

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

1049 WRIT PETITION NO.9595 OF 2023

BHAGYASHRI SHATRUGHAN KHOSE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
WITH
WRIT PETITION NO. 9611 OF 2023

RAHUL VISHNU MALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
WITH
WRIT PETITION NO. 9612 OF 2023

SACHIN VASUDEVRAO WADGAONKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
WITH
WRIT PETITION NO. 9614 OF 2023

SHARAD SARJERAO PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
WITH
WRIT PETITION NO. 9621 OF 2023

JAYA VASANTRAO NAGARGOJE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
1050 WRIT PETITION NO.9603 OF 2023

ROHINI BALAJI WAGHILE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS

Mr. R. J. Godbole, Advocate for Petitioners
Mr. V. M. Kagne, AGP for Respondents State

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.
DATE : 14th September, 2023

ORDER:

1. In all these matters, identical orders have been passed by the Education Officers (Secondary), Zilla Parishad, Beed, by which, approval for transfers of the teachers from the unaided/partially aided to the fully aided establishments has been refused in the light of the surplus teachers.

2. The impugned order indicates that there are two Assistant Teachers who are surplus in Beed District. Same ground has been invoked while rejecting the claims of these Petitioners. At the same time, the Education Officer has recorded that Smt. Bhagyashri Shatrughan Khose is at Sr. No.1, Rahul Vishnu Male is at Sr. No. 3, Sachin Vasudevrao Wadgaonkar is at Serial No.2, Sharad Sarjerao Pawar is at Serial No.1, Jaya Vasantrao Nagargoje is at Serial No.2 and Rohini Balaji Waghile is shown at Serial No.3 in the same School.

3. The learned Advocate for the Petitioners has pointed out an order dated 14th June, 2022, passed by a Coordinate Bench of this Court in Writ Petition No. 11470 of 2022 (Vishnu Gangadhar Sonpeer

Vs. State of Maharashtra), wherein, it has been held that any such movement of teachers to the fully aided establishment would not amount to transfer. We are in agreement with the said view since that emerges from the language used in Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. However, the Education Officer is bound by the parameters set out in Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, more particularly Sub Section (1) (a)(i), vide which the Management as well as the Education Authorities, before the transfer, have to verify as to whether there is any surplus persons available as provided in Sub-section (1) of Section 5. Sub Clause (ii) provides that if surplus persons are available, the Management shall not make such transfer.

4. Considering the above, we find that the Education Officer has hardly applied his mind while deciding each of these cases. Two persons are said to be at Serial No.1 in the same school, two persons are at Serial No.2 and two persons are at Serial No.3. The learned Advocate Shri Godbole submits on specific instructions that there are 246 vacancies available, in view of a communication by the Education Officer (Secondary)-Shri Nagnath Shinde, Zilla Parishad, Beed dated

14th June, 2023. According to Shri Godbole, the number of surplus teachers are much less than the approved vacancies available.

5. It is only with regard to the above aspect, that we have formed an opinion that the Education Officer should reconsider all these cases and depending upon the number of posts available, he should consider Rule 41-A(1) while considering the proposals. Any proposal seeking approval, beyond the number of available vacancies and any senior eligible surplus teacher, would naturally be disallowed by the Education Officer.

6. In view of the above, **these Petitions are partly allowed.**

7. The impugned orders are set aside only to enable the Education Officer to reconsider the records in view of the observations set out in the foregoing paragraphs and consider the claim of the Petitioners on their own merits in the light of the available vacancies and available surplus teachers. Let this exercise be completed within a period of 45 days.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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