



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

920 WRIT PETITION NO. 3145 OF 2024

SANDIP KONDAJI NAWALE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

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Mr. Ajay T. Kanawade Advocate for Petitioner.

Ms. M.N. Ghanekar, A.G.P. for Resp. Nos. 1 and 2.

Mr. A.G. Ambetkar Advocate for Resp. Nos. 3 and 4.

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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 21st MARCH 2024

ORDER :

1. Issue notice to the respondents. Learned AGP waives service of notice for respondent Nos. 1 and 2. Learned Advocate Mr. Ambetkar waives service of notice for respondent Nos. 3 and 4.

2. The present Petitions have been filed for following reliefs:-

“(B) By issuing appropriate Writ, order or directions, hold and declare that, the impugned communication Dtd. 03.01.2024 issued by Respondent No.2 is arbitrary and illegal to the well

settled position of 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.”

3. We have heard and perused the documents filed on behalf of the petitioner.

4. The petitioner was initially appointed as assistant teacher in respondent No. 4 junior college on 15th June 2011. The approval to the appointment was granted by respondent No.2 on 10th November 2015. It appears that respondent No.4 had forwarded the proposal in respect of the petitioner on 31st October 2023 for approval of transfer of the petitioner from unaided post to aided post. It came to be rejected by respondent No.2 on 3rd January 2024 on the ground that the process of transfer from private unaided to aided school has been suspended in view of the Government Circular dated 1st December 2022. The petitioner is pointing out the decision in *Writ Petition No. 2836 of 2023 (Late Madanlalji Kisanlalji*

Sancheti Seva Samiti, Malkapur, through its Secretary and others vs. State of Maharashtra, through its Secretary, Education and Sports Deptt., Mumbai and another) decided by this Court, Bench at Nagpur on 28th April 2023 in which reliance was placed on *Writ Petition No. 8215 of 2022 (Friends Social Circle, Akola and others vs. the State of Maharashtra and another)*, wherein it was considered that the Government Circular dated 1st December 2022 was permitted to operate in the manner that would not be in derogation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "MEPS Rules, 1981"). When similar order was before this Court Bench at Nagpur, it was then observed that the rejection of the said proposal for grant of approval on the said ground that transfer from unaided to aided post does not appear to be justifiable and the proposal should have been considered without giving effect to the Government Circular dated 1st December 2022.

5. Here also we are taking same view, in view of the fact that the exercise of transfer of the petitioner from unaided to aided post was stated to be taken under Rule 41-A of the MEPS Rules, 1981. Definitely, the case is made out for reconsideration by respondent No.2. Hence, following order:-

ORDER

(I) Writ Petition is allowed.

(II) The communication dated 3rd January 2024 issued by respondent No.2 – Deputy Director of Education, Pune Division, Pune is set aside.

(III) Respondent No.2 – Deputy Director of Education should reconsider the proposal dated 31st October 2023 and pass a fresh order without applying provisions of the Government Circular dated 1st December 2022. Necessary decision in this regard be taken within a period of four weeks of receiving copy of this order.

(IV) Authenticated copy of this order allowed.

(V) The petitioner may submit the said copy to respondent No.2.

(VI) Respondent No.2 after taking decision should communicate it to the petitioner.

(V) Writ Petition is disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE