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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10133 OF 2016

Mrs. Shivaneesh Prasad Deshpande ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10134 OF 2016

Mrs. Archana Prasad Dhavalikar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10135 OF 2016

Ms. Suvarna Narayan Jadhav ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10136 OF 2016

Ms. Ujjwala Ramchandra Gaikwad ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10137 OF 2016

Mrs. Sangita Vishwas Patil ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10138 OF 2016

Mrs. Anuradha Mohanrao Patil ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents
WITH
WRIT PETITION No. 10139 OF 2016

Jaydip Shivajirao Patil ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10140 OF 2016

Sakharam Eku Kolekar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10141 OF 2016

Santosh Sarjerao Patil ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10142 OF 2016

Ganesh Shankar Bidave ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10143 OF 2016

Ms. Anupama Ishwaragouda Yallappagouda ...Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10210 OF 2016

Narayan Gorakh Bhosale ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10211 OF 2016

Gulab Jotiram Katkar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10212 OF 2016

Ankush Dada Barkade ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10214 OF 2016

Sagar Vithoba Masal ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10215 OF 2016

Ms. Archana Appaji Jadhav ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10216 OF 2016

Shankar Sukhdev Kale ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10217 OF 2016

Rajendra Ganpat Mali ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10218 OF 2016

Laxman Aba Lavate ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10219 OF 2016

Kum.Asharani Jagannath Pawar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10220 OF 2016

Narayan Vasant Shinde ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10286 OF 2016

Shamrao Bajirao Naikwade ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10287 OF 2016

Milind Gopal Kumbhar ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10288 OF 2016

Jyotiba Govind Joshi ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10289 OF 2016

Ms. Simota Bapuso Zambare ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10290 OF 2016

Nilesh Sahebrao Mane ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10291 OF 2016

Kum. Deepali Shankar Patil ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10292 OF 2016
Rajiv Sahadev Kadam ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION No. 10294 OF 2016

Smt. Vaishali Tukaram Shinde ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION No. 10295 OF 2016

Rajaram Piraji Salunkhe ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION No. 10296 OF 2016

Nivas Shankar Mane ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION No. 10297 OF 2016

Satish Pandurang Gurav ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION No. 10313 OF 2016

Gorakhnath Vitthal Ghuge ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION No. 10318 OF 2016

Arjun Shrirang Thombare ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Narendra V. Bandiwadekar a/w M. G. Bagkar, for all Petitioners.

Ms. Kavita Solunke, AGP for the Respondent Nos. 1 to 3.

Mr. Chetan Patil, for Respondent Nos. 4 & 5 in WP. 10133/2016,
10136/2016, 10134/2016, 10135/2016, 10137/2016 to 10139/2016,
10141/2016.

Mr. R. A. Naik h/f U. R. Mankapure, for Respondent Nos. 4 & 5 in
WP. 10294/2016.

CORAM : B. R. GAVAI, &
RIYAZ I. CHAGLA, JJ.

DATE : AUGUST 1, 2017

PC.

1. Rule. Rule is made returnable forthwith. Learned AGP waives service of notice for the Respondent-State; and Mr. Chetan Patil and R. A. Naik waives service of notice for Respondent Nos. 4 and 5 in the respective petitions. By consent of parties, petitions are taken up for final hearing.

2. Since facts in all the petitions are common, all the petitions are heard together and disposed of by this common judgment

and order.

3. For the sake of convenience, we are referring to the facts in Writ Petition No. 10133 of 2016. The Petitioner came to be appointed as Shikshan Sevak on 3rd November, 2009 against a seat which is available for the open category. On 13th of July, 2010 Respondent No. 2 granted approval to the appointment of Petitioner as Shikshan Sevak. After three years satisfactory completion as Shikshan Sevak by the Petitioner, Respondent No. 5 submitted proposal to the Respondent No. 2 for approval. The Education Officer vide order dated 5th March, 2013 granted approval to the Petitioner as Assistant Teacher from 3.11.2012 in open category. By the impugned order dated 30th July, 2016, the approval which was given to the appointment of the Petitioner as the Assistant Teacher has been cancelled. Being aggrieved thereby, present petition is filed.

4. In all other petitions, though the dates of initial appointment as Shikshan Sevak, the dates of approval and appointment as Assistant Teacher of the Petitioners in other petitions are different to some extent, however, order cancelling the approval is of same date i.e. 30th July, 2016.

5. Affidavit in reply is filed by the Dy. Education Officer. Perused the reasons given in the impugned orders. In some cases, it is submitted that the selection process was conducted without obtaining prior approval of the Education Officer; and in some cases it is stated that though there was a backlog of reserved category candidates, the candidates were appointed from open category.

6. We find that it will not be necessary for us to go into the merits to find out as to whether the reasons given by the Education Officer in the affidavit are correct or not. We find that the petitions deserve to be allowed on short ground that by the impugned order, Respondent Education Officer has set aside the order passed by the earlier Education Officer. As such, the impugned order revokes the approval granted by the earlier order passed by the predecessor in the office of the Respondent Education Officer. By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the Respondent-Education Officer that Petitioners have obtained their initial orders by

fraudulent means. If the earlier Education Officer had granted approval to the Petitioners' appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out. Particularly when most of the Petitioners have already put in their services for 11 years, the impugned orders would amount to penalising them for no fault on their part.

7. In that view of the matter, we find that the impugned orders dated 30th July, 2016 are not sustainable in law. We, however, clarify that if the Education Officer is of the view that in some of the schools backlog of reserved category candidates is not properly maintained, the Education Officer would always be empowered to insist that hereinafter no candidate belonging to open category shall be filled in unless the quota of reserved category candidates, as per the requirement of MEPS Act Rules, is fulfilled.

8. Rule is therefore, made absolute in terms of prayer clause (b) with no orders as to costs. All the writ petitions are accordingly disposed of.

Sd/-
[RIYAZ I. CHAGLA, J.]

Sd/-
[B. R. GAVAI, J.]