

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

WRIT PETITION NO. 1965 of 2023

The National Education society, Khamgaon, through its Secretary and two others.

vs.

State of Maharashtra, through its Secretary, Education and Sport Deptt. Mumbai and anr.

Shri Ram Karode, Advocate for petitioners.
Ms S.S.Jachak, Assistant Government Pleader for respondents

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 7th JUNE, 2023

P. C.

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner no.3 came to be appointed on the post of 'Assistant Teacher' on 01.07.2013. Her appointment was on unaided division of the petitioner no.2-School. The appointment of the petitioner no.3 was approved and she was subsequently transferred on 26.09.2022 to the aided division of the petitioner No.2-School. This exercise was done after following procedure prescribed by Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the said Rules). The proposal dated 01.10.2022 for grant of approval has however been rejected by the respondent no. 2 on 09.01.2023 for the reason that in view of Circular dated 01.12.2022 issued by the State Government the provisions of Rule 41A of the said Rules had been stayed.

3. On hearing the learned counsel for the parties, we find that the aforesaid issue has been considered in Writ Petition No.8215 of 2022 (*Friends Social Circle, Akola and others vs. The State of Maharashtra and another*) and the Circular dated 01.12.2022 is permitted to operate in the manner that would not be in derogation of Rule 41A of

the said Rules. On this premise therefore the rejection of the proposal for grant of approval on that ground does not appear to be justifiable. The proposal dated 01.10.2022 would therefore be required to be re-considered without giving effect to the Circular dated 01.12.2022.

4. For aforesaid reasons the following order is passed:

(i) The communication dated 09.01.2023 issued by the Education Officer (Secondary), Zilla Parishad, Buldhana - respondent no.2 is set aside.

(ii) The Education Officer (Secondary) shall re-consider the proposal dated 01.10.2022 and pass a fresh order without applying the provisions of the Circular dated 01.12.2022. Necessary decision in this regard be taken within a period of four weeks of receiving copy of this order.

(iii) The decision taken be communicated to the petitioners.

5. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.