

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

WRIT PETITION NO. 12424 OF 2024

Smt.Aasavari Shantanu Gore
(nee) Aasavari Arun Thakur

... Petitioner

versus

The Education Officer (Secondary),
Pune Zilla Parishad and Others

... Respondents

....

Mr.Vaibhav Kulkarni with Mr.Yash Agarwal for the Petitioner.

Mr.K.S.Thorat, 'B' Panel Counsel for Respondent Nos. 1 and 2-State.

Ms.Disha Rathod i/b. Mr.Prathamesh Deshpande for Respondent Nos. 3
and 4- Management.

....

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 3RD DECEMBER, 2024

P.C.:

1. Leave to add a prayer for assailing the order dated 3rd October, 2022. The grounds are available. Hence, addition be carried out forthwith.

2. We have heard the strenuous submissions of the learned Advocates for the Petitioner, the Management and the learned 'B' Panel

Counsel, who has strenuously defended the impugned order.

3. This is yet one more case wherein the Education Officer (Secondary), has pointed out certain deficiencies. Rather than enabling the Management to remove the deficiencies, the entire proposal has been rejected by opining that, '*to save the time of the Education Department, such an order is passed*'.

4. It does not call for any debate that, until Rule 41A was introduced in the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the Rules of 1981), it was Rule 41 that was being followed for considering the cases of the teaching and non-teaching staff for grant of approval to their transfer from the unaided to the partially aided and from partially aided to fully aided establishments. Subsequently, Rule 41 A was introduced by way of an amendment on 14th December, 2020. By a Government Circular dated 1st December, 2022, Rule 41A was stayed. The said Circular dated 1st December, 2022 was stayed by this Court at the Nagpur Bench on 21st December, 2022 in Writ Petition No. 8215 of 2022 (*Friends Social Circle, Akola and others vs. State of Maharashtra and others*). By a judgment dated 21st July, 2023, the Rule was sustained and the Circular dated 1st December, 2022 was quashed and set aside.

5. In Writ Petition No. 3877 of 2024 (***Ratan Jyotiram Bhandare Versus The State of Maharashtra and Others***), this Court at the Aurangabad has passed certain orders directing the Government to bring the draft Rule 41B on the statute book which was aimed at considering cases of non-teaching employees who are transferred from the unaided to the partially aided and from partially aided to the fully aided establishments. In short, the proposed Rule 41B is *pari materia* to Rule 41A. Recently, by an order dated 13th November, 2024 in ***Ratan Jyotiram Bhandare (supra)***, the Division Bench of this Court at Aurangabad, has passed an order that until Rule 41B is introduced, keeping in view the earlier decisions cited by the Petitioner, the case of non-teaching employees shall be considered under Rule 41 of the Rules of 1981.

6. In view of the above, **this Writ Petition is partly allowed** with the following directions :

(a) The impugned order dated 3rd October, 2022 stands set aside and would amount to a notice to the Management for removal of deficiencies;

- (b) The Management shall remove deficiencies within 30 days from today and resubmit the proposal;
- (c) The above stated proposal would be a part/continuation of the earlier proposal dated 20th July, 2022 filed by the Management, which stands restored to the file of the Education Officer;
- (d) The proposal, after removal of deficiencies, shall be considered under Rule 41 of the Rules of 1981 and the same would be decided with a reasoned order, within a period of 60 days from the date of submission of the proposal by the Management, post removal of deficiencies.

7. We direct the Registry to list this disposed off Petition, on board on **13th January, 2025** only for the sake of compliance, under the caption **“For Compliance”**. The State of Maharashtra shall apprise this Court as regards the progress made in introducing draft Rule 41B vide an amendment to the Rules of 1981.

(ASHWIN D. BHOBE,J.)

(RAVINDRA V. GHUGE, J.)