

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

15 WRIT PETITION NO.10104 OF 2021

SHARDA NAMDEV KOLI

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

AND

17 WRIT PETITION NO.10106 OF 2021

TUSHAR NIMBA PATIL

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Ramesh I. Wakade, Advocate for the Petitioners.
Ms. G. L. Deshpande, AGP for Respondents-State.

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

DATED : 14th SEPTEMBER, 2021.

PER COURT:-

1. The proposal seeking approval to the transfers of petitioners from unaided to aided post is approved but in a phase wise grant-in-aid.

2. It is the contention of petitioners that petitioners have worked on unaided post for more than five years before transfer to the aided posts. The aided posts to which the petitioners are transferred on 100% grant-in-aid for which the approval has to be on 100% grant-in-aid post.

3. The AGP waives service for respondent Nos. 1 to 3.

4. The petitioners have placed on record the charts giving the date of appointment on unaided post. The approval granted to the appointment on unaided and the date of transfer to the aided post. The same is reproduced as below :

Chart in Writ Petition No.10104 of 2021

Sr. No.	Name of Employee	Appointment & Approval of "Assistant Teachers" on unaided basis w.e.f.	How many years worked on unaided basis	Transfer date w.e.f. unaided to aided	Approval as "Assistant Teacher" on 20% grant-in-aid basis instead of 100% w.e.f.
1.	Smt. Sharda Namdev Koli	26.04.2013 vide approval order dated 30.04.2013	06 years, 08 months & 05 days	01.01.2020	01.01.2020 vide approval dated 27.02.2020.

Chart in Writ Petition No.10106 of 2021

Sr. No.	Name of Employee	Appointment & Approval of "Assistant Teachers" on unaided basis w.e.f.	How many years worked on unaided basis	Transfer date w.e.f. unaided to aided	Approval as "Assistant Teacher" on 20% grant-in-aid basis instead of 100% w.e.f.
1.	Tushar S/o Nimba Patil	17.06.2013 vide approval order dated 30.12.2013	05 years, 08 months & 13 days	01.03.2019	01.03.2019 vide approval dated 26.06.2020.

5. It is submitted in all these matters, the petitioners have worked on unaided posts for five years and more.

6. We have in our judgment dated 4.7.2019 in Writ Petition No.1493 of 2018 with connected Writ Petitions held that some of the clauses of the Circular dated 28.6.2016 do not apply. It appears that the Education Officer, while granting approval to the appointment of petitioners as an assistant Teacher from the date of transfer to the aided posts had granted approval on grant-in-aid in phase-wise manner to the effect that after five years, the petitioners would be granted approval on 20% grant-in-aid. The same would not be in tune with the order passed by this Court from time to time at this Bench and also at principal seat.

7. In case the petitioners are transferred on 100% grant-in-aid posts since the date of completion of three years, they shall be considered on 100% grant-in-aid posts. In case the petitioners are transferred on grant-in-aid posts, for example on 60%, then from the date of transfer, they would be on 60% grant-in-aid posts, but if the petitioners, after having completed three years on unaided posts and are transferred on 100% grant-in-posts, their services will have to be considered on 100% grant-in-posts. This aspect has been ignored by the Director of Education / Dy. Director of Education / Education Officer.

8. In light of above, the impugned order of granting approval in phase-wise manner is quashed

and set aside and modified.

9. In case the Director of Education / Dy. Director of Education / Education Officer are satisfied about approval to the transfer of the petitioners on aided posts and if the petitioners have completed three years and more on unaided posts before they are transferred to aided posts on 100% grant-in-aid posts, then respondents – Director of Education / Dy. Director of Education / Education Officer shall consider grant of approval to the transfer of the petitioners on 100% grant-in-aid posts within a period of six months.

10. Writ Petitions disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE