

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8563 OF 2024

Bhaskar Sonu Borse And Anr ...Petitioners
Versus
The State Of Maharashtra And Ors ...Respondents

Mr. Sachin S. Punde for the Petitioners.
Mr. M. M. Pabale, AGP for the Respondent Nos. 1 to 4-State

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

DATED : 24 JUNE 2024

P.C.:

1. Heard learned Counsel for the parties.
2. The Petitioner No. 1 is working with the Petitioner No. 2-Educational Institute as an Assistant Teacher. The Petitioner No. 2 submitted a proposal on 15 October 2022 to the Respondent-Education Officer seeking approval of the appointment/posting of the Petitioner No. 1 from unaided to aided division in the school.
3. This proposal was rejected by the impugned order dated 8 December 2022 on two grounds. The first is that the short falls pointed out in the impugned order have not been removed and secondly that the approval for the transfer from unaided to aided division is barred as per

the Government Resolution / Circular dated 1 December 2022. The same position is reiterated under order dated 23 December 2022.

4. As regards the second ground is concerned, it cannot be sustained because the legal position is settled by the Division Bench of this Court in case of *Friends Social Circle, Akola vs the State of Maharashtra & Anr.* (Writ Petition No. 8215 of 2022, Aurangabad Bench) that by way of a Circular, statutory provision i.e. Rule 41 A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 cannot be suspended.

5. As regards the shortfalls are concerned, learned Counsel for the Petitioner submitted that they have been removed. However, this position will have to be examined by the Respondent-Education Authority.

6. In these circumstances, the impugned order dated 8 December 2022 and 23 December 2022 are quashed and set aside. The proposal of the Petitioner is restored to file.

7. As regards the shortfalls referred to in the order dated 8 December 2022, the same will be examined by the Education Authority after giving opportunity to the Petitioner and if there are any decisions of this Court relied upon by the Petitioner, decide the proposal after following the guidelines laid down in the decision of *Nitin Tadge & Ors. vs. State of Maharashtra & Ors. with connected Writ Petitions.* (Writ Petition No.

204 of 2019)

8. The proposal so restored will now have to be examined as above, as per Government Resolution dated 29 April 2024 by the concerned authority in the State Government. The decision be taken within a period of 8 weeks, subject to earlier urgent public duties.

9. The Writ Petition is disposed of.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)