

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**902 WRIT PETITION NO.1155 OF 2022
WITH WP/1157/2022 WITH WP/1159/2022 WITH WP/1156/2022
WITH WP/1158/2022**

ROHINI RAJENDRA NALWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
949 WRIT PETITION NO.8099 OF 2021

ROHIT MAROTI SHIRALE
VERSUS
THE STATE OF MAHARASHTRA THR PRINCIPAL SECRETARY AND
OTHERS
WITH
950 WRIT PETITION NO.8105 OF 2021

MAHENDRA JALINDAR DHAT
VERSUS
THE STATE OF MAHARASHTRA THR PRINCIPAL SECRETARY AND
OTHERS
WITH
**951 WRIT PETITION NO.8804 OF 2021
WITH WP/7566/2021 WITH WP/7887/2021 WITH WP/7567/2021**

ASHA GUNVANTRAO WAKDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
952 WRIT PETITION NO.9171 OF 2021

NITIN EKNATH BAHIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
954 WRIT PETITION NO.13040 OF 2021

GORAKHNATH MAHADEV HURKDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
973 WRIT PETITION NO.4523 OF 2022

RAJENDRA MATHARBA WAMAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH WRIT PETITION NO.12068 OF 2022
WITH WRIT PETITION NO.8103 OF 2021 WITH WRIT PETITION
NO.8100 OF 2021
WITH WRIT PETITION NO.13041 OF 2021

Mr.D.S.Mali, S.G.Munde, S.S.Dambe, Advocate for the petitioners in respective petitions.

Mr.S.K.Tambe, Mr.S.G.Karlekar, Mr.S.G.Sangle, Ms.R.P.Gaur, AGPs' for State.

Mr.L.H.Kawale, Advocate for respondent Nos. 4 and 5 in WP No.1155/2022.

**(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)**

DATE : DECEMBER 01, 2022

PER COURT :

1. WP No.12068/2022, WP No.8103/2021 with WP NO.8100/2021 and WP No.13041/2021 are not on board. Taken on board by consent of the parties.

2. All these petitioners are identically placed. All of them were

initially appointed as "Assistant Teachers". Each of them has completed 3 years as an Assistant Teacher in unaided category. Each of them have been granted approval. Issue is as regards their transfer from the unaided category to the aided category after completion of 3 years and after being granted approval, depending upon the vacancies available. It is undisputed that after completion of 3 years as Assistant Teachers, a right may accrue to the petitioners to be transferred from the unaided to the aided category, subject to the availability of posts. As and when the post is available, such teachers can be transferred to the aided category by considering their seniority.

3. In all these cases, the grievance of the petitioners is that the Education Officer has declined to approve the transfer from unaided to aided category after receiving the proposal from the Managements, for the reason that there are several surplus teachers who are eligible to be absorbed. This Court has settled this position in the light of Rule 41(A) of the MEPS Rules, 1981, holding that the surplus eligible teacher would get first preference to be absorbed in the school where vacancy is available subject to their eligibility. It is also settled that qua teachers like these petitioners, a surplus teacher who is junior to such

petitioners, cannot be absorbed by superseding the seniority of these petitioners.

4. In view of the above, these petitions are disposed off with a direction to the Deputy Director of Education, Latur, Division Latur/Aurangabad, as the case may be, and Education Officer of the Zilla Parishad, Primary or Secondary, as the case may be, to take a stock of the available surplus teachers. Considering the seniority of such surplus teachers vis-a-vis, the seniority of these petitioners, approval can be granted to the transfer of such candidates from the unaided to the aided category subject to the absorption of eligible teachers who are senior to such candidates. Needless to state, a surplus teacher, who may be junior to any of the petitioners or similarly situated candidates, would not be absorbed, over the seniority of such eligible candidates. Let such exercise be completed within a period of 4 months from today.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)