

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.11543 OF 2021

YOGITA AMBADAS MODAK
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

AND

902 WRIT PETITION NO.14182 OF 2021

RANJIT BAJIRAO PINGALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

AND

907 WRIT PETITION NO.2571 OF 2023

RUPALI SAUDAGAR MULE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

.....

AND

982 WRIT PETITION NO.6099 OF 2022

CHANDRASEN TUKARAM MANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

.....

AND

1047 WRIT PETITION NO.8022 OF 2022

SAVITA SUDHAKARRAO KULKARNI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

.....

AND

1048 WRIT PETITION NO.8050 OF 2022

DHANANJAY JAYWANT MASKE AND OTHERS
VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

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Advocate for Petitioner : Mr. Menezes Joslyn h/f Dr. R.J. Godbole
AGP for Respondent/State Nos. 1 to 3: Mr. S.G. Sangle
Advocate for Respondent Nos. 4 and 5 (in WP No. 11543/21) :
Mr. M.R. Wagh h/f Mr. V.B. Narke

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 3rd MARCH, 2023.**

PER COURT :-

1. The Petitioners are aggrieved on account of rejection orders, passed by the Education Officer, refusing to grant approval to the transfer of the Petitioners from unaided post to the aided post, in the Respondent school.

2. We have considered the submissions of the learned advocates for the respective sides. The impugned orders clearly indicate that the Petitioners are senior most teachers amongst the teachers in the unaided category. They have been transferred from unaided category to the partially aided category.

3. This court has already taken a view in the Writ Petition No. 3336 of 2021, vide judgment dated 02.05.2022.

4. The Petitioner in first writ petition, by way of amendment, has introduced prayer clause E-1 which reads as under:-

“E-1 By an appropriate order, direct Respondent Education Officer to reconsider the proposal of Petitioner transferring him from unaided post to aided post in view of the information received as per RTI Act, 2005 and in view of the order dated 10.3.2022 passed by Hon’ble High Court in writ petition No. 9245 of 2021.”

5. It is well settled that the surplus teachers have to be absorbed if there is a vacancy, prior to recruitment of fresh teachers or transferring teachers from unaided category to the aided category. However, the inter-se seniority between the surplus teachers and the senior most teachers from the unaided category, has to be taken into account, meaning thereby that the surplus teacher who is junior to a teacher in the unaided category, cannot be absorbed on a vacant post.

6. In view of the above, these petitions are partly allowed. The impugned orders in the respective petitions are quashed and set aside. Considering the effect of Section 5(1) of Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 r.w. Rule 41A of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981, the Education Officer shall reconsider the individual proposals of the respective Petitioners, on their own merits. Let such decision be arrived at by following the due process of law, within a period of 45 days.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)