

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

35 WRIT PETITION NO.5248 OF 2023

DINKAR LAXMAN BAWASKAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS

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Advocate for Petitioner : Mr. S.S. Dambe
AGP for Respondents: Mr. A.A. Jagatkar

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CORAM : MANGESH S. PATIL & S. G. CHAPALGAONKAR, JJ.
Dated: June 05, 2023

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PER COURT :-

1. This Petitioner is aggrieved by the impugned order passed by the Deputy Director of Education, thereby rejecting the proposal for grant of approval to the transfer of the Petitioner from the unaided post to the aided post under Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 on the ground that the State Government has stayed Rule 41A by circular dated 01/12/2022.

2. The learned Advocate for the Petitioner submits that the Circular dated 01/12/2022, has been stayed by this Court at the Nagpur bench and that their case is covered by the

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order dated 02.05.2022, passed by this Court, in Writ Petition No.4431 of 2023 and group of cases.

3. In view of the above, this Petition is partly allowed by quashing and setting aside the impugned order and remitting the proposal of the Petitioner to the Deputy Director of Education. We are issuing similar directions as under :-

- (a) Wherever the Management/Respondent in these Petitions has not intimated to the Deputy Director of Education as regards the available vacancies in it's Institution, such Management shall forthwith issue communication to the Deputy Director of Education, on or before 26.6.2023 setting forth details of the vacancies available with the said Institution.
- (b) While considering the above, if such communication has already been forwarded to the Deputy Director of Education by some of the Management, the issue of surplus teachers vis-a-vis available vacancies in Jalna district, based on their seniority and eligibility, will be considered and recommendation of surplus teachers to particular Institution for absorption, would

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be considered by the Deputy Director of Education.

- (c) While approving transfers from unaided to aided category as per the proposal forwarded by the Respondent/Management, the Deputy Director of Education shall consider surplus teachers available and while approving such transfers, would also consider whether, an imbalance in reservation is likely to be created in the aided category owing to such transfers.
- (d) As far as possible, the Deputy Director of Education shall ensure that an imbalance is not created in reservation while approving such transfers to the aided category vis-a-vis vacancies that have occurred from the reserved category on account of the teachers, who are exiting employment on account of their superannuation or voluntary retirement, etc..
- (e) After considering the above aspects, the Deputy Director of Education shall pass a reasoned order in the case before him, as expeditiously as possible and preferably on or before 31.7.2023.

- (f) Needless to state, those teachers, whose proposals would be approved for transfer from the unaided to aided category, would be entitled for all consequential benefits from the dates on which the transfer is approved.
- (g) The above guidelines would apply squarely to the cases wherein, the transfer is effected from unaided to partially aided or fully aided or from partially aided to fully aided category, etc.
- (h) In the event of any grievance of the Petitioner or any other teacher, persisting or cropping up on account of reservation/backlog while approving transfer of teacher from unaided to aided or partially aided or from partially aided to fully aided category, the said issue will be left open if there is specific challenge to that extent.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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