

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4088 OF 2024

Rashtrasant Acharya Anand Rushiji Shikshan
Prasarak Mandal Thr. Secretary And Ors

...Petitioners

Versus

The State Of Maharashtra And Anr

...Respondents

Ms Nikita Bhosale i/b. Mr. Ram Karode and Mr. Vinod Sangrikar for the
Petitioners.

Ms Pooja Joshi Deshpande, AGP for the Respondent Nos. 1 and 2-State

CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.

DATED : 12 APRIL 2024

P.C.:

1. Heard learned Counsel for the Petitioners and learned AGP for the Respondent-State.
2. The Management, the School and the employee have together filed this petition, challenging the impugned order dated 26 December 2023 passed by the Respondent No. 2-Education Officer (Secondary), Zilla Parishad, Nashik, rejecting the approval to transfer of Petitioner No. 3-teacher from unaided to aided post, on the ground of stay granted under

Government Circular dated 1 December 2022.

3. Inviting our attention to the judgment passed by the co-ordinate Bench of this Court at Nagpur reported in ***2023 SCC Online Bom 1503 - Friends Social Circle, Akola & Ors. vs. State of Maharashtra & Ors*** in ***Writ Petition No. 8215 of 2022*** and other petitions dated 21 July 2023, learned counsel for the Petitioners has submitted that the said Government Circular dated 1 December 2022, to the extent it stays the operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, is already set aside and therefore the impugned order is unsustainable.

4. Perused the impugned order. The rejection of the proposal of the Petitioner No. 3 is indeed solely based on the Government Circular dated 1 December 2022. Perusal of the aforesaid judgment in the matter of ***Friends Social Circle (Supra)*** shows that the said Government Circular is already set aside to the extent it stays the operation of Rule 41A of aforesaid Rules of 1981. The said decision has been followed by this Court in the subsequent Writ Petition No. 7272 of 2023, Writ Petition No. 6030 of 2023 and other petitions. Therefore, the impugned order is unsustainable.

5. In that view of the matter, we dispose of this petition by following order :

A) Impugned order dated 26 December 2023 is quashed and set aside and proposal of the Petitioner No. 3 teacher restored.

B) We direct that if there are any other grounds on which the Respondent No. 2-Education Officer intends to return or reject the proposal of the Petitioner No. 3, he is directed to communicate the same to the Petitioners within a period of 3 weeks from today. The Petitioners shall thereafter submit their explanation to the proposed grounds alongwith supporting materials including the Government Resolution, case laws, orders of this Court etc., if relied upon. The Respondent No. 2-Education Officer is directed to decide the proposal of the Petitioner No. 3 thereafter within a period of 8 weeks by dealing with the explanation given by the Petitioners and also dealing with the case laws, orders of this Court by passing a reasoned order, subject to other time bound directions.

C) We have not expressed any opinion on the Petitioners' proposal and same shall be decided on its own merits and in accordance with law. The proposal will not be rejected on the ground of Government Circular dated 1 December 2022. Needless to mention that if the Respondent-Education Officer

proceeds to grant the Petitioners' proposal as prayed, the consequential benefits will follow and in that case the aforesaid procedures/directions will not apply.

6. The Writ Petition is disposed of in above terms.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)