

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6468 OF 2023

Darshana d/o Sureshappa Ekghare,
Age 48 years, Occupation Service,
R/o Kranti Chowk, Ahmedpur
Tq. Ahmedpur, Dist. Latur.

...Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur,
Tq. And Dist. Latur.
3. The Education officer (Secondary)
Latur, Zilla Parishad Latur.
4. The Superintendent,
Zilla Parishad, Pay and Provident
Fund Unit (Secondary), Latur
Tq. And Dist. Latur.
5. Saraswati Vidhya Vikas Mandal,
Kranti Chowk, Pitashri Niwas Ahmedpur
Tq. Ahmedpur, Dist. Latur.
Through its Secretary.
6. Kamla Neharu Vidyalaya,
Ahmedpur, Tq. Ahmedpur,
Tq. And Dist. Latur.
Through its Head Master.

...Respondents

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Advocate for Petitioner : Mr. V. S. Panpatte
Advocate for Respondent Nos.1 and 2 : Mr. S. G. Sangle
Advocate for Respondent Nos.5 and 6 : Mr. Ashish
Deshmukh.

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

DATE : 19th June, 2023

ORDER : (SHAILESH P. BRAHME, J.)

Heard the learned Advocate for final disposal of the writ petition.

2. The petitioner is challenging communication / order dated 14/05/2023 issued by the respondent No.3 the Education officer (Secondary) Latur, Zilla Parishad, Latur rejecting the proposal of approval for transfer of the petitioner from unaided post to aided post in the respondent No.6 Kamla Neharu Vidyalaya, Ahmedpur. The sole reason for rejecting the proposal was that Government Circular dated 01/04/2021 was issued, which had stayed operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

3. The reason assigned for rejecting the proposal stated above is

totally unsustainable. The issue is no more res integra because the operation of the said Circular has been stayed by High Court in Writ Petition No.8215 of 2022, in the matter of 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). It is settled position of law that operation of statutory Rule cannot be stayed by departmental circular. The principle is consistently followed in number of petitions by this Court.

4. For the reasons stated above, the writ petition is partly allowed. The impugned communication / order is set aside. The respondent No.3 the Education officer (Secondary) Latur, Zilla Parishad Latur, shall consider the proposal afresh on its own merit as expeditiously as possible and preferably within a period of six (6) weeks. Needless to mention that respondent No.3 shall not reject the proposal on the ground founded in the present impugned order.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

vjg/-