

(1)

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

952 WRIT PETITION NO.10344 OF 2023

**SABA NAZ IBRAHIM KHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRIMARY
AND OTHERS**

....

Mr S. B. Choudhari, Advocate for Petitioner;
Mr V. M. Kagne, A.G.P. for Respondent No.1
Mr P. P. Dama, Advocate for Respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 22nd August, 2023

PER COURT:

1. The Petitioner has put forth prayer clauses (B) and (C)
as under :-

“B] By issuing appropriate Writ, Order or Directions, hold and declare that, the Impugned communication Dtd. 16/06/2023 issued by Respondent No. 2 is arbitrary and illegal to the well settled position of the law, and hence, the same is liable to be quashed and set-aside, and for that purpose issue necessary orders;

C] By issuing appropriate Writ, Order or directions, Respondent No.2 may kindly be directed to grant approval to the transfer of the services of petitioner as assistant teacher from the unaided division to the aided division of the secondary school run by the same management, with all consequential benefits, and for that purpose issue necessary orders;”

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2. Respondent No.3 is a formal party. The learned Advocate for the Petitioner seeks liberty to delete Respondent No.3. Deletion is permitted.

3. We have considered the submissions of the learned Advocate for the Petitioner, the learned Advocate for Respondent No.2 and the learned A.G.P. The proposal forwarded by the Management seeking approval to the transfer of the Petitioner from the unaided establishment to the aided establishment, is turned down on the ground that the Rule 41-A of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 (for short 'the MEPS Rules'), has been stayed by the Government, vide Government Circular dated 01/12/2022.

4. We are surprised that, the Education Officer has not even read the impugned order before signing it. The issue of transferring of an employee from the unaided establishment to the aided establishment, is covered by Rule 41-A of the MEPS Rules. Moreover, the Government Circular dated 01/12/2022, staying Rule 41-A, had been stayed by this Court at Nagpur Bench and

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vide order dated 21/07/2023, passed in Writ Petition No.8215/2022, the said Circular has been set aside.

5. In view of the above, **this petition is partly allowed.** The impugned order dated 16/06/2023 is quashed and set aside. The proposal of the Petitioner forwarded by the Management shall be reconsidered by Respondent No.2/ Education Officer (Primary), afresh, in the light of Rule 41-A of the MEPS Rules and shall pass an order within 60 days from today.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

sjk