

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

WRIT PETITION NO.4305 OF 2022

**GANESH UTTAM GHARAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Dr. R. J. Godbole
AGP for Respondents State: Mr. A. R. Kale
Advocate for Respondents 4 & 5 : Mr. N.D. Batle h/for Mr. V.B. Narke

CORAM : RAVINDRA V. GHUGE, &
ARUN R. PEDNEKER, JJ.

DATE : 24th August, 2022

ORDER:

1. The learned Advocate for the petitioner submits on instructions that as there are around 42 vacant posts and there would be around 10 surplus teachers, even if all the surplus teachers are absorbed, the petitioner can still be accommodated by transferring him to the 100% aided category/division, since he has worked for more than 3 years in the unaided category from 04.03.2016.

2. By a judgment dated 10.03.2022, this Court (Coram: R.D. Dhanuka & S.G. Mehre, JJ.), in Writ Petition No. 9245 of 2021, filed by Manik Tulshiram Mhaske Vs. State of Maharashtra & others, issued directions to the Education Department, in the light of the amended Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, to consider the position of vacancies and after

absorbing the surplus teachers, if vacancies falling in 100% grant-in-aid division were available, the case of the said petitioner was to be considered.

3. The petitioner is said to be identically placed and the learned Advocate for the petitioner prays for identical directions. The petitioner prays that prayer clause (C) may be considered in this petition.

4. In view of the above, this petition is disposed off with the following directions:-

- (a) The impugned order dated 01.10.2021 is quashed and set aside.
- (b) The proceedings pertaining to the proposal of the petitioner for transfer from unaided to the aided division, shall stand restored.
- (c) In the light of Rule 41-A of the MEPS Rules, 1981, the Education Officer (Secondary)- Respondent No.3, shall tender a list of eligible surplus teachers who can be absorbed with respondent No.4 Institution, on or before 30.09.2022.
- (d) Considering the absorption of the available and eligible surplus teachers, if vacancy still exists, the petitioner can be accommodated in accordance with the rules and the seniority, by transferring him to the aided division.

- (e) The education officer shall take such decision as expeditiously as possibly and preferably, on or before 15th November, 2022.

5. Needless to state, if the case of the petitioner is favorably considered in accordance with the Rules, all service benefits would be made available to him as expeditiously as possible and preferably on or before 30th December, 2022.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

JPC