

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 5118 OF 2024

Smt. Manjusha Ramdas Dumbare. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr. Shrirang Katneshwarkar for the Petitioner.
Mr. K. S. Thorat, 'B' Panel Counsel for Respondent Nos. 1 and 2.

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

DATE : 30 April 2024.

P.C. :

The learned counsel for the Petitioner states that the Respondent- Management is supporting the cause of the Petitioner and on the basis of the said statement that we have proceeded further.

2. The Petitioner has sought a direction to Respondent No. 2 to decide the proposal of the Petitioner seeking transfer from unaided to 100% aided post. In the petition the Petitioner has categorically asserted that the Petitioner was informed that the proposal cannot be considered because in view of the Government Resolution (GR) dated 1 December 2022, such transfers are not

permitted. The Petitioner points out that the Division Bench of this Court (Nagpur Bench) in the case of *Friends Social Circle Akola and others v. State of Maharashtra and others*¹ has quashed and set aside the said the said GR. The learned AGP points out that the State Government has now issued a Circular on 29 April 2024 to all Education Officers informing that the GR dated 1 December 2022 no longer applies. That being so, we find no impediment for processing the Petitioner's proposal for approval of transfer from unaided to 100% aided post. The Deputy Director of Education will take a decision on the proposal submitted by the Respondent-Management in respect of the Petitioner within a period of twelve weeks, subject to other time-bound commitments. The Deputy Director will follow the observations and methodology laid down in the decision of this Court in the case of *Shri Nitin Bhika Tadge v. State of Maharashtra*², which reads thus:

PART- II

- A. (i) *We direct that upon receipt of a proposal seeking approval, the Educational Authority, as per the methodology laid down in the Government Resolution dated 6 February 2012, will communicate the shortfalls/objections in the proposal submitted by the Management/Employer as the case may be calling for explanation giving them reasonable time. Upon receipt of such explanations, the Educational Authority will examine the explanation and pass a reasoned order.*
- (ii) *If any judicial pronouncement is cited regarding the shortfalls/ objections in the explanation, then in the reasoned order, the Educational Authority will specifically address the legal position laid down by the said judicial pronouncement.*

1 Writ Petition No.8215/2022 and others decided on 21 July 2023.

2 Writ Petition No.204/2019 and others decided on 16 April 2024

(iii) *It is emphasized that avoiding referring to and avoiding considering the legal position laid down in the judicial pronouncement would be viewed seriously and may result in action under the contempt jurisdiction of this Court.*

(iv)

B.

C. (i) *We take note of the Government Resolution dated 28 February 2024 laying down the procedure for complying with the Court orders. The Educational Authorities will scrupulously follow the mandatory directions issued by the State Government regarding compliance with the Court orders.*

(ii) *It is directed that if any legal position concerning the tripartite relationship between the employees, Management and the State Government in respect of the subject matter is laid down by this Court and if the said legal position is accepted by the State Government, then within a reasonable time the State Government shall issue circular/ notification/government resolution instructing the Educational Authorities in consonance with the legal position so laid down.*

D. *The above timelines will come into effect from the date the order is uploaded.*

3. We make it clear that we have not commented on the merits of the proposal in respect of the Petitioner which is for the Deputy Director to consider.

4. Writ petition is disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)