

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

6 WRIT PETITION NO. 5401 OF 2023

DIPA UTTAMRAO LUNGARE
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Panpatte V. S.
AGP for Respondent Nos. 1 & 2 : Mr. S.G. Sangale
Advocate for Respondent Nos. 3 & 4 : Ms. Thorat Yogita S.
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 17 JULY 2023

PC :

Heard the learned Advocate for the petitioner, learned AGP and also learned Advocate Ms. Thorat, who appears for respondent nos. 3 and 4.

2. Leave granted to delete respondent nos. 5 and 6. Amendment to be carried forthwith.

3. By the impugned order, the respondent no. 3 – Education Officer (Primary), has refused to grant approval to the petitioner's transfer from unaided division to aided division by referring to a circular issued by the Education Department dated 01 December, 2022.

4. The issue has been dealt with by this Court in number of matters. It has been expressly observed that by way of a departmental

circular the statutory provision containing Rule 41 (A) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 cannot be curtailed. In the matter of *Friends Social Circle Akola, through secretary Mohd. Farooque Gulam Gaus and others Versus The State of Maharashtra and others, Writ Petition No. 8215 of 2022 dated 21.12.2022 (Nagpur Bench)*, has already stayed operation of the circular dated 01 December 2022.

5. We allow the Writ Petition partly and quash and set aside the impugned order and direct the respondent no. 3 – Education Officer, to take a decision afresh and the approval shall not be refused by referring to the circular dated 01 December 2022. The decision shall be taken as expeditiously as possible and in any case within a period of six weeks from today.

6. The Writ Petition is disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

spc/