

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7939 OF 2024

Omkar Shikshan Prasarak Mandal and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. Rahul Kadam for the Petitioner.

Mr. K.S. Thorat, 'B' Panel Counsel for Respondent/State.

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

DATE : 18 JULY 2024

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P.C. :

. Heard learned counsel for the Petitioners and learned AGP for Respondent Nos. 1 and 2. In view of the order that we propose to pass, notice to Respondent No.3 is not necessary.

2. The Petitioner No.1 Education Institute running Petitioner No.2/School and Petitioner No.3 employee/teacher working with them, are jointly challenging the order dated 27 March 2024 passed by Respondent No.3 (Administrative Officer, Education Department Primary, Pune Municipal Corporation). By the said impugned order, the Administrative Officer has rejected the proposal for approval of transfer of Petitioner No.3 (Pushpa Ramprasad Ghule) from unaided to 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

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 Petitioners is restored to file. Respondent No.3/Administrative Officer is directed to send the proposal of Petitioners 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.)

¹ 2023 SCC Online Bom 1503