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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14414 OF 2021

Balaji Datta Ladke

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. D. S. Mali, Advocate for the Petitioner

Mr. S. K. Tambe, AGP for Respondents - State

.....

WITH

WRIT PETITION NO.6415 OF 2023

Ashok Pralhadrao Natkare

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

WITH

WRIT PETITION NO. 6440 OF 2023

Dhanaji Damodar Jadhav

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

WITH

WRIT PETITION NO. 7301 OF 2023

Tukaram Janardhan Mane

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. D. S. Mali, Advocate for the Petitioner
Mr. S. K. Tambe, AGP for Respondents - State
Mr. V. C. Patil h/f Mr. U. B. Bondar, Advocate for respondent No.3
.....

**[CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRADE, JJ.]**

DATE : OCTOBER 26, 2023

ORDER :

1. Heard learned advocates for the respective sides.
2. It is incorrect on the part of the Petitioner in Writ Petition No. 14414 of 2021, to contend that his approval for transfer from the existing division to the aided division was disapproved only for the reason of the Circular of the State Government dated 1st December, 2022. The impugned refusal of approval is dated 23rd November, 2021, when the said Circular dated 1st December, 2022 was not issued. Moreover, the said Circular is now set aside by the judgment of this Court dated 21st July, 2023 in the matter of *"Friends Social Circle and Others V/s State of Maharashtra and Others"* 2023 SCC Online Bom 1503.
3. Writ Petition Nos. 6415 of 2023, 6430 of 2023 and 7301 of 2023 were not on Board. On request taken on Board.
4. Rule 41A of the Maharashtra Employees of Private School

Rules, 1981 reads as under:

"41A. Conditions for transfer of teacher from un-aided to partially aided or aided school or division. -

(1) The management may transfer a teacher from un-aided school or partially aided school or division to the vacant post in partially aided school or division or aided school or division, respectively only if the following conditions are satisfied, namely : -

- (a) (i) the Management and Education Officer or Deputy Director shall, before making such transfer, verify that there is no surplus persons are available as provided in sub-section (1) of section 5 of the Act;*
 - (ii) if the surplus persons are available, the Management shall not make such transfer;*
- (b) the transfer shall not be made from the teachers of self-financed school of the Management;*
- (c) before making such transfer, the teacher should have completed minimum five years continuous service in un-aided school or division or partially aided school or division of the Management;*
- (d) the transfer shall be made in equal or same cadre. The transfer shall not be made from primary to higher primary, higher primary to secondary or secondary to higher secondary or higher secondary to D. El. Ed. schools or vice-versa;*
- (e) the transfer shall be made only by following the seniority and as per the requirement of the subject;*
- (f) before making transfer of a teacher, his appointment should have been approved by the Education Officer or Deputy Director, as the case may be;*
- (g) the transfer shall be made on the vacant post;*
- (h) the transfer shall be subject to the approval of*

Education Officer or Deputy Director, as the case may be.

(2) If the post becomes vacant due to transfer, such vacant post shall be filled as per the procedure provided in Rule 9.

(3) The transferred teacher shall be eligible for scale of pay and allowances as decided by the Government, from time to time.]

5. Circular dated 1st December, 2022 issued by the State Government, which is now set aside vide judgment in **"Friends Social Circle"** (*supra*), was aimed at suspending operation of Rule 41A. This act of the Government was initially disapproved by an order of staying the said Circular on 21st December, 2022. Subsequently, it is concluded that the said Circular cannot stand in the face of Rule 41A and was quashed and set aside by the judgment dated 21st July, 2023 (*supra*).

6. In view of the above, as the law stands today, all the conditions set out below Rule 41A will apply to all the Managements. Deviation from any of the conditions by the Management, will be unsustainable.

7. However, we have noticed from several orders passed by the Education Officer while refusing approval to the transfer of the teachers to the aided establishments, that the presence of senior surplus teachers is acknowledged / recorded. However, in

our view, it would be appropriate for the Education Officers, while rejecting the proposals of teachers for transfer, to mention the names of those surplus teachers, who are eligible and are senior to the teacher in whose case the proposal has been forwarded. This would give an opportunity to the teacher to know as to who are those surplus teachers who are above him in seniority. We, therefore, direct that the Education Officers, who reject such proposals, would mention names of the eligible surplus teachers, who are senior to the teacher at issue, in order to let him realize his seniority *vis-a-vis*, the surplus teachers.

8. We find that the common difficulty with such teachers as well as the Management is that all are in speculation as to whether there are any surplus teachers. To add to their confusion, the Education Officer only writes a particular number of teachers, without giving details. Shri. Mali, learned advocate, is right in contending in the three cases, which are on the production board, as to how the Education Officer on every occasion mentions that there are 95 surplus teachers, when the earlier order is of 13th January, 2023 and the recent order is of 19th April, 2023. He is, therefore, right in submitting that the districtwise list of surplus teachers should be maintained in order to enable either the teachers like the Petitioners or the

Management, to verify whether there are any surplus teachers, who have preference over the teachers like the Petitioners.

9. In our view, in this era of Information and Technology, information has to be readily available for any candidate. What we commonly find in such matters is that Managements forward proposals of teachers for transferring them from unaided to partially aided schools / divisions or from partially aided to fully aided schools / divisions. Seldom do we find that the Managements have scrupulously followed various contingencies enumerated in Rule 41A.

10. We, therefore, direct the Education Officers of each Zilla Parishad / Districtwise, to prepare a subjectwise list of surplus teachers at the district level in order to consider such names at the time of deciding proposals for transfer of teachers, forwarded by Managements. This would also help the Managements as well as the teachers in knowing those surplus teachers, who are senior to such teachers. For example / illustration, if a teacher teaching the subject 'History' can be considered for transfer to the aided school / division in view of a permanent vacancy, a surplus teacher teaching the same subject, who may be senior to the said teacher can be spotted in the list maintained by Education Officer. The Management can see the presence of that

surplus teacher, before deciding to send the proposal of another teacher, in as much as, the Education Officer can deal with a proposal if the Management has lost sight of an eligible surplus teacher, who is senior to the teacher in whose favour the Management has forwarded the proposal. As the law stands today, Rule 41A is enforceable and all the Managements are duty bound to scrupulously comply with the provisions / conditions set out under Rule 41A.

11. In the light of the above, we have perused the judgment delivered by this Court dated 6th July, 2021 in Writ Petition No. 7614 of 2020 (Prakash Dattatray Bagul V/s State of Maharashtra and Others), as well as the judgment delivered by a Co-ordinate Bench of this Court at the Principal Seat dated 12th March, 2021 in Writ Petition Stamp No. 93919 of 2020 (Sandhya Balkrushna Teli V/s State of Maharashtra and Others).

12. In view of the above, these petitions are disposed off with a direction to the Education Officer to upload the list of surplus teachers in each Zilla Parishad, districtwise. We direct the Management to strictly follow the conditions set out in Rule 41A of the MEPS Rules and if the present petitioners are eligible as per the scheme of Rule 41A, their proposals may be forwarded as and when they become eligible for approval, to the Education

Officer. The Managements shall consider the list before forwarding proposals of its teachers, in as much as, the Education Officer can consider the availability of surplus teachers while deciding such proposals.

13. We direct the learned Registrar (Judicial) of this Court to place this order before the learned Principal Secretary, School Education Department, State of Maharashtra (Respondent No.1) to circulate this order amongst all the Education Officers and also issue a Circular for the knowledge and assistance of all the Education Officers in the State of Maharashtra, to follow the directions set out in paragraph No. 12, hereinabove.

[Y. G. KHOBRADE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE