

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

82 WRIT PETITION NO.3999 OF 2023

BAPURAO WAMANRAO KALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...
Advocate for Petitioner : Mr. Sushant B. Choudhari
AGP for Respondents: Mr. V.M. Kagne
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 12th APRIL, 2023.**

PER COURT :-

1. The Petitioner has put forth prayer clauses B and C, as under:-

“B] By issuing appropriate Writ, order or directions, hold and declare that, the impugned communication Dtd. 20/03/2023 issued by Respondent No. 2 is arbitrary and illegal to the well settled position of the law, and hence, the same is liable to be quashed and set-aside, and for that purpose issue necessary orders;

C] By issuing appropriate Writ, order or directions, Respondent No. 2 may kindly be directed to grant approval to the transfer of the services of petitioner as assistant teacher from the unaided division to the aided division of the secondary school run by the same management, with all consequential benefits, and for that purpose issue necessary orders;”

2. Respondent Nos. 3 and 4 are formal parties.

3. We have considered the submissions of the learned advocate for the Petitioner and the learned A.G.P.. The proposal forwarded by the management seeking approval to the transfer of the Petitioner from the unaided establishment to the aided establishment, is turned down on the ground that the Rule 41(1) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981, has been stayed by the Government, vide Government Resolution dated 01.12.2022.

4. We are surprised that the Education Officer has not even read the impugned order before signing it. The issue of transferring of an employee from the unaided establishment to the aided establishment, is covered by Rule 41A of the Rules of 1981. Moreover, the Government Resolution dated 01.12.2022, staying Rule 41A, has been stayed by this Court at Nagpur, vide order dated 21.02.2022, passed in writ Petition No. 8215 of 2022.

5. In view of the above, this Petition is partly allowed. The impugned order is quashed and set aside. The proposal forwarded by the management, bearing No. JKMUMVL/39, dated 10.3.2023, has been restored to the file of the Education Officer (Secondary), Zilla Parishad, Parbhani, to be considered afresh, in the light of Rule 41A of the Rules of 1981. Let the order be passed on the said proposal, on or before 31.05.2023.

6. It is informed that after filing of the Petition, the unaided establishment, on which the Petitioner was working, has now been granted 20% aid. This would, however, not affect the proposal of the Petitioner and a decision thereon.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/