

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

WRIT PETITION NO. 6773 OF 2022

Phad Dattatraya Narayan

....Petitioner

Versus

The State of Maharashtra
and others

....Respondents

Mr. Shambhuraje V. Deshmukh, Advocate for petitioner.

Mr. S. G. Sangle, A.G.P. for respondent nos. 1 and 2.

**AND
WRIT PETITION NO. 6781 OF 2022**

Patil Sharad Ashokrao

....Petitioner

Versus

The State of Maharashtra
and others

....Respondents

Mr. Shambhuraje V. Deshmukh, Advocate for petitioner.

Mr. A. R. Kale, A.G.P. for respondent nos. 1 and 2.

**CORAM : DIPANKAR DATTA, C.J. &
RAVINDRA V. GHUGE, J.**

DATED : JULY 04, 2022.

PER COURT :

1. The learned advocate for the petitioner submits that, he is identically placed as like the petitioners who are covered by the order of this Court dated 02nd May, 2022 delivered in Writ

Petition No. 3336 of 2021 filed by Patekar Someshwar Rohidas Vs. The State of Maharashtra and others with connected writ petitions.

2. Considering his submissions, we have perused the order dated 02nd May, 2022. We have concluded that Rule 41A of the MEPS Rules, 1981 will have to be applied to ensure the absorption of surplus teachers senior to the petitioner, prior to transferring him from the unaided category to the aided category. We have also clarified that such absorption of surplus teachers would depend upon the inter-se seniority of the surplus teachers viz-a-viz the petitioner.

3. Since the learned advocate for the petitioner submits that, he is covered by the view taken by this Court vide order dated 02nd May, 2022, this petition is disposed in the same terms as are set out in para Nos. 15 and 16 of the order dated 02nd May, 2022, which read as under :

15. In view of the above, these Writ Petitions are partly allowed. We are quashing and setting aside the impugned orders and remitting the proposals of these petitioners to the Education Officer on the following conditions :-

(a) Wherever the Managements/ respondents in

these petitions have not intimated to the Education Officer as regards the available vacancies in their Institutions, such Managements shall forthwith issue communications to the Education Officer, on or before 25.05.2022 setting forth details of the vacancies available with such Institutions.

(b) While considering the above, all such communications which may have already been forwarded to the Education Officer by some of the Managements, the issue of surplus teachers vis-a-vis available vacancies in Beed district, based on their seniority and eligibility, will be considered and recommendation of surplus teachers to particular Institutions for absorption, would be considered by the Education Officer.

(c) While approving transfers from unaided to aided category as per the proposals forwarded by the respondents/ Managements, the Education Officer shall consider surplus teachers available and while approving such transfers, would also consider whether, an imbalance in reservation is likely to be created in the aided category owing to such transfers.

(d) As far as possible, the Education Officer shall ensure that an imbalance is not created in reservation while approving such transfers to the aided category vis-a-vis vacancies that have occurred from the reserved category on account of the teachers, who are exiting employment on account of their superannuation or voluntary retirement, etc..

(e) After considering the above aspects, the Education Officer shall pass reasoned orders in the cases before him, as expeditiously as possible and preferably on or before 15.07.2022.

(f) Needless to state, those teachers, whose proposals would be approved for transfer from the

unaided to aided category, would be entitled for all consequential benefits from the dates on which the transfers are approved.

(g) The above guidelines would apply squarely to the cases wherein, the transfers are effected from unaided to partially aided or fully aided or from partially aided to fully aided category, etc..

(h) In the event of any grievance of any of these petitioners or any other teacher, persisting or cropping up on account of reservation/ backlog while approving transfers of teachers from unaided to aided or partially aided or from partially aided to fully aided category, the said issue will be left open if there is specific challenge to that extent.

16. At this stage, the learned advocate for the petitioners submits that though in some petitions before this Court, the issue as regards the legality of Rule 41-A(1)(a) is being raised, the said challenge is not being pressed in these petitions since the Education Officer would be reconsidering all the cases of these petitioners. In the event, the said provision comes in the way of any of these petitioners or other teachers, they would raise a challenge to the said rule in a substantive petition, which this Court may then consider. So also, the issue of granting consequential benefits with retrospective effect from the date the vacancy has occurred, is not raised in these petitions. The same be left open to be considered in an appropriate petition.

4. No costs.

[RAVINDRA V. GHUGE, J.]

[CHIEF JUSTICE]