IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6640 OF 2017

1. Maharashtra Rajya Shikshak Sena,
Through its Taluka President,
Tal. Basmat, Dist. Hingoli,
Sahebrao Bapurao Yashwante,
Age:- 47 years, Occ. Service as
Primari Teacher, Zilla Parishad
Primary School, Revulgaon,
Tal. Basmat, Dist. Hingoli.

2. Maharashtra Rajya Prathmik
Shikshak Sangh, Hingoli,
Through its Taluka Vice President,
Anil Lingusa Kamlu,
Age:- 45 years, Occ. Service as
Graduate Teacher, Zilla Parishad
Primary School, Palsi,
Tal. Basmat, Dist. Hingoli. .... Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Dept.,
Mantralaya, Mumbai.

2. The Principal Secretary,
School Education Department,
Mantralaya, Mumbai.

3. The Commissioner of Education,
Maharashtra State, Pune.

4. The Zilla Parishad, Dhule,
Through its Chief Executive Officer .. Respondents

Shri S. S. Thombre, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent Nos. 1 to 3.
Shri S. B. Ghute, Advocate for the Respondent No. 4.

WITH
WRIT PETITION NO. 6642 OF 2017

1. Shiksahk Pratinidhi Sabha (Shikshak Congress) through its District President, Keshav Shyamrao Gambhire, Age:- 39 years, Occu:- Teacher, A/P Zillha Parishad Primary School, Machartwadi, Tq. Nilanga, Dist. Latur.

and 69 others .. Petitioners

Versus

1. The State of Maharashtra, Through its Principal Secretary, School Education Department Mantralaya, Mumbai-400 032.

and 06 others .. Respondents

Shri S. K. Mathpati, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent Nos. 1 to 5.

WITH
WRIT PETITION NO. 7820 OF 2017

Akhil Bhartiya Prathmik Shikshan Sangha, through its Executive President, Shegji Fattu Walvi, Age:- 40 Years, Occ. Service as Assistant Teacher, Zilla Parishad Primary School, Tawali,

Tal. Akkalkuwa, Dist. Nandurbar. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Dept.,
Mantralaya, Mumbai

and 04 others .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent Nos. 1 to 3.

WITH
WRIT PETITION NO. 6626 OF 2017

Maharashtra Rajya Prathmik
Shikshak Sangha, State Publicity Head,
Rajesh Keshvrao Hiwale,
Age:- 40 Years, Occ. Service as
Assistant Teacher, Zilla Parishad,
Center Primary School, Asegaon,
Tal. Gangapur, Dist. Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Dept.,
Mantralaya, Mumbai.
and 03 others .. Respondents

Shri S. S. Thombre, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent Nos. 1 to 3.

WITH
WRIT PETITION NO. 7590 OF 2017

1. Abdul Raheman Shaikh Abbas,
Age --- Years, Occu. : Service,
R/o Z. P. P. S. Urdu School No. 3,
Chopda, Tq. Chopada, Dist. Jalgaon

and 19 others .. Petitioners.

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai

and 04 others .. Respondents.

Shri M. R. Wagh, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent Nos. 1 to 4.

WITH
WRIT PETITION NO. 6621 OF 2017

1. Ganesh Pandurang Kute,
Age : 39 Years, Occu. : Service,
R/o Shivnagar, Jalna,
Tq. & Dist. Jalna.

and 16 others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development and Water
Department, Mantralaya,
Mumbai - 32.

and 04 others .. Respondents

Shri Suvid S. Kulkarni, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.
Shri A. R. Aghav, Advocate for Respondent Nos. 4 and 5.

WITH
WRIT PETITION NO. 7846 OF 2017

1. Vinod S/o Prakash Dike,
Age : 34 Years, Occu. : Service,
R/o Shingi, Kendriya Primary School,
Tq. Gangapur, Dist. Aurangabad

and 44 others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development & Water
Conservation Department, Mantralaya,
Mumbai - 32

and 05 others .. Respondents

Shri Sambhaji G. Munde, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Ghute, Advocate for Respondent Nos. 5 and 6.

WITH
WRIT PETITION NO. 7714 OF 2017

1. Ferozkhan Nurkhan Pathan,
Age : 44 Years, Occu. : Service,
R/o Kendriya Primary School,
Kesapuri Tanda, Aurangabad,
Dist. Aurangabad.

and 31 others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development & Water
Conservation Department, Mantralaya,
Mumbai - 32.

and 07 others .. Respondents

Shri Sambhaji G. Munde, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Ghute, Advocate for Respondent Nos. 5 to 8.

WITH

WRIT PETITION NO. 6687 OF 2017

1. Ambadas S/o Sonba Gore,
Age : 47 Years, Occu. : Teacher,
A/p. Zillha Parishad Primary School,
Temburni, Tq. Basmat, Dist. Hingoli.

and 102 others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development & Water
Conservation Department, Mantralaya,
Mumbai - 32

and 06 others .. Respondents

Shri Shivkumar K. Mathpati, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 5.
Shri S. B. Ghute, Advocate for Respondent Nos. 6 and 7.

WITH
WRIT PETITION NO. 6649 OF 2017

1. Farooq Ibrahim Baig
Age - 49 Years, Occu. : Service,
Zilla Parishad Primary School,
Navi-Wadi Nanded, Tq. & Dist. Nanded

and 149 Others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.

and 03 others .. Respondents

Shri Kishor J. Ghute Patil, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 and 2.
Shri S. B. Pulkundwar, Advocate for Respondent Nos. 3 and 4.

WITH
WRIT PETITION NO. 6258 OF 2017

1. Sudam S/o Shankar Date,
Age : 40 Years, Occu. : Service,
R/o at Post Wasunde, Tq. Parner,
Dist. Ahmednagar

and 09 Others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development and Water Conservation Department,
Mantralaya, Mumbai.

and 04 others .. Respondents

Shri M. R. Sonwane, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.

WITH
WRIT PETITION NO. 6748 OF 2017

1. Aade Vijaykumar Khemaji,
Age : 36 Years, Occu. : Service,
R/o C/o ZP Primary School,
Tungi (B), Tq. Ausa

and 80 Others .. Petitioners

Versus

1. The State of Maharashtra
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.

and 02 others .. Respondents

Shri Vinod D. Godbharle, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 and 2.

WITH
WRIT PETITION NO. 7661 OF 2017

1. Anand Babasaheb Sarwade
Age - 33 Years, Occu. : Service,
R/o Z P P S, Mahadev Wasti,
Center Bhavathana, Tq. Ambajogai
Dist. Beed

and 17 others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.

and 05 others .. Respondents

Shri R. B. Narwade Patil, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri U. S. Mote, Advocate for Respondent No. 5.

WITH
WRIT PETITION NO. 6619 OF 2017

1. Vilas Abasaheb Deshmukh,
Age - 40 Years, Occu. : Agril. & Service,
R/o Vishnupuri, Tq. & Dist. Nanded.

and 09 0thers .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Department of Rural and Water Conservation, Mantralaya, Mumbai.

and 06 others .. Respondents

Shri Ganesh V. Mohekar, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Pulkundwar, Advocate for Respondent Nos. 5 to 7.

WITH
WRIT PETITION NO.7712 OF 2017

1. Shivaji Balasaheb Navale

Age - 43 Years, Occu. : Service,
As Assistant Teacher, Presently
Working with Z. P. Primary School,
Lambe Wasti, Tq. Newasa,
Dist. Ahmednagar

and 80 others .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.

and 10 others .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.
Shri S. T. Shelke, Advocate for Respondent Nos. 4 and 5.

WITH
WRIT PETITION NO. 6715 OF 2017

Rajshree Rajesh Jagtap
and 17 others .. Petitioners

Versus

1. The State of Maharashtra
and 10 others .. Respondents

Shri R. F. Totala and Shri Rahul Totala, Advocate h/f Shri R. K. Temkar, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.

WITH
WRIT PETITION NO. 6716 OF 2017

Vyenkat S/o Bhujangrao Kendre
and 25 others .. Petitioners

Versus

1. The State of Maharashtra
and 05 others .. Respondents

Shri J. M. Murkute, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.

WITH
WRIT PETITION NO. 6723 OF 2017

Gajanan Arjuna Khillari
and 18 others .. Petitioners

Versus

1. The State of Maharashtra
and 06 others .. Respondents

Shri S. K. Mathpati, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Ghute, Advocate for Respondent Nos. 6 and 7.

WITH
WRIT PETITION NO. 5719 OF 2017

Dilip s/o Ramakant Dhakane .. Petitioner

Versus

1. The State of Maharashtra
and 05 others .. Respondents

Shri S. G. Mundhe, Advocate for the Petitioner.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Ghute, Advocate for Respondent Nos. 5 and 6.

WITH
WRIT PETITION NO. 6623 OF 2017

Rajesh S/o Gangadhar Jagtap
and 26 others .. Petitioners

Versus

1. The State of Maharashtra
and 05 others .. Respondents

Shri R. F. Totala and Shri Rahul Totala, Advocate h/f Shri R. K. Temkar, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.

WITH
WRIT PETITION NO. 6724 OF 2017

Smt. Parveen D/o Wasik Kazi .. Petitioner

Versus

1. The State of Maharashtra
and 06 others .. Respondents

Shri S. K. Matpati, Advocate for the Petitioner.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 5.
Shri S. B. Ghute, Advocate for Respondent Nos. 6 and 7.

WITH
WRIT PETITION NO. 6726 OF 2017

Smt. Vidya D/o Bhalchandra Suryawanshi .. Petitioner

Versus

1. The State of Maharashtra
and 03 others .. Respondents

Shri V. M. Maney, Advocate for the Petitioner.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt.

Pleader for Respondent No. 1 to 3.
Shri S. B. Ghute, Advocate for Respondent No. 4.

WITH
WRIT PETITION NO. 6750 OF 2017

Nandkishor Ramrao Markad
and 05 others .. Petitioners

Versus

1. The State of Maharashtra
and 03 others .. Respondents

Shri V. M. Maney, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.
Shri S. B. Ghute, Advocate for Respondent No. 4.

WITH
WRIT PETITION NO. 7812 OF 2017

Yuvraj Vitthalrao Powade
and 63 others .. Petitioners

Versus

1. The State of Maharashtra
and 04 others .. Respondents

Shri S. S. Kulkarni, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.
Shri S. B. Pulkundwar, Advocate for Respondent No. 4 and 5.

WITH
WRIT PETITION NO. 7851 OF 2017

Subhash Nivrutti Bhadange
and 23 others .. Petitioners

Versus

1. The State of Maharashtra
and 04 others .. Respondents

Shri S. S. Kulkarni, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.

WITH
WRIT PETITION NO. 7815 OF 2017

Dipak S/o Ankushrao Londhal
and 19 others .. Petitioners
Versus
1. The State of Maharashtra
and 06 others .. Respondents

Shri S. K. Mathpati, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 5.
Shri S. B. Ghuyte, Advocate for Respondent No. 6 and 7.

WITH
WRIT PETITION NO. 7766 OF 2017

Nagnath S/o Laxman Gatkal
and 84 others .. Petitioners
Versus
1. The State of Maharashtra
and 03 others .. Respondents

Shri P. A. Bharat, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.

WITH
WRIT PETITION NO. 7041 OF 2017

Bhalchandra Hiraji Choudhari
and another .. Petitioners

Versus

1. The State of Maharashtra
and 07 others .. Respondents

Shri S. G. Mundhe, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Ghute, Advocate for Respondent No. 5 to 8.

WITH
WRIT PETITION NO. 6625 OF 2017

Maharashtra Shikshak Sanghatana
Zilla Shakha Dhule .. Petitioner

Versus

1. The State of Maharashtra
and 03 others .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 3.

WITH
WRIT PETITION NO. 8020 OF 2017

Arun Nivrutirao Wattamwar
and 26 others .. Petitioners

Versus

1. The State of Maharashtra
and 03 others .. Respondents

Shri M. P. Tripathi, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 and 2.

WITH
WRIT PETITION NO. 8022 OF 2017

Vikas S/o Gangadhar Dongre .. Petitioner
Versus
1. The State of Maharashtra
and 05 others .. Respondents

Shri J. M. Murkute, Advocate for the Petitioner.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.

WITH
WRIT PETITION NO. 6022 OF 2017

Sandeep S/o Nanasaheb Shirkule
and 21 others .. Petitioners
Versus
1. The State of Maharashtra
and 05 others .. Respondents

Shri S. G. Mundhe, Advocate for Petitioners.
Shri V. J. Dixit, Senior Counsel i/by Shri A. B. Girase, Govt. Pleader for Respondent No. 1 to 4.
Shri S. B. Ghute, Advocate for Respondent Nos. 5 and 6.

CORAM : ANOOP V. MOHTA AND
SUNIL K. KOTWAL, JJ.
DATE : 22ND JUNE, 2017.

ORAL JUDGMENT (***Per Anoop V. Mohta, J.***) **:-**

1. Rule. Rule returnable forthwith, heard finally by consent.

2. We are disposing off all these writ petitions, by a common

judgment as the petitioners/teachers of Zilla Parishad have raised common and interlinked issues, and the contesting respondents are common.

3. The petitioners, who are primary teachers of Zilla Parishad Primary School of the respective district/area through the association and in individual capacity, have filed these petitions, thereby the State Government (the "State") resolution (the "resolutions") dated 27th February, 2017 as modified on 15th April, 2017, 17/26/31, May, 2017 and 6/7/21 June, 2017 stated to be illegal, unreasonable, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India. The issues are raised that these resolutions are contrary to the provisions of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 ("Z. P. Act") and the Rules made thereunder, and to the earlier government resolutions. Prayers are also made to declare these resolutions bad in law and to retain the resolution dated 15th May, 2014. All in all a common challenge is raised to the new transfer policy of Zilla Parishad school teachers announced by the State.

4. There is no issue that all these teachers have been appointed by respective Zilla Parishad/authority under the Z.P. Act from time to time. They are under the service conditions of the respective Zilla Parishad for all the purpose. The Zilla

Parishad/authority are required to follow the State circulars/resolutions of such teacher issued from time to time. The Z. P. Act defines various terms including “Block Development Officer”, “Chief Executive Officer”, “Development Scheme” as constituted under Section 4, “Executive Officer”, “Panchayat”, “Resolution”, “Relevant District Board” and “Zilla Parishad”. The power is also provided for abolition of district and/or alteration/division in boundary/block. The power of State to control the various affairs and to give directions through various resolutions is not in dispute.

The limited scope of judicial review in State policy decision:

5. The law with regard to the fundamental rights, revolving around doctrines including "treating equals unequally", 'discrimination in creating class' and/or 'unreasonable classification' or “discriminatory, unreasonable, arbitrary, illegal decisions” are quite settled. The Apex Court in **Air India Limited: K. Amal Chopra : Prabha Rani : F. P. L. Tounghe : Menka Nathani Vs. Nergesh Meerza : I.A.G. : I. A. C. : I.A.C. : I.A.G.** ***(1981 DGLS (SC) 389 : 1981 AIR(SC) 1829 : 1981 (3) Scale 1275*** has observed as under :

> **"39. THUS from a detailed analysis and clow examination of the case of this Court starting from 1952 till today, the following propositions emerge :**

(1) In considering the fundamental right or equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay service terms, leave, etc. are introduced in different or dissimilar posts.

THUS where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be A completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently Art. 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:-
(A) the nature, the mode and the manner of recruitment of a particular category from the very start.
(B) the classifications of the particular category.
(C) the terms and conditions of service of the members of the category;
(D) the nature and character of the posts and promotional avenues;

> **(E) the special attributes that the particular category possess which are not to be found in other classes, and the like.**
>
> **40. IT is difficult to lay down a rule of universal application but the circumstances mentioned above may be taken to be illustrative guidelines for determining the question.**

6. The Supreme Court in **Deepak Sibal Vs. Punjab University and another** ***(1989) 2 SCC 145*** has observed in paragraph 20, as under, keeping in mind Article 14 and the allegations of unreasonable, discriminatory rules/circulars/resolutions, and that, if the alleged clauses are unseverable from the remaining part of the rule, the entire rule must be struck down.

> **"20. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable."**

7. The Apex Court has endorsed as under in **State of Andhra Pradesh Vs. Mcdowell and Company Limited** ***(1996 DGLS (SC) 623 : 1996 AIR (SC 1627 : 1996 (3) JT 679 : 1996 (3) Scale 146*****,** keeping in mind basic principles and power of the State while enacting the law or publishing any circular, resolution and taking any decision including the aspect of Article 14, 19(1)(g), 21 and 226 of the Constitution of India :

> **"Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality,(ii) illegality and (iii) procedural impropriety [See Council of Civil Services Union v. Minister for the Services which decision has been accepted by this Court as well]. The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. [See the opinions of Lords Lowry and Ackner in R.v. Secretary of State for the Home Department Ex-parte (1991 A.C.696 at 766-7 and 762]. It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted."**

8. The Apex Court in **Om Kumar Vs. Union of India** ***(2000 DGLS (SC) 1642 : 2000 AIR (SC) 3689 : 2000 AIR (SCW) 4361 : 2000 (Supp.3) JT 92 in para No. 66*** has observed as under :

> **"It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination**

> **applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority."**

09. The Apex Court in another judgment in **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi** ***(2006) 10 SCC 337*** keeping in mind the power and requirement of Government to take any new policy decision, the scope of judicial review in such administrative action, has been crystallized/reiterated in the following words.

> **11. "5 While exercising the power of judicial review of administrative action, the Court is not the appellate authority and**
>
> > **'[t]he Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J. & K. SCC p. 374 para 19, Shri Sitaram Sugar Co. v. Union of India.)**
>
> **The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.**
>
> **6. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court**

is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt (sic decide) which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theatre Company v. City of Chicago (L. Ed. p. 734).

> **"The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. (See: State of Orissa and others v. Gopinath Dash and Others SCC 497, paras 5-8).**

17. It is not the case of the petitioners that with any oblique motive the eligibility criteria has been stipulated. On the contrary after analyzing the issues, a Committee appointed by the respondent had suggested the norms and the schemes was accordingly prepared. We do not find any irrationality much less something which is totally out of context to justify interference.

10. The Apex Court recently in a case of ***Binoy Viswam Vs. Union of India and Others MANU/SC/0693/2017*** dated 09.06.2017 reiterated the above position of law in following words:

> **"96.What follows is that Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of achieving specific ends. Classification to be reasonable should fulfil the following two tests:**
>
> **(1) It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.**
>
> **(2) The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.**
>
> **Thus, Article 14 in its ambit and sweep involves two facets, viz., it permits reasonable classification which is founded on intelligible differential must have a rational relation to the objects sought to be achieved. Further, it does not allow any kind of arbitrariness and ensures fairness and equality of treatment. It is the fonjuris of our Constitution, the fountainhead of justice. Differential treatment does not per se amount to violation of Article 14 of the Constitution and it violates Article 14 only when there is no reasonable basis and there are several tests to decide whether a classification is reasonable or not and one of the tests will be as to whether it is conducive to the functioning of modern society."**

The background of urgent hearing :

11. The teachers have challenged the resolutions at various benches of this High Court, immediately after publication of list of teachers by all the concerned respondents, who are due and eligible for transfer, but before the receipt of any transfer orders. In some matters it is directed to maintain *status-quo* with

regard to posting of teachers till next date. However, permitted the respondents to proceed with the procedure formulated under impugned resolutions. Similar types of orders dated 25th May, 2017 passed at Bench at Aurangabad in vacation. The High Court has issued notices in other writ petitions. Nagpur Bench of this Court in Writ Petition No. 2939 of 2017 on 19th June, 2017 in association petition, referring to the challenge to the resolutions has vacated interim orders dated 03rd May, 2017 and 17th May, 2017 and permitted the respondents to issue transfer orders. They have observed that individual petitioners are free to file appeal as provided for in the resolution.

12. In view of the urgency so expressed, matters are listed by the consent of the parties for final disposal as issues are revolving around five lakh teachers in the State. The respondents submitted to take decision at earliest so that policy decision so taken need to be implemented before 30th June, 2017. This would enable the teachers to resume their duties at respectable places as the academic session has already commenced. The order of status-quo hampering their further action of transfers. The State and all the concerned authorities of the respective area have been acting upon the same. All the teachers who are in service of Zilla Parishad have already acted upon it by submitting their details in the format annexed to the resolutions. To achieve the object of the transfer policy so

announced, everyone has to act promptly.

No reason to interfere with the teacher transfer policy :

13. We have permitted respondents to file affidavit in reply. Respondent Nos. 1 and 2 (Writ Petition No. 6640 of 2017 and others) have filed affidavit-in-reply on 16th June, 2017. Similar affidavit is filed in other matters also. Some petitioners through association and by individuals have filed petitions without even receipt of any transfer orders based on the policy/resolution. Actual effect and/or grievances of the respective petitioner/teacher need to be tested on individual grievance basis and not in general. The state policy with regard to power of respective employer, State, Zilla Parishad to transfer the teacher from one place to another and/or district to another and/or hilly area to general area covering the aspect of tenure at one place on administrative reason and/or couple convenience and/or by giving specific importance to the class or classes of person, is well within the knowledge of all the concerned. All the individual teachers are bound by the service conditions which include the power of respective employer/Zilla Parishad, to transfer the teacher, within the framework of declared policy, from time to time. The very challenge on behalf of such teacher association itself is unacceptable.

14. The point/issue so raised need to be tested on the actual foundation of individual grievances of the respective teachers, not at the instance of the association's. Preparation of list of eligible teachers for transfer that itself can not be the ground to entertain the petition, when admittedly the teachers have not even received any transfer order. It is premature stage. We have to consider the challenge so raised in above situation, whereby submission is made to test the merits and demerits of the resolutions, including its constitutional validity or illegality so stated. It is relevant to keep in mind the above settled principles of law, when and under which circumstances the Court can have a judicial review of the State resolutions and or policy decision of such general/mass transfer of teachers. Those judgments are noted in the earlier paras itself.

The Education policy and its urgent Implementation :

15. The Right of Children to Free and Compulsory Education Act 2009 (the RTE Act) and regulations as amended from time to time, and the The Right of Children to Free and Compulsory Education Rules 2010 (The Rules) are with intention to provide for free and compulsory education to all children of the age of six to fourteen years and strengthen the education system through out India, keeping in mind power and authority of respective States to control, govern and regulate the education system. It deals with the duties of the appropriate Government, local

authority and parents read with responsibility of schools and teachers about the curriculum/elementary education. The Act and Rules also deals with school management and responsibility of schools and teachers. The power to take appropriate steps to fix and finalize staffing pattern and related activities, is also provided. The State keeping in mind those provisions for taking steps from time to time. Even under the RTE Act, schedule and norms and standards of schools has been provided including teachers-student ratio for the respective classes. Every concerned department, officer need to proceed on the basis of this Act and the time to time declared related State resolutions, which includes the transfers, absorption of teachers as per the strength of students and/or under a particular school/institution/taluka/district.

16. The provisions of the RTE Act, Zilla Parishad Act and the circulars so issued covering various facets including of the teacher transfer, apart from judgment/orders passed by the Court based on then existing transfer policy need to be read together. The State Government's obligations/responsibility to take effective steps to bring uniform education policy, which includes important role of management and teachers, keeping in mind right of children to free and compulsory education just cannot be overlooked. The State has, therefore, empowered and required to take appropriate steps from time to time to bring uniform

education policy. Therefore, the decision, so taken in bringing new transfer policy, cannot be disturbed at the instance of these teachers, who have admitted not even received any transfer orders. All these challenges are without foundation of individual merits are premature.

17. The submission that any one can challenge any Government policy, at any time, is not acceptable, basically when it comes to the State transfer policy, published in advance in February 2017 itself, so that appropriate steps/orders can be initiated before the commencement of academic session.

Object & Purpose of the Policy :

18. The recent policy decision is taken in the interest of teachers working through out the state to bring in more transparency in the process of transfer. All the teachers working at their respective places in hard area and/or general/normal/easy area, required to be treated equaly. The difficulties faced by the teachers individually and/or couple and/or working in hard area and/or long tenure at one place, request transfer and/or couple convenience transfer and/or personal reason and/or revocation of transfer for certain classes of people have been noted. The restriction of transfer and/or giving preference to particular class of teacher while passing the order of transfer, have been in existence since long. The same

has been re-streamed with a view to have a uniform workable policy and to lesson the human interference while dealing with the process of transfer and/or passing of transfer orders. The policy's aim of computerization of the process in view of the huge number of teachers involved, so also for the proper management, keeping in mind the requirement of staffing pattern, in no way can be stated to be unjust, unreasonable, arbitrary and/or contrary to the existing policy and/or law. Every one concerned, is required to keep in mind the role of teachers for up-bring of the students/children. But at the same time, these teachers being employees of the Zilla Parishad, the authority and power given to the Chief Executive Officer, who is appointing authority need to guided properly. No one can insist and/or seek any directions from the Court, that the Government is bound to continue with the existing policy as a matter of right, so far as the aspects of such transfer.

Reasonable Classification to Achieve Object :

19. We have gone through the earlier resolutions, so referred in the impugned resolution and through the contents of the resolutions as amended from time to time. The impugned resolution is nothing but further steps to implement the transfer policy, which required to be fixed based upon various representations and the grievances so raised by the respective teachers/employees/institutions. Uniformity is necessary keeping

in mind the provisions of the acts so referred and as the teachers are special and important class of society are required to be delt with cautiously. The decision so reflected, in no way can be stated to be with any ulterior motive and/or unreasonable and/or arbitrary and/or discriminatory and/or violative of Article 14, 16 and 21 of the Constitution of India and the provisions of the RTE Act and/or in conflict with earlier resolutions so referred above including resolutions dated 18.04.2013, 24.10.2013, 15.05.2014, 12.07.2014, 12.01.2017.

20. We have noted that, such teachers are already recognized as a class, not only by this resolution and/or decision, set by earlier resolutions. Admittedly, on the date of appointment itself, they were made known the condition of their services, which includes the transfer and/or related aspects. For all services purposes, they will be governed by the existing provisions of law and the service conditions including the misconduct and/or enquiry, so referred and required to be initiated in case, there is breach and/or non compliance of the orders including the transfer orders so mentioned in the resolutions itself.

21. The reference is made to various judgments in support of the contentions that such classification and/or creating a different class of teacher is in contravention to the provisions of the R. T. E. Act and Article 14, 16 and 21 of the Constitution of

India. We are not inclined to accept this submission as this classification has been in existence since long. It is well known within the field in question. All have been acting upon the same since long. Other employees of the Zilla Parishad cannot be treated and/or falls within the ambit of teacher, who are basic elements for imparting education to the children/students in respective schools/institutions. We are of the view that, treating this class separately by giving importance to every aspect of such teachers including the difficulties and the grievances, so referred and raised from time to time and at the same time in the interest of running uniform education pattern in the State cannot be stated to be arbitrary and/or unreasonable. The judgments so cited by the learned counsel appearing for petitioners, itself lay down the position of law clear that the State Government and/or concerned authority has always power to recognize this class and/or to make reasonable classification to achieve the aims and objects of the policy so declared. The classification so raised is justifiable. The demarcation of such teachers is in existence in Group - C (Class - III) and Group - D (Class IV) employees cannot be stated to be unconstitutional and/or illegal. This is also for the reason that, there are teachers, who have been supporting the policy decision as it has taken the care of long pending grievances. The decision of the Government to stream line all the grievances, which is in the interest of all the concerned. At the instance of some teachers, whole policy of the

classification so reiterated, which is in existence since long need not be interfered with.

Other Specific Features of the Policy :

22. The earlier tenure of teacher at one place initially with three years or four years was well known. Those resolutions are always kept in mind while taking transfer policy decision. There is no issue that, from time to time the tenure and/or fixed period at one place/taluka/district has been noted/modified and all the concerned parties have acted upon it. The individual grievances based upon malafides and/or are always matter of discussion and debate including in Courts. It is made clear in the circular itself that, they would take various steps as declared to implement the transfers. It is obligatory, therefore, for the concerned respondents to keep in mind other classes and the procedure so mentioned in the resolution before passing the transfer orders or based upon the final list. All the concerned teachers have already submitted the details and opted for 20 places in on-line process through the official website including www.edustaff.maharashtra.gov.in. All the resolutions/circulars are available on the official website of the Government of Maharashtra namely (www.maharashtra.gov.in).

23. Therefore, at this stage, unless specific and individual orders are made out, it is difficult to accept the case of petitioners

that, in pursuance to this declared policy, every teacher who has completed ten years of service will be transferred every year. The State having taken decision to give importance to the smooth running of schools or educational institutions and the alleged repeated transfers in short duration, on every occasion, will not be in the interest of any one. Though in a given case for administrative reason and exigency, they may pass orders. However, it is made clear that, in view of impugned policy dated 27.02.2017 and as amended from time to time, being a new policy, some orders, even if passed having effect of immediate transfer, such grievances may be considered in individual cases. The power of Government or the respondent to transfer based upon this policy is in no way, can be stated to be unreasonable and/or arbitrary.

24. We have noted that, the State/authorities required to consider the clauses, about the option so provided and the rider that every teacher would not be transferred. It will depend upon facts and circumstances and the vacancies and the requirement so contemplated under the resolution. The apprehension, even if, just cannot be gone into at this stage without considering individual grievances. No Government resolution or policy can be challenged merely on the basis of assumption and presumption, without material and the cause of action. The change in policy of giving importance of ten years, in no way, can

be stated to be arbitrary or unreasonable. Actual implementation and its effect, has not yet occurred, therefore, at this stage, no reason to interfere with the policy so declared.

Hard area or Easy/General area :

25. The definition of hard area and not hard area is not the foreign concept. Earlier circulars itself refer and deal with the same, and the parties have been acting upon it. The judgments so referred to, recognizing such areas. The concerned officers/department need to take note of the judgment/orders passed by this Court in this regard. The challenge and the submission that in defining hard area and/or general/easy area itself would create complications for want of specific and clear guidelines. After going through the earlier circulars as well as those resolutions, we are inclined to observe that, the Chief Executive Officer (C. E. O.) who is appointing authority of such teachers and who is incharge of district required to take note of various elements before declaring such areas as specified area. The concept of difficult area is known. The resolution itself provides the basic elements, which required to be taken note of by such officers before taking such decisions. The impact of such decision and/or declaration of hard area and/or non hard/easy/general area on the teachers/employees working in the respective area of the district, is clear. We are inclined to observe that, though it is necessary for the State to have a clear specific

and in detail guidelines, which should be used and utilized by the concerned officers before taking such decision based upon facts and material need to be provided. We are inclined to observe that, the elements and the power and the authority of the C. E. O. as provided, in no way can be stated to be bad in law, unjust and/or contrary to any provision. It is made clear that, in case any arbitrariness and/or any decision taken contrary to the provisions and/or material, it will be tested at appropriate case and in appropriate circumstance, but to say that the power so given is contrary, unjustifiable and the decision so taken by the authority is without guidelines is not acceptable. On this ground also we cannot declare the resolution bad, unjust and contrary to the law.

Earlier Scheme - Percentage :

26. We have considered the whole policy which has been introduced keeping in mind the clauses so referred in the resolution to give proper effect, the new scheme so announced and for that if decision is taken to delete the fixed percentage of transfer which, in our view, itself cannot be a reason to say that the impugned resolution/policy decision is bad in law. The State while framing the policy require to add/alter/modify the resolutions and the procedure. They are ultimately the final authority. In any way, at the petitioners' insistence or submission to continue with the earlier percentage of transfer is

unacceptable. No right or entitlement is pointed out for continuation of such policy and/or the clause. Having once noted all the clauses which are interlinked/inter connected and to implement the same, the government has modified the earlier resolutions of its scheme to certain extent and for proper implementation of the present scheme such decision, if taken which, in our view difficult for this Court to interfere with the same policy decision.

Couple convenience versus individual teachers :

27. The concept of couple convenience as noted has been in existence since 2001 as reflected in resolution dated 27th March, 2001. Further endorsed in resolution dated 18th April, 2013. These resolutions also endorse the distance of thirty kilometers so prescribed since inception with concept of couple convenience.

28. The facet of couple convenience is also well known in the field. This is not for the first time such concept is introduced, keeping in mind restriction of 30 K.M. distance. Earlier resolutions itself refer to this 30 K.M. distance. There was no such challenge made at earlier point of time. The submission that a discrimination is created by creating a class referring to these 30 K.M. by excluding the others who are within 30 K.M. and/or individuals, even otherwise, is unacceptable. The couple convenience concept is definitely well within the framework of

policy decision and in the interest of particular couple class. there was no such earlier challenge that, this creation of couple convenience is bad in law and/or unjust or unreasonable. It is made clear that, ultimately at the time of passing transfer orders, the concerned officer is required to consider all the elements so provided. There is no uncertainty as stated while fixing the distance as 30 K.M. for deciding the couple convenience issue. We cannot interfere and disturb this aspect merely for asking, even by the couple petitioners. The individual grievances if any required to be tested when occasion comes. But on assumption and presumption such clause cannot be declared as bad in law.

29. The submission that, such convenience is not taken note of individual teachers of the class is created by carving such special class or privilege to the couple is unacceptable. The couples who are within 30 K.M. and who are out side 30 K.M. itself has created discrimination and/or arbitrariness is the contention. As noted, this concept of couple convenience within or outside 30 K.M. is in existence since long, but remained unchallenged. Some boundary is required to be fixed by the State and even otherwise to implement such policy decision of transfer. There is no scope for judicial review, at the instance of petitioners on the basis of assumption and presumption and/or general allegations. We see no case is made out, even to disturb this created class

and/or policy.

Publication of list based upon option/seniority :

30. As per the scheme, the teacher is required to submit the details as per the published scheme. In this process the State/Zilla Parishads have collected all the material data, including the date of appointment, seniority, tenure of post at one place in hard and in general area. Therefore keeping in mind the education pattern/staffing patter and the requirement of particular school or teacher based upon the students strength a proper and general decision can be taken. This procedure cannot be stated to be arbitrary, unreasonable or contrary to the provisions of any law. The interest of specific class of teachers is taken care of within the framework of law including the constitutional provisions. The concept of providing 20 option in the form ultimately stream line and supports the authority to take and/or pass transfer orders. This mechanism definitely reduces/lessons the human interference. There are about four to five lacs of teachers are involved. It is difficult for any department to collect physically all the data at one stroke, before passing any such transfer orders. However, in view of this transparent policy substantial material/data is available to give effect to pass effective transfer orders. Some liberty and leverage, in our view, therefore, is required to be given to the concerned appointing authority, specifically when scheme is

introduced by modifying earlier circular for the first time through the impugned resolution. This is no way read that the authority can act upon beyond the provisions of law.

Provision of representation/objection to the list :

31. The resolutions itself provide a mechanism to raise objection at appropriate stage. One is after publication of list by the Education Officer of the Zilla Parishad in each district. The objection to the list is required to be considered before declaring the final list. The final list would be used and utilized for all transfer orders. The Education Officer is required to deal with the objection, if any, in accordance with law. The objection if not raised, the list attains finality for all further purposes. The department is required to proceed on the basis of it.

32. In the present cases, resolution is announced in February 2017. The respective lists were published by the respondents' officers some time in May/June 2017. The publication of list pending writ petitions, even if any and/or otherwise cannot be disturbed.

33. It is necessary to note the High Court while passing the interim orders, permitted the respondents to proceed with the procedure so announced. The *status quo* was restricted only to the posting orders. Therefore, every one concerned are aware of

the contents of resolution and its effect. There was no prevention or bar by any order of not raising objection at appropriate time. The Education Officer is required to consider objection, if filed with the period schedule so announced. As noted, the Education Officer, even if rejects the objection, appeal is available before the Chief Executive Officer within five days, such decision will be final. Once list is prepared as announced, the concerned respondents need to take timely action to implement the transfer policy, so announced, as education session required to be started as announced by all the concerned.

Appeal/Representation against the Transfer Orders :

34. The important facet of availability of any further forum, once the transfer orders are passed and/or likely to be passed not specifically reflected in resolution of 27.02.2017. To redress the grievance about illegal and impermissible transfer order a remedy is required. By subsequent resolution dated 15.04.2017 even prior to filing of these basic writ petitions in May it is provided or it is made clear that such transfer orders or irregularity and/or grievances if any permitted to be agitated before the respective Divisional Commissioner of the Revenue Division. It is provided that the Divisional Commissioner to take decision within 30 days, and that decision will be final. The learned senior counsel appearing for the respondent/State on instructions and considering the basic requirement of availability

of such forum to consider the individual grievance of aggrieved teacher/party, after receipt of transfer orders makes the statement that the Divisional Commissioner of the respective revenue divisions will accept and/or entertain such objection/representation/appeals and deal with the same in accordance with law as early as possible, keeping in mind the intended resolution and the urgency of the situation. This, forum is required to be given importance as various factual irregularities/grievances of each and every individuals, just cannot be gone into for the first time in the writ jurisdiction. The availability of such forum/authority and in view of above is sufficient to take interest of aggrieved teachers on merits of the transfer orders. The issue, therefore, of non availability of any forum and/or no procedure prescribed to make representation, as recorded above concludes the situation possitively. Therefore, on this ground no case is made out to interfere with the resolution.

Misconduct/disciplinary action, if transfer order is not complied with :

35. The resolution provides mechanism, in case if there is non compliance of transfer orders by the individual teachers. The aspect of misconduct refers only to the individual persons. The grievances revolving around individual transfer orders cannot be considered on the basis of general averment so made by the association or individuals before receipt of transfer orders. The

concerned persons/employee/teachers after receipt of transfer order, if failed to comply with the same, the resolution clauses are very clear referring to the disciplinary proceedings as contemplated under the provisions of the Maharashtra Zilla Parishads District Services (Disciplinary Action and Appeal) Rules, 1967. Clause 6 and 7, how this clause can be said to be unjust, arbitrary and contrary to law. It is necessary to observe that, it is also clear that teachers are not government servants as sought to be contended. The teachers are the class itself, governed by the provisions of the Z. P. Act. The disciplinary proceedings based upon any such misconduct, therefore, required to be dealt with in view of above provisions only.

The detailed procedure is prescribed to implement the transfers :

36. After considering rival contentions and after going through the contents of the resolutions, we have also noted that, apart from above, there are detailed procedures prescribed to take steps to implement the resolutions including the collecting requisite data and material before passing the transfer orders. There is no procedural lacuna and/or irregularity, which goes to the root to declare the whole process as bad, unjust or contrary to any law.

Preparation of seniority list and/or existing seniority list :

37. It is clear from the resolution that transfer depends upon the seniority list of teachers of specific class holding right of transfer and/or eligibility for transfer. Teachers have been provided with choice of twenty places if any vacancy is available as per the choice earlier given by them. By determination of seniority has also been explained and certain categories of teachers are added in special class. List of transferable vacant posts also required to be published. Category of teachers eligible for transfer and teacher holding right to transfer is in the interest of all. The teachers who have worked continuously in general area for a period of ten years are eligible for transfer and also the teachers who have worked continuously for a period of three years in difficult area. In view of this resolution, therefore, it will be feasible for the concerned authorities to take decision to transfer eligible teachers as per the vacancy available and the seniority list. The teachers of Zilla Parishad required transfer in various schools in view of increase or decrease of strength of students and requirement to achieve uniform teaching pattern, the scheme framed.

38. For proper implementation and considering the scheme and the purpose of this resolution and the policy decision and even otherwise to have a seniority list based upon the data

collected, which will definitely useful to implement effectively declared policy in no way can be said to be unjust and/or unreasonable. The respondents required to take note of seniority and how to implement it keeping in mind the provisions is again matter of individual challenge, if any. But at this stage, on that ground also it is difficult to disturb the resolution. The preparation of list taluka wise and/or district wise is again subject to actual and factual implementation of the resolution. The decision if taken through the policy to give effect to transfer by 31st May 2017 and to take effective steps in this regard, in our view, this cannot be tested and/or interfere at the instance of petitioners.

Earlier High Court Orders :

39. The resolutions itself deal with various orders passed in writ petitions, based upon then existing policy or resolution. The government/respondent is required to implement and give effect to the resolutions, keeping in mind various orders so passed by the Court. Even, otherwise, we are dealing with present decision so declared on 27.02.2017 and to bring in all the requisite element and to give effect to the same, which in our view within power and purview of the authorities/State, and create no hurdle of any sort. The employees/teachers, who are transferred based upon the orders passed by this Court prior to this resolution and/or based upon earlier policy are also required to submit their

details as per the resolutions. There is no reason that, they would not submit the details. The respondent/State, however, will consider the orders and/or such cases on individual basis, if required in view of new policy and appropriate orders need to be passed for proper implementation of the scheme and the orders of the Court. The Government has in the resolution itself made clear that, they will respect the orders passed by the High Court and will pass transfer order keeping in mind the requirement of transfer between the period 01st May to 31st May of every year.

Inconvenience/hardship/difficulties to individual teachers :

40. Any transfer orders, though the service is transferable, new policy once declared and the concerned employer if take decision on administrative reason and/or exigency and/or otherwise including the request transfer to adjust or accommodate one teacher or other and/or exchange transfer, is always matter of debate and individual challenge. As the law with regard to transfer is clear, except in exceptional and extraordinary circumstances and/or if case is made out to interfere the Court to pass protective orders in favour or against the parties/petitioners. The earlier orders of Court, no way can be read to the effect that, it is permanent order and Court has passed order of giving permanent post to the teacher. The scope of judicial review as settled in such matter need no discussion. It

is settled. The individual petitioners, if make out a case on various facets/grievances, the Court is required to consider it, as and when occasion arises, subject to completion/exhaustion of all appropriate remedy available under the service condition and/or resolution. This is also for the reason that, various facets and facts are involved, where concerned department need to answer and deal with the same. The respective representations, even if pending need to be dealt with in accordance with law. The transfer order once issued as per the scheme required to be followed/implemented to its logical extent by all the concerned.

Deletion of Counseling Method/Teacher Cadre :

41. Having once noted the importance of the resolution and its effect the submission that to continue to to restore the counseling method, is ultimately, the State's policy decision. We cannot direct to add or delete or restore clauses as prayed for the reasons so recorded above. So is the case of deletion of the teacher cadre from the resolution dated 15.05.2014. The resolutions cannot be dissected in part as prayed it creates more complications than solving it.

Management/Institutions challenge for further order of teachers' unsustainable :

42. Petitions so far as managements are concerned, considering the scheme and object of the resolution is not

maintainable as they are not concerned with such teachers transfer orders. They will not be effected by individual transfer order issued to the concerned teacher. In our view the challenge to the resolution is unsustainable, cannot be considered at the instance of the Management/Institutions.

Conclusion :

43. The individual grievances and/or difficulties and/or submissions based upon the actual material required to be tested as and when transfer orders are passed. The implementation of the resolutions is not stayed by any Court, though specifically prayed. On the contrary the Court while passing order of status quo restricted only to the posting and not to the further procedure.

44. For the reasons so recorded, as no case is made out of violation of any fundamental rights and/or statutory rights, and/or of legislative competence, there is no need to interfere with the impugned resolutions. We have also noted, there is no unreasonableness. There is no illegality and/or any procedural impropriety. Therefore, there is no question of treating equal unequally. The classification, in our view is reasonable to achieve aim and object of the education and related transfer policy based upon the RTE Act and/or related uniform education mechanism, required for the teachers in the State of

Maharashtra.

45. We are inclined to observe that, the merit of minimum tenure and the demerit of frequent transfer needs to be kept in mind by the State/Authority. The Apex Court in **T.S.R. Subramanian and others Vs. Union of India and others [(2013) 15 SCC 732** has considered this aspect. The scope of judicial review in transfer and posting matter is quite limited, unless case is made out.

All Interim Orders are Vacated :

46. As noted, petitioners through association and individually have filed the writ petition before the receipt of any transfer order. The Court only permitted respondents to continue with the procedure in the month of May itself. There was no hurdle of any type and therefore respondents and its officials to proceed to implement the resolution.

47. Final list now published in the month of May/June. There was status-quo with regard to issuance of posting only in respect of individual petitioners, and not for others. The State/concerned authorities required to take steps as the schools are already open. We are inclined to pass specific order of vacating the status-quo order so passed in the respective petitions. We are inclined to observe that for the reasons so recorded above, the State/concerned authorities require to take effective steps to

implement the impugned resolution dated 27th February, 2017 and as amended from time to time and proceed accordingly in the interest of all concerned.

48. Therefore following order:

O R D E R

(a) Impugned Government Resolutions dated 27th February, 2017 and as amended from time to time are valid and well within the framework of law.

(b) The State and the authorities to proceed further to implement the resolutions, in question forthwith.

(c) Liberty is granted to the petitioners/teachers to approach the appropriate appellate authority i. e. the Divisional Commissioner or such authority after receipt of individual transfer orders. The Divisional or such Authority to deal with the representation and/or appeal, if filed as early as possible. The State to take steps to provide an appropriate machinery to deal with such appeals/representations to avoid further delay in the respective matters.

(d) The individual grievances/problems after

decision of the Divisional Commissioner may be tested, if an appropriate case is made out within the frame of law of transfers, by invoking remedy available under the law.

(e) All petitions are dismissed accordingly with above observations. No costs.

(f) The parties to act on authenticated copy.

49. Learned Counsel for petitioners submitted to continue orders of status-quo as already granted in the respective petitions. Considering the reasons so recorded and for the fact that schools are already started, we are not inclined to continue with the orders of status-quo so passed only in favour of few teachers. We have to consider the interest of all the concerned. Request to continue order of status-quo is therefore rejected.

50 Interim orders passed by the Courts in all the writ petitions, if any, of non-issuance of posting orders stand vacated. The respondents to proceed further accordingly.

Sd/-
[SUNIL K. KOTWAR, J.]

Sd/-
[ANOOP V. MOHTA, J.]

bsb/June 17