

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

**WRIT PETITION NO.7841 OF 2022
JAI HINDALA MATA TRIBAL EDUCATION SOCIETY AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**AND
WRIT PETITION NO.10056 OF 2022
TUKARAM ANKUSH WANKHEDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
SECRETARY AND OTHERS**

...
Advocate for the Management i.e. petitioners in WP 7841/22 and
respondents 3 and 4 : Shri A.B. Girase
Advocate for the petitioner in WP/10056/2022 and for
respondent Nos.3 and 4 in WP 7841/2022 : Shri Ajay D. Pawar
AGP for Respondents 1 and 2/State : Shri P.S. Patil

...
**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 21st November, 2022

Per Court :-

(a) Writ Petition No.7841/2022:-

1. On 28.07.2022, we had passed the following order:-

*“1. The petitioners have put forth prayer clauses
(B) and (C), which read as under :-*

*“B) By way of appropriate writ, order or
directions in the like nature, the Hon’ble Court
may kindly quash and set aside the impugned
order dated 03/03/2022 issued by the
Education Officer (Secondary), Zilla Parishad,*

Nandurbar and consequently, the respondent No. 3 be repatriated in the petitioner No. 2 School.

C) By way of appropriate writ, order or directions in the like nature, the Hon'ble Court may kindly direct the respondent No. 2 to issue the repatriation order in favour of the respondent No. 3 in the petitioner No. 2 School, appreciating the provisions of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules 1981."

2. *Issue notice to the respondents, returnable on 12/09/2022. The learned A.G.P waives service of notice on behalf of respondent Nos.1 and 2.*
3. *Let replies be filed, at least 10 days prior to the returnable date."*

2. Respondent No.3 herein is the candidate, who is senior to respondent No.4 and therefore, has the first right of absorption in the light of Rule 26(4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "the MEPS Rules, 1981").

3. This Court has taken a view in ***Secretary, Paramhansa S.P.M. and another vs. Nagappa Ramchandra Teerth and others, (2022) 4 Mah LJ 473 : 2022 SCC Online Bom 715***, concluding that the senior-most surplus candidate, who has been absorbed after being declared as surplus in another institution, gets the first right to opt for repatriation with the parent

institution when a vacancy occurs. If such candidate declines to opt for repatriation or does not express his option within the timeline prescribed under Rule 26(4), the candidate next in the seniority, who has been declared surplus, can be absorbed in the parent school.

4. The learned advocate representing respondent Nos.3 and 4 submits that respondent No.3, who is the candidate who gets the first right of repatriation, has communicated to the Management that he did not desire to seek repatriation in the petitioner organization. Respondent No.4 is the candidate, who is at next serial number below respondent No.3 and he is desirous of repatriation to the petitioner parent organization.

5. In view of the above, this Writ Petition is disposed off.

(b) Writ Petition No.10056/2022:-

6. This petition is filed by respondent No.4 in Writ Petition No.7841/2022, namely, Tukaram Wankhede. His grievance is that respondent Nos.3 and 4 i.e. the Management and the School, need to submit the pay bills of the petitioner since March, 2022 as he has already been absorbed by way of

repatriation in the parent organization.

7. The learned advocate for the Management strenuously opposes the said request.

8. The learned AGP submits that the person, who is repatriated and absorbed in employment by the parent organization and has started working in the said capacity, is entitled for the salary in view of the duties performed.

9. Considering the above and since there is no dispute that the petitioner has been working since March, 2022 upon his absorption, this Writ Petition is partly allowed with the direction to respondent Nos.3 and 4 to forward the pay bills of the petitioner from the date of his repatriation/absorption till November, 2022, within a period of two weeks from today. The Education Officer, on receiving the said pay bills with regard to the arrears, would clear the said bills within a period of 30 days. Needless to state, respondent No.4/Headmaster would forward the pay bills of the petitioner from the month of December, 2022 on month to month/regular basis in accordance with the rules applicable.