

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

1051 WRIT PETITION NO.8542 OF 2021

SUDAM UDHAVRAO KAVCHAT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner: Mr. Choudhari Dilip J
AGP for Respondents No. 1&2: Mr. S. G. Karlekar
Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...

AND

...

1052 WRIT PETITION NO.8543 OF 2021

VAISHALI PANDURANG MASKE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner: Mr. Choudhari Dilip J
AGP for Respondents No. 1&2: Mr. A. R. Kale
Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...

AND

...

1053 WRIT PETITION NO.8544 OF 2021

LAHU SHAMRAO GAVANE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner: Mr. Choudhari Dilip J
AGP for Respondents No. 1&2: Mrs. V. N. Patil-Jadhav
Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...

AND

...

1054 WRIT PETITION NO.8545 OF 2021

VINOD VITHAL GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...
 Advocate for Petitioner: Mr. Choudhari Dilip J
 AGP for Respondents No. 1&2: Mrs. V. N. Patil-Jadhav
 Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...
AND
 ...

1055 WRIT PETITION NO.8546 OF 2021
SUREKHA ABASAHEB THORLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
 Advocate for Petitioner: Mr. Choudhari Dilip J
 AGP for Respondents No. 1&2: Mr. P. K. Lakhotiya
 Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...
AND
 ...

1056 WRIT PETITION NO.8547 OF 2021
BHAUSAHEB DASU GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
 Advocate for Petitioner: Mr. Choudhari Dilip J
 AGP for Respondents No. 1&2: Mr. P. K. Lakhotiya
 Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...
AND
 ...

1057 WRIT PETITION NO.8548 OF 2021
TRIMBAK BABASAHEB KATKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
 Advocate for Petitioner: Mr. Choudhari Dilip J
 AGP for Respondents No. 1&2: Mr. P. K. Lakhotiya
 Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...
AND
 ...

1058 WRIT PETITION NO.8551 OF 2021**DHANANJAY SHANKARRAO MORE****VERSUS****THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner: Mr. Choudhari Dilip J
AGP for Respondents No. 1&2: Mr. S. P. Tiwari
Advocate for Respondents No. 3&4: Mr. B. B. Bhise

...

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

DATE: 20th AUGUST, 2021

PER COURT:

1. The proposals seeking approval to the transfer of the petitioners from unaided to aided are rejected.

2. We have heard Mr. Choudhari, learned Advocate for the petitioner, the learned A.G.P. for respondents no. 1 and 2 and the learned Advocate for the respondent institution.

3. The proposals of the petitioners are basically rejected on the ground that -
(I) backlog of reserved category candidates exists
(II) surplus candidates are available and
(III) Government Resolution dated 01.04.2021.

4. It is submitted that in all these matters the petitioners have worked for more than 5 years on unaided post before they were transferred to the

aided posts. The details of the petitioners regarding their dates of appointment, approval on unaided posts, date of transfer on aided posts etc. are given below-

The details enumerated in the Chart in respect of Writ Petitions i.e. Writ Petition No. 8542/21 to 8548/21 & Writ Petition No. 8551/21.								
Factors	WP-8542/2021 Sudam Kavchat M.A. B.Ed. 1051	WP-8543/2021 Smt. Vaishali Maske M.Sc. B.Ed. 1052	WP-8544/2021 Lahu Gavane M.A. B.Ed. 1053	WP-8545/2021 Vinod Gaikwad M.A. B.Ed. 1054	WP-8546/2021 Smt. Surekha Thorale M.Sc. B.Ed. 1055	WP-8547/2021 Bhausahab Gaikwad M.A. B.Ed. M.Phil 1056	WP-8548/2021 Trimbak Katkar M.A. B.Ed. 1057	WP-8551/2021 Dhananjay More M.A.B.Ed. 1058
D.O.A. & Approval	16.03.2012 11.05.2012	03.03.2015 31.12.2016	03.01.2012 11.05.2012	03.03.2015 25.03.2015	06.03.2012 11.05.2012	03.01.2012 11.05.2014	14.12.2011 31.03.2012	03.01.2012 11.05.2012
D.O.C. & Approval	18.03.2014 17.10.2014	05.03.2017 12.03.2019	03.04.2014 02.08.2014	05.03.2017 20.02.2019	09.03.2014 12.01.2015	07.01.2014 02.08.2014	14.12.2013 22.08.2014	03.01.2014 17.10.2014
Category	Open	Open	Open	Open	O.B.C.	Open	Open	Open
Order of transfer and Joining	01.03.2021 13.03.2021	22.03..2021 23.03.2021	01.03.2021 02.03.2021	22.03.2021 23.03.2021	01.03.2021 13.03.2021	01.03.2021 02.03.2021	01.03.2021. 02.03.2021	01.03.2021 02.03.2021
D.O. Proposal	22.03.2021	27.03.2021	22.03.2021	31.03.2021	22.03.2021	18.03.2021	<u>09.03.2021</u> 22.03.2021	18.03.2021
Date of Rejection	24.05.2021	31.03.2021	24.05.2021	31.03.2021	24.05.2021	01.06.2021	24.05.2021	24.05.2021
Reasons	i) Circular dated 1.4.2021 ii) Name appears at Sr.No.28 of Seniority List iii) Back-log of 84 Seats	i) Circular dated 28.6.2016 ii) Back-log of 84 Seats	i) Circular dated 1.4.2021 ii) Name appears at Sr.No.18 of Seniority List iii) Back-log of 84 Seats	i) Circular dated 28.6.2016 ii) Backlog of 84 Seats	i) Circular dated 1.4.2021 ii) Name appears at Sr.No.47 of Seniority List iii) Back-log of 84 Seats	i) Circular dated 1.4.2021 ii) Name appears at Sr.No.22 of Seniority List iii) Back-log of 84 Seats	i) Circular dated 1.4.2021 ii) Name appears at Sr.No.10 of Seniority List iii) Back-log of 84 Seats	i) Circular dated 1.4.2021 ii) Name appears at Sr.No.21 of Seniority List. iii) Back-log of 84 Seats.

5. In all these writ petitions except Writ Petition No. 8546 of 2021, the candidates are from General category. In Writ Petition No. 8546 of 2021 the petitioner is appointed from O.B.C. category.

6. The backlog exists. The learned Advocate for the institution submits that the institution would file affidavit with the Education Officer that the management would fill in the backlog of reserved category candidates. The Education Officer is required to consider the existence of vacant posts from General / O.B.C. category and of course the other aspects such as the seniority, qualification also has to be considered. The Education Officer it appears has not considered whether the posts of General category are vacant. There are 17 O.B.C. posts vacant in view of that, the petitioner in Writ Petition No. 8546 of 2021 could have been considered.

7. The Government Resolution dated 01.04.2021 also would not come in the way of the petitioners because all these petitioners have rendered more than 5 years of service on the unaided posts and are transferred to the aided post before the operation of Government Resolution dated 01.04.2021.

8. In light of the above, the impugned orders are quashed and set aside.

9. The Education Officer shall consider that if the posts are vacant in the General category then those petitioners appointed and transferred to the aided posts on General category should be considered. The same would also apply for a candidate of O.B.C. category. The Education Officer shall consider the Judgment of this Court in Writ Petition No. 1493 of 2018 with connected writ petitions dated 04.07.2019.

10. The said exercise shall be done preferably within a period of four (04) months.

11. Writ Petitions are accordingly disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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