

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1553 OF 2024

Monali Ankush Bambale

...Petitioner

Versus

The State Of Maharashtra
Thr. The Secretary And Ors.

...Respondents

Mr. Satish Raut, Advocate for the Petitioner.

Mr. Sandeep Waghmare, Advocate for Respondent Nos.5 & 6.

Ms. Nisha Mehra, AGP for Respondent Nos.1 & 2/State.

CORAM : RAVINDRA V. GHUGE
&
M.M. SATHAYE, JJ.

DATE :- 11th OCTOBER, 2024

PER COURT :-

1. The Petitioner has served the Management and the Zilla Parishad. The acknowledgments of the Inward Department of both these Authorities, are placed on record (two pages) and the same is marked as 'X' for identification.

2. The Petitioner has put forth twofold prayers in this Petition. Firstly, that the impugned order dated 2nd March, 2023 be

quashed and set aside and secondly, that the proposal dated 28th April, 2023 be decided afresh.

3. This Court has frequently come across several orders passed by the Education Departments under the Zilla Parishad and the Municipal Corporation, on the ground that, Rule 41(A) of the Maharashtra Employees of Private Schools' (Conditions of Service) Rules, 1981, has been stayed by the Government Circular dated 01st December, 2022. The Education Departments at times, are oblivious of the fact that the said Government Circular is stayed by the Nagpur Bench on 21st December, 2023 in *Friends Social Circle, Akola through Secretary, Mohd. Farooque Gulam Gaus and others vs. The State of Maharashtra and others, Writ Petition No.8215/2022*. Eventually, by Judgment dated 25th July, 2023, the Petition was allowed and the circular was quashed and set aside. As such, Rule 41(A) is now applicable without any impediment.

4. It is apparent from Clauses (i) and (ii) under Rule 41-A that no employee working on the unaided or semi-aided establishment, can be transferred to the partly aided or fully aided

establishment, unless surplus teachers senior to them have been absorbed. The order sought to be impugned in this Petition, dated 2nd March, 2023, is actually a communication by the Administrative Officer of the Education Department (Primary), Pune Municipal Corporation to the Chairman of the Trust, which has appointed the Petitioner. There is no rejection of the proposal of the Petitioner dated 28th April, 2022.

5. In view of above, keeping in focus that the Education Department of the Municipal Corporation is not appearing in this Court on the notice of the Advocate, **this Writ Petition is disposed off** with the direction to Respondent No.4 to consider the proposal forwarded by the Management strictly in terms of Rule 41(A) and if there are no surplus teachers, who need to be absorbed on fully aided establishment, the proposal would be considered on its own merits by following the due procedure laid down in law.

6. In the event, the Authority to deal with such proposals, has been altered in the light of Government Resolution dated 29th April, 2024 issued by the School Education and Sports Department, Government of Maharashtra, Respondent No.2 would forward the

said proposal to the concerned Authority, within a period of 30 days from today. The said authority would then decide the proposal within a period of 60 days.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)