

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

40 WRIT PETITION NO.8796 OF 2023

SAROJA SUBHASH DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Deshmukh Shambhuraje V
Addl.GP for the respondent – State : Mrs. M.A. Deshpande
...

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

DATE : 24 JULY 2023

PC :

The petitioner is seeking approval to her transfer from unaided division to aided division pursuant to the provisions of Rule 41(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. By the impugned order, approval has been refused by the respondent – Education Officer only on the ground that there are surplus teachers and circular dated 01-12-2022 issued by the government whereby operation of Rule 41(1) has been stayed.

2. As far as seniority of the petitioner is concerned, there is no dispute that she is at serial number 1.

3. The other ground being relied on by the Education Officer is regarding there being a circular dated 01-12-2022 staying operation of the provisions of section 41(1).

4. A co-ordinate Bench of this Court in the matter of ***Friends Social Circle, Akola through its Secretary Mohammad Farooque Gulam Gaus and others Vs. State of Maharashtra through its Secretary, Education and Sports Department, Mumbai and another; 2022 DGLS (Bom.) 4629*** (writ petition no. 8215 of 2022 dated 21-12-2022 - Nagpur Bench) has stayed the operation of the very circular dated 01-12-2022 by making an observation that it cannot supersede the statutory provision.

5. Since it is a matter of approval to the transfer from unaided division to aided division, the question of availability of surplus teacher which could be germane to the provision of section 5(1) of the MEPS Act which is applicable to the fresh appointments, may not be applicable.

6. In the light of the above, the impugned order is liable to be quashed and set aside.

7. The writ petition is allowed partly.

8. The impugned order is quashed and set aside.

9. The matter is remanded to the respondent – Education Officer for taking a decision afresh on its own merits but without resorting to the grounds which form the basis for passing the impugned order.

10. The decision shall be taken as expeditiously as possible and in any case within six weeks.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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