

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

976 WRIT PETITION NO. 5708 OF 2020

**YASHSHREE SUBHASHRAO MOGAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner: Mr. Nitin K. Chaudhari
AGP for Respondents No. 1 & 2: Mr. S. K. Tambe
Advocate for Respondents No. 3 & 4:
Mr. S. M. Gaikwad

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**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE: 07th OCTOBER, 2020

PER COURT:

1. The proposal seeking approval to the transfer of the petitioner from unaided to aided is rejected on the ground that teacher at Serial Nos. 2 and 3 of the seniority list in unaided category are senior to the petitioner and they are not transferred to the aided posts. It is the contention of the learned Advocate for the petitioner that the teachers at Serial Nos. 2 and 3 of the seniority list have given their no objection for considering proposal of the petitioner from unaided to aided post. The another

reason is of Circular dated 28.06.2016. We have already held in judgment dated 04.07.2019 in Writ Petition No. 1493 of 2018 with connected writ petition that some of the clauses of the Circular do not apply. The another ground for rejection of the proposal of the petitioner is that backlog of reserved seats appeared.

2. The Education Officer has to consider whether the post is meant for Open category candidate. If the post is available for Open category candidate, then it ought not to be rejected on the ground that other posts for reserved category candidates are also vacant. Undertaking can be obtained from management of filling in the reserved category posts.

3. In light of that, the impugned order is quashed and set aside. The Education Officer shall confirm and satisfy himself of the no objection given by the candidates at Serial Nos. 2 and 3 of the seniority list and shall not reject the proposal of approval on the ground that reserved

seats are not yet filled in, in case, the post for Open category is also available. It shall also consider the judgment of this Court in Writ Petition No. 1493 of 2018 with connected writ petition dated 04.07.2019, so far as Circular dated 28.06.2016 is concerned. The proposal be decided afresh preferably within four (04) months.

4. Writ Petition is accordingly disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

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