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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 WRIT PETITION NO. 1021 OF 2025

MANSI ARUN KELKAR

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

Mr.R.I.Wakade, Advocate for the petitioner.
Mr.A.V.Lavte, AGP for the respondent / State.

(CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.)

DATE : FEBRUARY 3, 2025

PER COURT :

1. Leave granted to add Management as a party respondent.
Amendment to be carried out forthwith.

2. We have heard both the sides. The petitioner is awaiting approval to her transfer from partially aided division to the fully aided division of respondent No.4 / College being run by respondent No.5 / Management, in the light of the provisions of Rule 41 and 41-A of the Maharashtra Employees of Private School (Condition of Service) Regulations Act, 1977 and The Maharashtra Employees of Private

School (Condition of Services) Rules, 1981, framed thereunder.

3. The learned AGP points out that in fact by communication dated 30.08.2024, the respondent/Divisional Director of Education, Pune has forwarded interalia the petitioner's proposal for decision by the State in the light of the Government Resolution dated 29.04.2024. He also places before us the very Government Resolution. By way of such resolution, it has been resolved that inspite of the Government Resolution dated 01.12.2022, the writ petitions were lodged and the modalities to be adopted have been prescribed in the matter of grant of approval according to the order passed in the writ petitions by the High Court wherein Government Resolution dated 01.12.2022 was struck down. By clause 2 of the GR dated 29.04.2024, it has been resolved that all such similar proposals wherever there are no orders passed by the Court or no matters are pending before the Court, the proposals shall be forwarded by the Education Officers and the Divisional Deputy Director of Education to the State Government. He submits that in the light of aforementioned communication dated 30.08.2024, the petitioner's proposal has been forwarded to the State Government.

4. The learned AGP, on written instructions received by him today submits that the steps are being taken for carrying out necessary amendment in Rule 41-A and he has been requested to seek time from this Court.

5. In our considered view, when a similar attempt to stall the operation of Rule 41-A was made by issuing GR dated 01.12.2022, and when this Court in the matter of **Friends Social Circle and others Vs.State of Maharashtra and others [2023(5) ALL MR 601]** had struck down such an attempt expressly observing that the Rules cannot be intermeddled issuing departmental circulars and referring to the decision of the Supreme Court in the matter of **Dr. Rajinder Singh Vs. State of Punjab and Others [(2001)5 SCC 482]**, in our considered view, issuing a similar circular again in the form of circular dated 29.04.2024 is clearly an attempt at undermining authority of the High Court. The stand of the State Government even before coming out with an amendment to Rule 41-A to regulate operation of Rule 41-A is highly objectionable. In spite of being aware that a similar attempt was expressly struck down, the State has indulged into such an exercise.

6. Be that as it may, as has been held in Friends Social Circle (supra), till the time the legislature comes out with an amendment to Rule 41-A, the respondents cannot be allowed to seat over the proposal for grant of approval to the petitioner's transfer by referring to the GR dated 29.04.2024 or even a subsequent circular dated 03.10.2024.

7. The writ petition is allowed. Respondent No.3 is directed to consider and decide the petitioner's proposal dated 31.07.2024 in accordance with Rule 41 and 41-A of the MEPS Rules, 1981, as expeditiously as possible and in any case within 4 weeks, without referring to the Government Resolutions dated 29.04.2024 and 03.10.2024.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)