

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO.6010 OF 2023

DIPALI MADHUKARRAO PATEKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Pawade Nilkanth R
AGP for the respondent – State : Mr. S.B. Pulkundwar
Advocate for the respondents no. 3 to 6 : Mr. A.G. Chaudhari
...

**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**
DATE : 15 JUNE 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate for the petitioners as also the learned AGP and learned advocate Mr. Chadhari who appears for respondents no. 3 to 6. The petitioners who were appointed as Assistant Teachers on unaided divisions of the schools are aspiring for transfer to the aided divisions in accordance with the Government policy and rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (**Rules**).

2. Admittedly, the respondent – management has not taken any decision on the sole count that by virtue of circular dated 01-12-2022, operation of rule 41-A of the Rules has been stayed.

3. In the matter of ***Friend Social Circle, Akola through its Secretary Mohd. Farooque Gulam Gaus and others Vs. State of Maharashtra through its Secretary, Education and Sports***

Department, Mumbai and another (writ petition no. 8215 of 2022) by the order dated 21-12-2022 (Nagpur Bench), operation of that circular dated 01-12-2022 has been stayed. This decision has been followed subsequently by several benches of this Court.

4. If issuance of the circular dated 01-12-2022 alone is the basis for the respondent – management not to act, the stand would not be acceptable in the light of the stay to the operation of that very circular. It would always be open for the management in view of the consistent view taken by this Court to take appropriate decision in accordance with law.

5. Learned advocate Mr. Chaudhari for the respondent – management, on instructions, submits that in view of the legal position, the management would take a fresh decision in accordance with law.

6. The petition is allowed partly.

7. The management shall take appropriate decision afresh on the petitioners' requests for transfer to the aided divisions which shall be strictly in accordance with the rules, regulations and the government resolutions issued from time to time but shall not refuse to do it by referring to the circular dated 01-12-2022.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

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