

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3117 OF 2023

Rupali Ramesh Shelke]
Age – 36 years, Occu – Service,]
Address at Post Dodi Budruk,]
Taluka Sinnar, District - Nashik] .. Petitioner.

v/s.

1 State of Maharashtra]
through the Hon'ble Secretary]
School and Education Department]
Mantralaya, Mumbai 400 032.]
[Summons to be served upon the]
Office of Government Pleader]
under Order XXVII, Rule 4 of the]
Code of Civil Procedure, 1908.]]
2 The Education Officer (Secondary)]
Nashik Zilla Parishad,]
Trimbak Naka, Nashik 422 001.]
3 Deputy Director of Education]
Nashik, Nashik Road,]
Nashik.]
4 Shri Bramhanand Swami Shikshan]
Prasarak Mandal]
Office at: At Post Dodi Budruk]
Taluka Sinnar, District Nashik] .. Respondents.

Mr. Nikhil Waje, for the Petitioner.

Mr. N. C. Walimbe, Addl. G. P with Ms. A. A. Purav, AGP for Respondent-State.

Mr. Vishesh Srivastav, for Respondent No.4.

CORAM: A.S.CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.
DATE : 11th DECEMBER, 2023.

ORAL JUDGEMENT (Per A.S.CHANDURKAR,J.):-

RULE. Rule made returnable forthwith and heard finally by consent of the learned Counsel for the parties.

2 The Petitioner is aggrieved by the communication dated 6th January, 2023 by which, the proposal seeking approval to her transfer from unaided school to aided school on 17th November, 2022 has not been decided on the ground that, the Circular dated 1st December, 2022 preclude the Education Officer (Secondary) from considering the same. The Circular dated 1st December, 2022 purports to stay to the effect of the provisions of Rule 41A of the Maharashtra Employees Private Schools (Conditions of Service) Rules, 1981.

3 In view of the judgment of this Court at Nagpur Bench passed in Writ Petition No.8215 of 2022 (Friends Social Circle, Akola & Others v/s. State of Maharashtra & Others) decided on 21st July, 2023, it has been held that by issuing such Circular, operation of statutory Rules cannot be stayed. Since, that is the only reason for not deciding the proposal, we deem it appropriate to direct the Education Officer (Secondary) to reconsider the said proposal of the Petitioner and decide the same in accordance with law.

4 For the aforesaid reasons, the communication dated 6th January, 2023 issued by the Education Officer (Secondary) is hereby quashed. The Education Officer (Secondary) shall hear the Petitioner as well as Respondent No.4 – Management and re-consider the proposal, seeking approval to the transfer of the Petitioner dated 17th November, 2022 from unaided school to aided school. Necessary decision shall be

taken within a period of six weeks from receiving a copy of this order.

5 All points on merits are kept open.

6 It is made clear that if the Petitioner is not satisfied with the out come of the said adjudication, she is free to challenge the same in accordance with law. In case, if Petitioner is entitled to such approval, all consequential benefits shall be made available to her.

7 Rule made absolute in the aforesaid terms.

(FIRDOSH P. POONIWALLA,J.)

(A.S. CHANDURKAR,J.)