

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3437 OF 2022

Ku. Usha D/o Keshao Bhoyar,
 Aged about 55 years, Occ- Service,
 R/o Rajiv Gandhi Nagar, Ward No.4,
 Near Sahkari Rice Mill, Wadala (Paiku),
 Th. Chimur, Distt- Chandrapur. **PETITIONER**

...V E R S U S...

1. Education Officer (Secondary),
Zilla Parishad, Chandrapur.
2. Sramjivi Gramin Vikas Sanstha,
Chimur, Distt- Chandrapur, through
its Secretary, Chimur, Chandrapur – 442903.
3. Pandurang Dahikar Vidyalaya,
Talodhi, through its Headmaster,
Th Chimur, Distt- Chandrapur.

Added R-No.4 as
per Court's order
dtd. 27.04.23

4. State of Maharashtra, School Education
and Sport Department, Mantrlaya,
Mumbai – 32. **RESPONDENT**

 Mr. N. R. Saboo, Advocate for Petitioner.
 Mr. N. S. Rao, Assistant Government Pleader for
 Respondents 1 and 4/State.

CORAM: **ROHIT B. DEO AND M. W. CHANDWANI, JJ.**
DATE: **15th JUNE, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard. Rule. Rule made returnable forthwith by

consent of the learned counsels for the parties.

2. The petitioner initially assailed the communication dated 11.10.2021 issued by respondent 1 – Education Officer (Secondary), Zilla Parishad, Chandrapur whereby the proposal submitted by the employer of the petitioner Pandurang Dahikar Vidyalaya, seeking permission to transfer the petitioner from 40% added section to 100% added section, is rejected.

3. The proposal came to be rejected on the ground that in Chandrapur District surplus teachers are available.

4. However, during the course of hearing it has transpired that as a fact surplus teachers are not available in the Chandrapur District. The affidavit in response filed on behalf of the Education Officer (Secondary), Zilla Parishad, Chandrapur also admits that in Chandrapur District surplus teachers are not available, as on the date of the hearing.

5. We, therefore, passed the following order on 23.03.2023 :-

We are not required to delve deeper in the merit, particularly in the narrative and the counter narrative.

2. We find, that at present there is no surplus teacher required to be absorbed in the district concerned.

3. We are of the view, and the learned Assistant Government Pleader Mr. Rao fairly does not join issues, that it would be appropriate if the Education Officer (Secondary), Zilla Parishad, Chandrapur revisits the issue and takes an appropriate decision, which may be placed before us on the next date of hearing.

4. We permit the petitioner or her representative to appear before the Education Officer (Secondary), Zilla Parishad, Chandrapur at 11.00 a.m. on 30/03/2023.

5. Needless to observe, the Education Officer (Secondary), Zilla Parishad, Chandrapur shall hear the petitioner and pass a reasoned order.

6. The order shall be passed within two week from the date of appearance of the petitioner.

7. Stand over to 20/04/2023 for further consideration.

6. The Education Officer (Secondary), Zilla Parishad, Chandrapur has after hearing the petitioner again rejected the proposal of the management. However, the reason which is given is that the State Government has vide Government Resolution dated 01.12.2022 stayed the implementation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short the MEPS Rules).

7. The Government Resolution on the basis of which the rejection is predicated, is already stayed by the Aurangabad Bench, with the result that Rule 41A continues to hold the filed.

8. In similar matters the Coordinate Bench has set aside the orders of rejection and has directed the Education Officer (Secondary), Zilla Parishad, Chandrapur to consider the proposal forwarded by the management afresh in the

light of Rule 41A and in accordance with law.

9. We see no impediment in granting similar relief to the petitioner.

10. We, therefore, quash and set aside the impugned decisions dated 11.10.2021 and 19.04.2023.

11. We direct the Education Officer (Secondary), Zilla Parishad, Chandrapur to consider the proposal of the management afresh after hearing the petitioner, and consistent with the provisions of Rule 41A, on its own merit.

12. The petitioner shall appear before the Education Officer (Secondary), Zilla Parishad, Chandrapur on 26.06.2023 and shall produce copy of this order.

13. The Education Officer (Secondary), Zilla Parishad, Chandrapur shall take an appropriate decision in the matter within two weeks from the date of appearance of the

petitioner.

14. The petition is disposed of in the aforestated terms.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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