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

WRIT PETITION NO. 3267 OF 2024

MUNJAJI S/O RATANRAO SAWANT

....Petitioner

VERSUS

**THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHER**

.....Respondent

.....
Advocate for the Petitioner : Mr. Sushant Baburao Choudhari
AGP for Respondents: Mr. K.S. Patil.

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

DATE : 27th MARCH, 2024.

P.C. :-

1. This petition can be disposed of in view of the facts of the case. Learned AGP waives notice for respondent Nos. 1 and 2. No need to issue notice to respondent No.3.

2. The petitioner who came to be appointed with respondent No.3 on 1.9.2012 was granted the approval by order dated 19.12.2015. He was on un-aided division. He appears to be the senior-most around 15.6.2023 and thereafter respondent No.3 took a decision to transfer him from un-aided to aided division and accordingly, passed the order dated 15.6.2023. On 31.7.2023, a proposal was sent for approval to said transfer to respondent No.2. By impugned communication dated 31.1.2024, respondent No.2 has rejected the said proposal on the ground

that in view of the circular dated 1.12.2022, the operation of the Govt. Resolution dated 1.9.2021 has been stayed until further orders.

3. It appears that respondent No.2 had not taken note of the order passed by this Court, Bench at Nagpur in ***W.P. No. 8215 of 2022 (Friends Social Circle, Akola Vs. State of Maharashtra)*** with companion matters decided on 21.7.2023, thereby the said circular dated 1.12.2022 to the extent it stays the operation of Rule 41A of the Rules of 1981 was set aside for want of power with respondent No.1 to do so. Therefore, the respondent No.2 ought not to have considered the said circular when in fact, statutory provision is there, it should have been followed not the circulars or other notifications which may be in contravention of the enactment. Therefore, the impugned communication/order dated 31.1.2024 deserves to be set aside. The proposal forwarded by respondent No.3 dated 31.7.2023 shall be restored to file of respondent No.2.

4. Respondent No.2 shall decide the said proposal afresh on its own merits in terms of Rule 41A of the MEPS Rules, 1981 within a period of two months.

5. With aforesaid directions, writ petition stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-