

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

73 WRIT PETITION NO.2667 OF 2023

TUKARAM JANARDHAN MANE
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Sambhaji G. Munde.
AGP for Respondent/State : Mr. S. P. Tiwari.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 08th March, 2023.

Per Court:

1. The Petitioner is aggrieved that his transfer from unaided category to the aided, has not been approved by the competent authority vide order dated 13th January, 2023.

2. We have considered the submissions of the learned Advocate for the Petitioner and the learned AGP. The Education Officer has recorded that there are 95 surplus teachers and considering Rule 41A of the MEPS Rules, 1981, until the surplus teachers, to the extent of those senior to the Petitioner, are not absorbed, the Petitioner cannot claim transfer from the unaided category to the vacant post available in the aided category. Rule 41A was stayed by the State Government by a circular dated 1st December,

2022. This Court, at Nagpur, vide order dated 21st December, 2022 passed in Writ Petition No.8215 of 2022, stayed the said circular thereby restoring Rule 41 A.

3. The learned Advocate for the Petitioner submit that the possibility of some of the 95 surplus teachers being senior to the Petitioner, cannot be ruled out. The learned AGP submits that there are 95 surplus teachers, who are senior to the Petitioner and, therefore, until the senior surplus teachers are not absorbed on permanent vacant posts, the Petitioner's transfer from the unaided to the vacant post in the aided category, cannot be granted an approval.

4. In view of the above, this Petition is disposed off. Needless to state, the Education Officer, while directing absorption of surplus teachers in various institutions on vacant posts, would consider the claim of the Petitioner depending on his seniority and, as and when, the Petitioner's turn comes, the Education Officer can consider such case, if the management transfers him from the unaided to the aided category.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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