

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

1016 WRIT PETITION NO.7386 OF 2021

**BALASAHEB SUDAMRAO SOLANKE
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS**

...

Advocate for Petitioner : Mr. N.K. Chaudhari
AGPs for Respondents 1 & 2 : Mr. S.P. Tiwari
Advocate for Respondents 3 & 4 : Mr. Umesh Gite h/f. Mr. N.B.
Khandare

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1017 WRIT PETITION NO.7387 OF 2021

**SHANKAR RAMBHAU GAVHANE
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS**

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Advocate for Petitioner : Mr. N.K. Chaudhari
AGPs for Respondents 1 & 2 : Mr. S.P. Tiwari
Advocate for Respondents 3 & 4 : Mr. Umesh Gite h/f. Mr. N.B.
Khandare

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1018 WRIT PETITION NO.7392 OF 2021

**VIKAS BHISHMA GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS**

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Advocate for Petitioner : Mr. N.K. Chaudhari
AGPs for Respondents 1 & 2 : Mr. K.N. Lokhande
Advocate for Respondents 3 & 4 : Mr. Umesh Gite h/f. Mr. N.B.
Khandare

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1019 WRIT PETITION NO.7396 OF 2021

BABASAHEB NIVRUTTI JADHAV

VERSUS
THE STATE OF MAHARASHTRA AD OTHERS

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Advocate for Petitioner : Mr. N.K. Chaudhari
AGPs for Respondents 1 & 2 : Mr. P.K. Lakhotiya
Advocate for Respondents 3 & 4 : Mr. Umesh Gite h/f. Mr. N.B.
Khandare

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1020 WRIT PETITION NO.7397 OF 2021

MAHADEO ASHOKRAO LANGE
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS

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Advocate for Petitioner : Mr. N.K. Chaudhari
AGPs for Respondents 1 & 2 : Mr. S.K. Tambe
Advocate for Respondents 3 & 4 : Mr. Umesh Gite h/f. Mr. N.B.
Khandare

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1021 WRIT PETITION NO.7418 OF 2021

DINESH PRAKASHRAO WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS

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Advocate for Petitioner : Mr. N.K. Chaudhari
AGPs for Respondents 1 & 2 : Mr. S.B. Pulkundwar
Advocate for Respondents 3 & 4 : Mr. Umesh Gite h/f. Mr. N.B.
Khandare

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**CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : 11/08/2021.

PER COURT :

. The proposals seeking approval to the transfer of the
petitioners from unaided to aided divisions is rejected under the

impugned orders.

2. We have heard the learned counsel for petitioners, learned counsel for respondents and the learned A.G.P

3. The proposals of the petitioners for approval for the transfer from unaided to aided divisions are rejected on two counts (i) Circular dated 28.6.2016 and (ii) backlog of reserved category posts.

4. The petitioners have given details of the dates of appointment on unaided posts, the date of approval to the appointment on unaided posts, date of transfer on aided posts etc.. The said details are enumerated in the chart, which reads thus :-

Factors	WP/7386/21 Balasaheb Solanke B.Sc. B.Ed 1016	WP/ 7387/21 Shankar Gavhane B.Sc. B.Ed. 1017	WP/7392/21 Vikas Gaikwad B.Sc. B.Ed. 1018	WP/9396/21 Babasaheb Jadhav 1019	WP/7397/21 Mahadeo Lange B.Sc. B.Ed. 1020	WP/7418/21 Dinesh Waghmare B.Sc. B.Ed. 1021
DOA APPROVAL	14/03/2015 25/03/2015	05/03/2015 25/03/2015	14/03/2015 25/03/2015	09/01/2013 24/01/2013	05/03/2015 25/03/2015	05/03/2015 04/06/2018
3 Years APPROVAL	26/10/2018 17/01/2019	25/01/2019 07/03/2019	26/10/2018 20/12/2019	08/01/2015 18/02/2015	26/10/2018 19/07/2019	29/10/2018 11/04/2019
Category Caste Validity	Open	Open	Open	SC 06/04/1999 Page 18	Open	OBC 18/10/2002 Page 12

DOT/ Joining	22/03/2021 23/03/2021	22/03/2021 23/03/2021	22/03/2021 23/03/2021	01/03/2021 01/03/2021	22/03/2021 23/03/2021	22/03/2021 23/03/2021
DO Proposal	31/03/2021	30/03/2021	31/03/2021	01/03/2021	31/03/2021	31/03/2021
DO Rejection	31/03/2021	31/03/2021	31/03/2021	17/03/2021	31/03/2021	31/03/2021
Reasons	Page 19 Circular dtd. 28/06/2016 84 Backlog	Page 19 Circular dtd. 28/06/2016 84 Backlog	Page 19 Circular dtd. 28/06/2016 84 Backlog	Page 19 Circular dtd. 28/06/2016 15 Backlog	Page 23 Circular dtd. 28/06/2016 84 Backlog	Page 22 Circular dtd. 28/06/2016 84 Backlog

5. It would appear that in four of the writ petitions, the petitioners are from general category and in Writ Petition No. 7396/2021, the petitioner is from SC category, whereas in Writ Petition No.7418/2021, the petitioner is from OBC category.

6. The above petitioners are appointed on unaided posts in 2013 to 2015. Their appointments are approved under the orders of Education Officer. The petitioners are transferred to the aided posts on or about March 2021. The petitioners have completed more than three years of service on unaided posts before their transfer to aided posts.

7. The management is empowered to transfer the employees resorting to Rule 41 of the MEPS Rules.

8. We have under our judgment dated 4th July 2019 in

Writ Petition No. 1493/2018 with connected writ petitions held that some of the circulars dated 28.6.2016 are erroneous.

9. If the petitioners are transferred after rendering more than three years of service on unaided post and they are transferred to the aided post and the post is 100% grant in aid, there approval shall given on 100% grant in aid. Ofcourse, Education Officer is required to confirm the seniority, roster, the qualification of the persons transferred.

10. In the present case, one of the reason for rejecting the proposal for approval is existence of backlog. There are 33 posts shown vacant. The petitioner from Writ Petition No. 7396/2021 is from SC category. There are 17 posts shown to be vacant of OBC. The petitioner from Writ Petition No. 7418/2021 claims to be appointed from OBC category. There are total 84 posts of backlog shown to be vacant. The Education Officer is required to consider whether the posts are vacant for general candidate and if the posts are also available for general category candidate, the persons appointed from open category are also required to be considered for approval. The management shall file undertaking with the

Education Officer that Management would fill in the backlog. If the transfer of the petitioners is on 20% or 40% grant in aid post, the approval would be for 20% or 30% grant in aid posts.

11. In the light of above, the impugned orders are quashed and set aside. The Education Officer shall reconsider the proposals seeking approval to the transfer of the petitioners from unaided posts to aided posts in tune with the judgment of this Court in Writ Petition No. 1493/2018 with connected writ petitions dated 4th of July, 2019. The said proposals be decided preferably within four months.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

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