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

905 WRIT PETITION NO.10917 OF 2023

SMT. SHINDE NISHIGANDHA MAHADEV
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS

AND

907 WRIT PETITION NO.10921 OF 2023

SMT. SAKHARE SULAKSHANA SHIVRAJ
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS

AND

910 WRIT PETITION NO.11192 OF 2023

KADAM SHEKHAR BABASAHEB
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS

AND

911 WRIT PETITION NO.11194 OF 2023

BHALEKAR SANTOSH SUDHAKAR
VERSUS
THE STATE OF MAHARASHTRA THORUGH ITS
PRINCIPAL SECRETARY AND OTHERS

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Mr S. V. Deshmukh, Advocate for Petitioners;
Mr A. V. Deshmukh, Mr P. S. Patil, Mr V. M. Kagne and Mr P. K.
Lakhotiya, A.G.Ps. for Respondents/State in respective petitions;
Mr P. D. Suryawanshi, Advocate for Respondent No.2 in
WP/11192/2023

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

DATE : 7th September, 2023

PER COURT:

1. In all these matters, the Petitioners have been transferred from the unaided to partial aided/unaided to fully aided/partially aided to fully aided, etc. establishments. Their proposals for approval to the transfers were forwarded to the Education Officer. By the impugned order, all the proposals have been rejected on the ground that Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the 1981 Rules') has been stayed by the State of Maharashtra vide its Circular dated 01/12/2022.

2. Rule 41-A of the 1981 Rules 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 to the vacant post in partially aided school or aided school or division 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;

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(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.”

3. We have heard the extensive submissions of the learned Advocates for the respective sides.

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4. It is undisputed that the Circular dated 01/12/2022, staying the effect of Rule 41-A of the 1981 Rules, was stayed by the interim order of the Nagpur Bench of this Court, dated 21/12/2022, in Writ Petition No.8215/2022 (Friends Social Circle, Akola, thr. it's Secretary and others Vs. the State of Maharashtra and another). Subsequently, by a judgment dated 21/07/2023, the said petition along with a group of petitions, were allowed and the Circular dated 01/12/2022, was quashed and set aside.

5. In view of the above, **these Writ Petitions are partly allowed.** The impugned orders in these Writ Petitions are quashed and set aside.

6. The proposals of these Petitioners are restored to the file of the Education Officer, who will consider them afresh in the light of Rule 41-A of the 1981 Rules, and pass a reasoned order in each of these cases, within 45 days from today.

7. In the event of any surplus teachers, the Education Officer shall carefully scrutinize each of these cases and pass reasoned orders taking into account the rights of the surplus teachers, as are enshrined in law. Any grievance about the orders,

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that are to be passed by the Education Officer, can be voiced by the Petitioners in appropriate proceedings.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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