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

4 WRIT PETITION NO. 9108 OF 2023

**SHAIKH HASEEB ABDUL HABEEB AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

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Mr V. S. Panpatte, Advocate for Petitioners;
Mr P. K. Lakhotiya, A.G.P. for Respondent Nos.1 to 3
Mr I. D. Maniyar, Advocate for Respondent Nos.4 to 6

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 2nd January, 2024

PER COURT:

1. We have considered the extensive submissions of the learned Advocate for the Petitioners. The sum and substance of his submission is that Rule 41(5)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("the 1981 Rules) is applicable to the Petitioners' case and they are willing to be governed by the said clause. Even if their salaries are reduced, they have no objection, and as there is a vacancy, they may be treated as being eligible for transfer to the

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Higher Secondary School from a Junior College of Education in terms of sub-clause (a).

2. Considering the record before us, we find that the impugned orders dated 05/01/2022 and 16/06/2022, passed by the Deputy Director of Education, Chhatrapati Sambhajinagar, would not be sustainable. On the one hand, the Petitioners assert that the signature of the Education Officer (Secondary), Zilla Parishad, Parbhani, is seen on the Annexure, and on the other hand, the said Authority concludes in the light of the Government Circular dated 08/06/2020 and the Government Resolution dated 01/04/2021, that a candidate cannot be transferred from the Junior College of Education to the Secondary School.

3. We find from the Government Resolution dated 01/04/2021, that such a transfer is not precluded and more so, in the light of sub-clause (a) of Rule 41(5) of the 1981 Rules. The only rider that is applicable is, such a transfer should not be against the will of a candidate and such a candidate/employee should be agreeable to move down from the Junior College of Education to the Secondary School, notwithstanding that, the salary scale/pay-scale is likely to be reduced.

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4. The learned Advocate for the Petitioners submits that, in the Petitioners' cases, the pay-scale is likely to be the same. He further adds that, Rule 41(5)(a) is acceptable to them.

5. In view of the above, **this Writ Petition is partly allowed.** The impugned orders dated 05/01/2022 and 16/06/2022 are quashed and set aside. If the signature of the Education Officer is not found on the proforma annexure, Respondent No.2/ Deputy Director of Education, Chhatrapati Sambhajnagar shall call upon the said Authority to place his signature on the said proforma. Thereafter, Respondent No.2 shall proceed to pass an appropriate order on the transfer proposals of the Petitioners in the light of Rule 41 (5)(a) of the 1981 Rules within a period of 45 days. If there is any other legal impediment, the decision of Respondent No.2 should reflect reasons, if an adverse order is to be passed.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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