

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4724 OF 2021

Rajendra Namdeo Mahajan & Anr. ... Petitioners

Versus

The State of Maharashtra

Through The Secretary,

School Education Department & Ors. ... Respondents

WITH

WRIT PETITION NO. 8309 OF 2021

Ashok Ananda Khairnar & Anr. ... Petitioners

Versus

The State of Maharashtra

Through The Secretary,

School Education Department & Ors. ... Respondents

WITH

WRIT PETITION NO. 8308 OF 2021

Mrs. Anita Sushil Singh & Anr. ... Petitioners

Versus

The State of Maharashtra

Through The Secretary,

School Education Department & Ors. ... Respondents

Mr. Narendra V. Bandiwadekar a/w. Mr. Vinayak R. Kumbhar i/b.
Mrs. Ashwini Navjyot Bandiwadekar, for the Petitioners.

Mr. N. C. Walimbe, AGP for State in Writ Petition No.4724 of
2021.

Mrs. P. N. Diwan, AGP for State in Writ Petition No.8309 of 2021.

Mrs. P. J. Gavhane, AGP for State in Writ Petition No.8308 of

order is corrected as per speaking to minutes of order dt. 10/12/2021

2021.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 3rd DECEMBER, 2021.

P.C. :-

1. Learned counsel for the petitioners and learned AGP jointly state that the issues and facts in all these matters are identical and can be disposed of by common order. Statement is accepted. Accordingly all these petitions were heard together and are disposed of by a common order.

2. Rule. Learned AGPs in all the matters for respondent nos.1 to 3 waives service. By consent of parties, all the petitions are heard finally.

3. By these three petitions filed under Article 226 of the Constitution of India, the petitioners have impugned orders dated 7th July, 2021, 20th July, 2021 and 20th July, 2021 respectively passed by the Deputy Director of Education, refusing to enter the names of the petitioners in the Shalarth Pranali in the post of Assistant Teacher.

4. Learned Counsel for the petitioners tendered a chart showing the date of appointment on permanent unaided post of

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the petitioner, date of approval granted to the petitioners, date of transfer of the petitioner to aided post, date of order passed by the Education Officer approving the transfer from unaided post to aided post and the impugned order passed by the Deputy Director of Education. The details from the chart tendered by learned counsel for the petitioner are as under:-.

Sr. No.	W. P No.	Name of Petitioner	Un-aided Appointment	Un-aided Approval	Transfer to Aided	Transfer Approval	Impugned Order
1	2	3	4	5	6	7	8
1	4724 2021	Rajendra Namdeo Mahajan	21.6.1995	15.5.1999	20.3.2017	27.3.2017	7.7.2021
2	8308 2021	Mrs. Anita Sushil Singh	13.6.2000	6.12.2005	20.3.2017	30.3.2017	20.7.2021
3	8309 2021	Ashok Ananda Khairnar	15..6.2013	6.7.2014	16.6.2016	12.1.2017	20.7.2021

5. Mr. Bandiwadekar, learned counsel for the petitioners invited our attention to the Exhibits annexed to the petition including the impugned orders and would submit that though the Education Officers in all these matters has approved the transfer of the petitioners from unaided post to aided post, the Deputy Director of Education has not only refused to enter the name of the petitioners in the Shalarth Pranali but has also set aside the order passed by the Education Officer granting approval of the transfer of the petitioners from unaided post to aided post. Learned Counsel for the petitioner submit that reasons mentioned in the impugned order are totally perverse.

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6. It is submitted that the resolutions pressed in service by the Deputy Director of Education were not at all applicable to the case of the petitioners. The Petitioners were appointed much prior to the date of those resolutions and more particularly resolution dated 20th June 2017. He submits that Rule 41(A) amended and brought into effect from 8th June 2020 also would not apply to the transfers already made to aided post from unaided post much prior to the date of said notification.

7. It is submitted by learned counsel for the petitioner that even otherwise Deputy Director of Education has no power to set aside order passed by the Education Officer on the ground other than the ground of any fraud, suppression or misrepresentation on the part of the petitioners or the Management. He strongly placed reliance on the unreported judgment of this Court delivered on 30th March, 2021 in case of **Jadhav Amol Krushna Vs. The State of Maharashtra and Others** in Writ Petition No. 1373 of 2019 and more particularly in paragraph Nos. 8 and 9 and would submit that this Court was pleased to quash and set aside the order passed by the Deputy Director of Education in identical situation.

8. Mr. Walimbe, learned AGP for the State placed reliance on the contentions raised by the State Government in the affidavit-in-reply filed by Shri Sandeep Sangave, Deputy Director of order is corrected as per speaking to minutes of order dt. 10/12/2021

Education notarised on 2nd December,2021.

9. A perusal of the order passed by the Deputy Director of Education indicates that he has relied upon the Government Resolutions, issued subsequent to the date of transfer on the aided post. In our view, said Government Resolutions is not applicable to the facts of this case.

10. Be that as it may; there were no allegations of fraud, suppression or misrepresentation alleged by the Deputy Director of Education against the petitioner or against the Management in the impugned order transferring the petitioners from unaided post to aided post which was duly approved by the Education officer on 27th March 2017, 30th March 2017 and 12th January 2017 respectively in each of these petitions.

11. The Division Bench of this Court in the said Judgment in case of **Jadhav Amol Krushna** (supra) has considered the Government Resolution dated 23rd August 2017, empowering the Deputy Director of Education to exercise the power to set aside order passed by the Education Officer, however, on a limited ground and in a limited circumstance of fraud, suppression and misrepresentation. This Court has held that these three factors need not be restricted to the acts of teachers and management alone, but they can be by the authorities and by way of collusion.

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This Court held that if there are no allegations of fraud, suppression or misrepresentation, the Deputy Director of Education cannot exercise such powers under the said Government Resolution dated 23rd August 2017. Learned AGP in these cases could not show any such allegations of fraud, suppression or misrepresentation or collusion either in show cause notice or in impugned order passed by the Deputy Director of Education. The Judgment of this Court in case of **Jadhav Amol Krushna** (supra) apply to the facts of this case. We are bound by this Judgment. We do not propose to take any different view in the matter.

12. In our view, the Deputy Director of Education thus could not have refused to enter the name of the petitioners in Shalarth Pranali and allocate the Shalarth ID, on the ground that the Education Officer has already granted approval to the transfer of the petitioners from unaided post to aided post on 27th March 2017, 30th March 2017 and 12th January 2017 respectively

13. We accordingly pass the following order.

- (a) The Writ petitions are allowed in terms of prayer clauses (b) and (c).
- (b) The consequential benefits including payment of arrears of salary if any shall be provided to each of these petitioners by the Education

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Officer within four weeks from the date of entering the name of the petitioners in the Shalarth Pranali.

- (c) The Deputy Director of Education shall enter the name of the petitioner in Shalarth Pranali within three weeks from today.
- (d) Rule is made absolute in the aforesaid terms.
No order as to costs.
- (e) Parties to act on an authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]