

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

WRIT PETITION NO. 4377 OF 2023

Pratibha d/o Nagorao Somache

...Petitioner

Versus

The State of Maharashtra & ors.

...Respondents

.....

Mr. R. I. Wakade – Advocate for the petitioner

Mr. S. K. Tambe – AGP for respondent/State

Mr. P. R. Nangare – Advocate for respondent no. 3

.....

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

DATED : 24th APRIL 2023

PER COURT : -

1. The petitioner is identically placed. She has put forth prayer clause-B as under:

“B) By issuing Writ of Mandamus or any appropriate Writ, order or direction in the like nature, impugned order dtd. 19.01.2023 passed by respondent No. 3- Education Officer (Primary), Zilla Parishad, Aurangabad thereby refusing to grant an approval to the transfer of petitioner from unaided to aided post w.e.f. 03.10.2022 may kindly be quashed and set aside.”

2. We have considered the submissions of the learned advocate for the petitioner 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 petitioner from the unaided

establishment to the 100% aided establishment, 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 bench, passed an order on 21.12.2022 in Civil Writ Petition No.8215/2022, and the circular dated 01.12.2022, which stayed the effect of Rule 41A, has been stayed. It was also directed that the proposal of the said petitioners can be considered as per Rule 41A.

5. In view of the above, this **petition is disposed off**. The impugned order dated 19.01.2023 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 (Primary) to consider the proposal forwarded by the management dated 28.12.2022, 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]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE