

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10618 OF 2016

Rajya s/o. Divlya Tadvi .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 10630 OF 2016**

Brahmanand s/o. Laxmanrao Deshmukh .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.S.R. Choukidar h/f. Mr.R.S.Deshmukh and Mr.L.S. Shaikh, Advocate for the petitioners.
Ms.R.P. Gour, AGP for respondent/State.
Mr.V.S. Panpatte, Advocate for respondent Nos.4 and 5.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 30.11.2017

P.C. :-

1. The petitioners in both these writ petitions were appointed on 14.06.2011. Their appointments were approved. They were appointed on unaided posts. The petitioner in Writ Petition No.10618 of 2016 belongs to

Scheduled Tribes category and is transferred from unaided to aided post on 31.01.2016. The petitioner in Writ Petition No. 10630 of 2016 is from open category and is transferred from unaided to aided post on 01.09.2015. The proposal seeking approval to their transfer from unaided to aided posts is rejected basically on the ground that the permission of the Education Officer has not been obtained and there are surplus candidates.

2. Learned Counsel for the petitioner submits that there is no bar for transfer from unaided to aided post. The same is permissible. The learned Counsel relies on the following judgments of this Court :-

- 1) Ms.Sandhya Laxman Ghosalkar Vs. State of Maharashtra, WP No.5258 of 2012 dated 12.09.2012 with connected petitions (Principal Seat)
- 2) Ms.Rupali Maruti Shingte & Anr. Vs. The State of Maharashtra & Anr., WP No.9173 of 2013 dated 18.02.2014 with connected petitions (Principal Seat).
- 3) Phiroj Chandsaheb Momin & Anr. Vs. The State of Maharashtra, WP No.3197 of 2014 dated 16.09.2014. (Principal Seat)
- 4) Shri Ashok Dinkar Kale Vs. The State of Maharashtra, WP No.676 of 2014 dated 14.09.2014 with connected petitions. (Principal Seat)
- 5) Chandrakali Pandurang Dhongde Vs. The Secretary, Department of School & ors., WP No.7230 of 2011 dated 30.11.2011 with connected petitions. (Aurangabad Bench)
- 6) Dattu s/o. Bhima Thorat Vs. The State of

Maharashtra & Ors., WP No.2960 of 2012 dated 11.10.2012. (Aurangabad Bench)

7) Sudhir Dnyandeo Gadakh Vs. State of Maharashtra & Ors., WP No.5978 of 2014 dated 09.10.2014 with connected petitions. (Aurangabad Bench)

8) Rajashri Shahu Shikshan Sanstha Vs. The State of Maharashtra, WP No.11719 of 2016 dated 09.11.2017. (Aurangabad Bench)

9) Manisha Kisan Jadhav Vs. The State of Maharashtra, WP No.11216 of 2016 dated 09.11.2017. (Aurangabad Bench)

3. Learned Advocate further submits that even otherwise ban on recruitment does not apply to the reserved category candidates.

4. Learned AGP submits that there are large number of surplus candidates, who are required to be absorbed and thus the act of transfer of the petitioners to aided posts is not permissible. Learned AGP also relies on the circular dated 28.06.2016 to submit that the petitioner has to first work as Shikshan Sevak and also on the judgment of Division Bench of this Court in Writ Petition No.5615 of 2012 decided on 02.11.2012.

5. Learned Counsel for the petitioner relies on the

judgment of Division Bench dated 21.09.2012 in Writ Petition No. 5258 of 2012 with connected matters to submit that the teachers who have put in 5-6 years of service, will have to be transferred and considered as Assistant Teachers.

6. We have considered the submissions canvassed by learned Counsel for the respective parties. The transfer of the petitioners from unaided to aided posts is prior to issuance of the circular dated 20.06.2016. In view of that, said circular would not apply.

7. In the judgment referred to supra, this Court has observed that ban on recruitment would not apply to such transfers and that the transfer from unaided to aided posts is permissible. In the present case, the petitioners have worked for more than 4-5 years on unaided posts prior to transfer to aided posts. The petitioners also would be junior most in the aided category in hierarchy of seniority.

8. Mr. Panpatte, learned Counsel for the management submits that the respondent had not at any material point of time directed to absorb the surplus teachers.

9. Considering the above, the impugned judgment and order is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to transfer the petitioners from unaided to aided posts in accordance with law expeditiously, on its own merits, preferably within four months. It shall not reject the proposal on the ground that permission of the Education Officer was not obtained or that there are surplus candidates. The writ petition is accordingly disposed of. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]