

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6092 OF 2023**

**KESHAV JANARDHAN KOHAKADE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

**AND
WRIT PETITION NO.6113 OF 2023**

**SMITA DAGDU CHAKRANARAYAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

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Mr. V. H. Dighe, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for Respondents-State.
Mr. S. S. Wagh, Advocate for Respondent No.3.

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**CORAM : MANGESH S. PATIL AND
S. G. CHAPALGAONKAR, JJ.
DATE : 9 JUNE 2023**

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

. Heard.

2. Issue notice to the respondents. Learned A.G.P. waives notice on behalf of respondent nos.1 and 2. Mr. Wagh, learned advocate waives notice on behalf of respondent no.3.

3. With the consent of both the sides, the matter is heard finally.

4. The petitioners are aggrieved by the rejection of the proposals submitted for approval to their transfer from unaided division to aided division.

5. Admittedly, by virtue of circular dated 01.12.2022, operation of the provisions of Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 were sought to be stayed.

6. Issue has been settled in catena of judgments of this Court. It has been expressly held that the circular is bad in law in as much as by way of such administrative circular the statutory rules cannot be trampled with. One such decision is in the matter of **Sopan Tukaram Babar Vs. The State of Maharashtra and Others, Writ Petition No.5684/2023** decided by us on 05.06.2023. We follow the same course.

7. The impugned orders dated 02.01.2023 and 14.02.2023/06.03.2023 respectively passed by the Respondent no.2 Education Officer (Secondary), Zilla Parishad, Ahmednagar are liable to be quashed and set aside. He is directed to re-consider the proposals and pass fresh order in the light of the directions issued in writ petition no.4431 of 2023 with other connected writ petitions with which we are in respectful agreement.

8. In view of the above, these petitions are partly allowed by quashing and setting aside the impugned orders and remitting the proposal of the petitioners to the Education Officer.

- (a) If the Management/Respondent in these Petitions has not intimated to the Education Officer, Secondary as regards the available vacancies in its Institution, it shall forthwith issue communication to the Education Officer, on or before 15.07.2023 setting forth details of the vacancies available with such Institution.

- (b) While considering the above, if such communication has already been forwarded to the Education Officer by the Management, the issue of surplus teachers vis-a-vis available vacancies in Ahmednagar district, based on their seniority and eligibility will be considered and recommendation of surplus teachers to the Institutions for absorption, would be considered by the Education Officer.
- (c) While approving transfers from unaided to aided category as per the proposals forwarded by the Respondent/Management, the Education Officer 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 Education Officer 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 Education Officer shall pass a reasoned order in the cases before him, as expeditiously as possible and preferably on or before 31.8.2023.

- (f) Needless to state, the petitioner/s, whose proposals would be approved for transfer from the unaided to aided category, would be entitled to all consequential benefits from the dates on which the transfers are approved.
- (g) In the event of any grievance of the petitioners persisting or cropping up on account of reservation/backlog while approving transfers of teachers 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.

9. Writ Petitions are disposed of in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(MANGESH S. PATIL)
JUDGE