



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 308 OF 2024

1. Dayaram Patel Smarak Trust, Dharani,
Tah. Dharani, Dist. Amravati, through
its President,
2. Dnyanmandir Madhyamik Vidyalaya,
Duni, Tah. Dharani, Dist. Amravati,
through its Headmaster,
3. Ku. Jyoti Rampandit Badratiye,
Aged about 42 years, Occ. Service,
R/o C/o Dnyanmandir Madhyamik
Vidyalaya, Duni, Tah. Dharani, Dist.
Amravati

...Petitioners

// VERSUS //

1. The State of Maharashtra, through its
Secretary, School Education and Sports
Department, Mantralaya, Mumbai-32
2. The Deputy Director of Education,
Amravati Division, Amravati
3. The Education Officer (Secondary),
Zilla Parishad, Amravati

... Respondents

Shri Rupesh Vaishnav, Advocate h/f Shri Anand Parchure, Advocate for
the petitioners.

Shri G.S.Umale, AGP for the respondent nos. 1 to 3 / State.

**CORAM : SMT. M.S.JAWALKAR &
PRAVIN S. PATIL, JJ.**

DATED : 7th AUGUST, 2025.

ORAL JUDGMENT : (PER : PRAVIN S. PATIL, J.)

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the parties.

2. By this petition, the petitioners are challenging the order dated 23rd November, 2023 passed by the Respondent No.3, Education Officer (Secondary), Zilla Parishad, Amravati, thereby rejecting the proposal seeking transfer of petitioner no.3 Assistant Teacher from unaided secondary division to aided secondary division of the petitioner no.2 School, by relying upon the Government Resolution dated 1st December, 2022, thereby the stay has been granted to the Government Resolution dated 8th June, 2020 and Government Resolution dated 1st April, 2021.

3. The petitioner has pointed out that this Court by the judgment delivered on 21st July, 2023 in Writ Petition No. 8214 of 2022 (Friends Social Circle, Akola and others Vs. State of Maharashtra and others) and other connected petitions considered the legality and validity of Government Circular dated 1st December, 2022, and by recording cogent reason held that Government order or notification or circular can't be a substitute of statutory rules framed with the authority of law. Accordingly, observed in paragraph 7 as under :

“7. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that the provisions

of Rule 41A of the Rules of 1981 came to be inserted vide Notification dated 08/06/2020. The manner in which a Rule is required to be made has been prescribed by Section 16 of the Act of 1977. Under sub-section (3) of Section 16, the Rules made under the Act of 1977 are subject to condition of previous publication. The Notification dated 08/06/2020 has been published in the official Gazette. It is thus clear that Rule 41A is duly inserted in the Rules of 1981 by virtue of Notification dated 08/06/2020. Once Rule 41A is validly enacted and is placed in the Rules of 1981, the same would operate till such time it is subsequently amended or deleted as the case may be. However as long as Rule 41A continues on the statute book its operation cannot be stayed by issuing a Circular as has been done on 01/12/2022. We have not been shown any power by virtue of which the operation of a validly made Rule could be stayed by issuing a Circular by the Department of School Education and Sports. The Honourable Supreme Court in *Dr Rajinder Singh (supra)* has held that it is a settled position of law that no government order or notification or circular can be a substitute of statutory rules framed with the authority of law. It may also be stated that while it is open for the Rule making Authority to supplement an existing Rule by issuing administrative instructions, it is not permissible to supplant a validly enacted Rule through administrative instructions. The same analogy would apply when the operation of a validly framed Rule is sought to be suspended by issuing a Circular. On this count we find that the Department of School Education and Sports was not empowered to stay the operation of Rule 41A of the Rules of 1981 by issuing Circular dated 01/12/2022.”

4. As such, the Government Circular dated 1st December, 2022 to the extent it stays the operation of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 is quashed and set aside.

5. In the circumstances, considering the fact that this Court has already quashed and set aside the Government Circular dated 1st

December, 2022, the impugned order passed by the respondent no.3-Education Officer to reject the proposal of transfer of petitioner no.3 from unaided secondary division to aided secondary division, by relying upon Government Circular dated 1st December, 2022, is unsustainable in the eyes of law.

6. Hence, for the reasons recorded in the judgment and order dated 21st July, 2023 in Writ Petition No. 8215 of 2022, the impugned order dated 23rd November, 2023 passed by the respondent no.3-Education Officer is hereby quashed and set aside.

7. The respondent no.3-Education Officer is directed to reconsider the proposal of approval of the petitioner no.3 forwarded to his office on dated 30th November, 2021 on its own merit within a period of four weeks from the date of production of this order by petitioners before him. And if necessary, he is at liberty to call the parties and by conducting hearing, decide the proposal accordingly.

8. Writ petition is disposed of in aforesaid terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[SMT. M.S.JAWALKAR, J.]