

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

WRIT PETITION NO. 3343 OF 2025

Rajendra Sudam Awaghade & Anr. ... Petitioners

versus

The State of Maharashtra & Anr. ... Respondents

Mr.Narendra V. Bandiwadekar, Senior Advocate with Mr.Vinayak R. Kumbhar, Mr.Rajendra B. Khaire and Mr.Aniket S. Phapale i/b. Ms.Ashwini N.Bandiwadekar for the Petitioners.

Mr.P.P.Kakade, Addl. GP with Mr.V.M.Mali, AGP for Respondent Nos.1 and 2, State.

Mr.Mahesh J. Chothe, Deputy Director of Education, Kolhapur Division, Kolhapur.

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

DATE : 04TH APRIL, 2025

P.C. :-

1. This case once again involves the same Deputy Director of Education, Kolhapur Division, Kolhapur, Mr.Mahesh J. Chothe.

2. The proposal of Petitioner No. 1, dated 1st August, 2023, was forwarded to the Office of Respondent No.2, the Deputy

Director of Education, Kolhapur Division, Kolhapur, for appropriate orders under Rule 41A of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the Rules of 1981). The said proposal has been rejected vide the impugned order dated 23rd January, 2024 on the ground that the Government Resolution (in fact, it is a Government Circular) dated 1st December, 2022 is in force.

3. It needs mention that the Government Circular dated 1st December, 2022 had placed Rule 41A (wrongly mentioned as Rule 41-1 in the Circular as well as the earlier Government Resolution dated 1st April, 2021), in abeyance. 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***). Subsequently, by judgment dated 21st July, 2023, Rule 41A was sustained and the Circular dated 1st December, 2022 was quashed and set aside.

4. The Petitioners, in the above circumstances, have approached this Court. The copy of the judgment in ***Friends Social***

Circle, Akola and others (*supra*) is placed on record at Page No. 38 onwards.

5. In response to this Petition, Mr. Mahesh J. Chothe, the Deputy Director of Education, has tendered an affidavit-in-reply dated 4th March, 2025. In paragraph 1, it is stated that he has gone through the copy of the Writ Petition with all annexures thereto. He has perused the official record pertaining to the subject matter of the case and based on the information derived therefrom, he is filing this affidavit. In paragraph 6, the said Officer has mentioned as under :

“6. I further submit that Petitioner No.3, the Junior College, had submitted a proposal to this Respondent office on 1.8.2023 regarding the transfer of Petitioner No.1 from partially aided division to aided division, which had been effected on 1.8.2023. This Respondent office, vide communication letter dated 23.1.2024, returned the Petitioners’ unaided-to-aided division transfer proposal, stating that, in accordance with the Government Resolution dated 01.12.2022 and the Government Notification 08.06.2020, specifically Rule 5, Sub rule (41-A), and the consequent Government Resolution dated 01.04.2021, further directives in this regard have been put on hold until further orders”.

6. It is, thus, clear that despite the copy of the judgment in ***Friends Social Circle, Akola and others*** (*supra*) having been placed

on record by which the Circular dated 1st December, 2022 has been quashed and set aside, the concerned Officer reiterates that the rejection of the proposal is in accordance with the Circular dated 1st December, 2022.

7. The above statement, despite the judgment of this Court having been brought to the notice of the concerned Officer, has a semblance of an intention to overbear the authority of the Court and a willful and deliberate act to overlook the said judgment and continue to reiterate a stand which is illegally taken by him, when the Circular dated 1st December, 2022 has already been set aside.

8. This is not the first time that this Court has expressed displeasure about the conduct of the concerned Officer. However, in the present situation, he has taken things too far by reiterating an illegal stand, though *Friends Social Circle, Akola and others (supra)* was cited to him.

9. In view of the above, we are *SUO-MOTO* issuing contempt notice in the format prescribed under the Contempt of Courts Act, 1971 to Shri Mahesh Chothe, returnable on **21st April**,

2025. We direct the registry to register this proceeding as a *SUO-MOTO CONTEMPT* proceeding. The concerned Officer instructs the learned AGP to waive service of notice, on his behalf.

10. We are listing the said suo-moto Petition on **21st April, 2025** for framing of charges. If the said Officer desires to file an additional affidavit, notwithstanding that he has already taken a stand in confrontation with the judgment in *Friends Social Circle, Akola and others (supra)*, office to accept the additional affidavit, if filed, on or before 15th April, 2025.

11. **This Writ Petition is allowed.** The impugned order dated 23rd January, 2024 is illegal and unsustainable and the same is quashed and set aside. The proposal dated 26th December, 2023 is restored to the file of Respondent No.2, to be reconsidered afresh in the light of Rule 41A of the Rules of 1981 and all the clauses set out therein. Needless to state, he would independently decide the said proposal on its own merits.

12. We mention that we have not expressed any opinion as regards the merits of the proposal.

13. If there are any deficiencies in the proposal, the concerned Officer is at liberty to address a communication to the Management within 21 days and point out the deficiencies, in one stroke. Once such deficiencies are pointed out, the Management shall cure the deficiencies, within 15 days and resubmit the proposal. The said proposal would be decided on its own merits, within a period of 30 days thereafter.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)