

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

WRIT PETITION NO.14813 OF 2024

Shri Bipin Madhukar Mhatre ... Petitioner
versus
The State of Maharashtra & Ors. ... Respondents

....
Mr.Prashant Bhavake for the Petitioner.
Ms.Tejas Kapre, AGP for Respondent Nos. 1 to 5-State.
....

**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.**

DATE : 3RD DECEMBER, 2024

P.C.:

1. 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 the partially aided to the fully aided establishments.

2. 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 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.

3. The Petitioner has put forth prayer clauses (b), (c) and (d), as under :

“(b) By a suitable Writ, Order or direction, this Hon’ble Court be pleased to direct the Respondent No.5- Education Officer to decide the proposal dated 10-7-2020 submitted by the Respondent No. 6- Educational Institution and Head Master of the Respondent No. 7- Secondary School for individual approval to the transfer of the Petitioner from unaided post of Peon to aided post of Peon at Respondent No. 7- Secondary School by taking into consideration Rule 41 of the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981 and by ignoring Government Circular dated 1-12-2022, within the stipulated period which this Hon’ble Court may deem fit and accordingly, to grant individual approval to the transfer of the Petitioner from unaided post of Peon to aided post of Peon at Respondent No. 7- Secondary School;

(c) By a suitable Writ, Order or direction, this Hon’ble Court be pleased to direct the Respondent No.4- Deputy Director to allot Shalarth ID to the Petitioner for releasing online salary of the Petitioner in case the individual approval is granted to the transfer of the Petitioner in the aided post of Asst. Teacher;

(d) Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to restrain the Respondents from absorbing any surplus Peon on the post already occupied by the Petitioner at Respondent No. 7- Secondary School and maintain the status quo in respect of the said post occupied by the Petitioner."

Considering that the simple prayer for deciding the pending proposal, has been canvassed, we have not issued notice.

4. **This Writ Petition is disposed off** with a direction to Respondent No. 5 to deal with the pending proposal dated 10th July, 2020, if not yet decided, by strictly adhering to the policies applicable and in the light of Rule 41A of the Rules of 1981. A strict verification exercise shall be conducted and the proposal shall be scrutinized in view of the sub clauses set out in Rule 41A of the Rules of 1981.

5. If Respondent No.5 notices any deficiencies in the proposal, he would communicate the same to Respondent No. 6 and call upon the said Management to cure the deficiencies. Until such deficiencies are cured, the proposal would be kept pending. After deficiencies are cured, he would proceed to pass a reasoned order. However, if the management does not remove the deficiencies for an unduly long time, Respondent 5 will dispose off the proposal.

6. Needless to state, if the proposal is approved, the Management would proceed to initiate steps for seeking allotment of the Shalarth ID to the Petitioner by following the due procedure laid down in the law. If the proposal is rejected, the aggrieved party is at liberty to avail of a remedy as is permissible in law.

(ASHWIN D. BHOBE,J.)

(RAVINDRA V. GHUGE, J.)