

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9814 OF 2024

Vaishali Deepak Desai
(Nee: Vaishali Babaso Patil)

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Prashant Bhavake for the Petitioner.

Ms. Ashwini A. Purav, AGP for Respondent Nos. 1 to 5/State.

Mr. Utkarsh Desai for Respondent No. 6

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 19 JULY 2024

P.C. :

1. Heard learned counsel for the Petitioners and learned AGP for Respondent Nos. 1 to 5. Learned Counsel for Respondent Nos. 6 and 7 (Management) states that they are supporting Petitioner's case.

2. Petitioner employee/teacher working with Respondent No. 7- School run by Respondent No. 6 - Education Institute is challenging the order dated 20 December 2023 passed by Respondent No.5 (Education Officer, (Secondary), Zilla Parishad Kolhapur). By the said impugned order, the Education Officer has rejected the proposal for approval of transfer of Petitioner from partially aided (20%) to fully aided division on the ground of stay granted under Government Circular dated 1 December 2022.

3. The learned counsel for the Petitioner has relied upon the

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judgment of *Friends Social Circle, Akola & Ors. v/s State of Maharashtra*¹.

4. Perusal of the impugned order shows that the only ground on which the proposal is rejected is the Government Circular dated 1 December 2022.

5. In the Judgment of *Friends Social Circle, Akola (supra)*, this Court has clearly held that Rule 41A of the Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 cannot be stayed by issuance of Government Circular and has set side the said Government Circular to the extent it stays operation and Rule 41A. Indeed this view has been consistently followed thereafter in number of decisions of this Court. In light thereof, the impugned order cannot be sustained.

6. The impugned order is accordingly quashed and set aside. The proposal of the Petitioner is restored to file. Respondent No.5/Education Officer is directed to send the proposal of Petitioner within a period of two weeks from today to the appropriate authority as per Government Resolution dated 29 April 2024 for decision in accordance with law.

7. Writ Petition is disposed of in the above terms. No costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

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