

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

WRIT PETITION NO.5999 OF 2023

**RAJASHRI NARAYAN BHADANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND ANOTHER**

...

Mr. Vijay B. Patil, Advocate for the Petitioner.
Mr. P. K. Lakhotiya, AGP for Respondents-State.

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**CORAM : MANGESH S. PATIL AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 06th JUNE, 2023.

P.C:-

1. Heard the learned advocate for the petitioner as also the learned A.G.P.

2. The petitioner who has been transferred from unaided post to aided post is seeking approval to such appointment/transfer. He is aggrieved by the impugned communication received by the management from the Education Officer (Secondary) (respondent no.2) dated 21.12.2022, whereby the proposal has been turned down on two counts:-

- (i) There is an objection raised by one Smt. Shobha Atmaram Patil regarding seniority in effecting such transfer;
- (ii) By virtue of circular issued by the School Education and Sports Ministry dated 01.12.2022, the operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 has been stayed.

3. As far as the claim of Smt. Shobha Atmaram Patil is concerned, if she is already before the Education Officer (Secondary) (Respondent No.2) and her grievance is being entertained by him, even if the entitlement of the petitioner to seek approval is dependent on the decision in respect of Smt. Shobha Atmaram Patil, it would be a dispute *inter se* between two individuals. It would always be open for the Education Officer (Secondary) to consider the request of the petitioner simultaneously with the grievance of Smt. Shobha Atmaram Patil being considered by him. It appears that, the Education Officer (Secondary) is considering the grievance of Smt. Shobha Atmaram Patil pursuant to the directions of this Court in Writ Petition No.2313/2023 dated 28.02.2023 in which apparently the petitioner was not a party. Suffice for the purpose to observe that, consideration of the grievance of Smt. Shobha Atmaram Patil may have a bearing on the entitlement of the petitioner to seek approval. However, when the former is still to be decided finally, it was inappropriate for the Education Officer (Secondary) to refuse to consider the petitioner's proposal for grant of approval. He could have considered both these requests simultaneously.

4. As far as the second ground in the impugned communication regarding stay to the operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 by virtue of circular dated 01.04.2022 is concerned, the issue is no more *res integra*. Operation of the self same circular has been stayed by this Court in Writ Petition No.8215/2022; Friends Social Circle, Akola through its Secretary, Mohd. Farooque Gulam Gaus and Others Vs. The State of Maharashtra through it's Secretary, Education and Sports

Department, Mumbai and Another (Nagpur Bench) dated 21.12.2022. Needless to state that, even in many other matters this Court has observed that by way of departmental circular the operation of the Rule could not have been legally stayed.

5. We allow the writ petition partly. The impugned communication dated 21.12.2022 is quashed and set aside. Respondent no.2-Education Officer (Secondary) shall now reconsider the petitioner's proposal simultaneously with the case of Smt. Shobha Atmaram Patil and pass an appropriate order, but shall not reject the proposal on the basis of the circular dated 01.04.2022.

(S. G. CHAPALGAONKAR)
JUDGE

(MANGESH S. PATIL)
JUDGE