

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

WRIT PETITION NO. 6964 OF 2023

VIJENDRA SHANKARRAO YEMEKAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Kulkarni Smita S.
AGP for Respondent/s – State : Mr. S.G. Sangale

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

DATED : 26 JUNE 2023

PER COURT :

1. Heard learned Advocate for the petitioner and learned AGP.

2. The petitioner who was appointed as an Assistant Teacher on unaided division has been subsequently transferred to the aided division and the proposal for his transfer has been turned down by the respondent no. 2 – Education Officer, by the impugned communication solely on the ground that by the Government Circular dated 01 December 2022, operation of Rule 41 (1) has been stayed.

3. We have been consistently passing the orders after this Court at Nagpur Bench in the matter of Friend Social Circle Akola

through secretary Mohd. Farooque Gulam Gaus and others Versus The State of Maharashtra and others, Writ Petition No. 8215 of 2022 dated 21.12.2022, has stayed operation of the very circular dated 01st December, 2022. Statutory provisions or rules cannot be superseded by the Administrative Act.

4. The Writ Petition is allowed partly. The communication is quashed and set aside. The respondent no. 2 – Education Officer, may take appropriate decision afresh but shall not be rejected on the ground mentioning the impugned order. The decision shall be taken as expeditiously as possible and in any case within a period of six weeks from today.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

SPChauhan