

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

901 REVIEW APPLICATION (CIVIL) NO.234 OF 2023
IN WP/1697/2023

- 1) Bharat Multipurpose Education Society,
Nalgir, Tq. Udgir, Dist. Latur,
Through its Secretary
Shri. D.P. Nadarge
Age. 72 years, Occu. Agriculturist,
R/o. Nalgir, Tq. Udgir, Dist. Latur.
- 2) Ravi Vitthalrao Bhamare
Age. 35 years, Occu. Service,
R/o. C/o Bapu Madhyamik Vidhayalay,
Nageshwadi, Tq. Chakur Dist. Latur.

... Applicants

Versus

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education
Latur Division, Latur.
- 3) The Education Officer (Primary),
Zilla Parishad, Latur.
- 4) The Education Officer (Secondary),
Zilla Parishad, Latur.

... Respondents

...

Mr. Anand Vinayakrao Patil Indrale, Advocate for Applicants.

Mr. P. S. Patil, AGP for Respondent Nos.1, 2 & 4.

Mr. V. C. Patil, h/f Mr. U. B. Bondar, Advocate for Respondent No.3.

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

DATE : 30th November, 2023.

Per Court:

1. We have considered the submissions of the learned Advocates for the respective sides. Having perused Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, more specifically clause (d), which expressly prohibits a transfer from primary to higher primary or higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. schools or *vice-versa*, the learned Advocate for the Management submits that what was subjected to the order of the Education Officer impugned in the Writ Petition, was a '*no objection*' given by the Management. Factually, a proposal for transferring Petitioner No.2 / employee was not put up before the Education Officer (Primary).

2. The learned Advocate submits that the Management would scrupulously follow Rule 41A in letters and spirit and consider whether the Petitioner's transfer from partially aided primary school to a secondary fully aided school, would be permissible and by ensuring that the conditions set out in Rule 41A are complied with, a fresh proposal would be forwarded. Petitioner No.2 / employee makes a statement that his case may be considered for prospective approval and he would not claim any benefits, either directly or indirectly, or seek retrospective approval.

3. We find from the specific language used in clause (d) under Rule 41A (1) viz. **“transfer shall not be made”** from one level to another level, bars a transfer from the primary level to the secondary level. The circular referred to by the Review Applicants dated 1st April, 2021, more particularly clause (4), would indicate that if the pay-scale is the same, a transfer from one level to higher level could be permitted. Question would be whether a Circular can over-ride a provision under the statute. We would not entertain the said submission at this stage, since we are dealing with a Review Application. It is for the competent Education Officer to consider the language used in clause (d) of Rule 41A(1).

4. In view of the above, **this Review Application is rejected.**

5. If the Management scrupulously follow Rule 41A and if it tenders a fresh proposal of Petitioner No.2 / employee, the Education Officer shall verify that each of the conditions set out under Rule 41A are strictly complied with and pass a reasoned order.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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