts has been rejected as Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 is kept in abeyance, by the circular dated 01.12.2022.

4. It is well settled that a Rule framed under a statute or a statute, cannot be kept in abeyance by a Government circular. On these premises, this Court, at the Nagpur, passed an order on 21.12.2022 in Civil Writ Petition No.8215/2022 concluding that the circular dated 01.12.2022, which stayed the effect of Rule 41A, cannot be continued. Hence, by an interim order, the said circular has been stayed and kept in abeyance. It was also directed that the proposal of the said petitioners can be considered as per Rule 41A.

5. In view of the above, these petitions are disposed off. The impugned order dated 09.12.2022 stands set aside. Considering the law applicable, and in view of the fact that the circular staying the operation of Rule 41A has itself been stayed, that we direct the respondent no.3-Education Officer (Secondary), Shri Ashok Kadus, to consider the proposal forwarded by the management dated 08.08.2022 afresh, in the light of Rule 41A, by following the due procedure laid down in law, within a period of 30 days from today. Pending Civil Application, if any, also stands disposed off.

**[SANJAY A. DESHMUKH, J.]**

**[RAVINDRA V. GHUGE, J.]**