

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO. 14332 OF 2021

ASHWINI GINYANDEV NEHARKAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Mr. D.J.Choudhary

AGP for Respondents/State : Mr. P.S.Patil

Advocate for Respondent Nos. 3 & 4 : Mr. Khadap Rahul D.

Advocate for Respondents : Mr.

...

AND

937 WRIT PETITION NO. 928 OF 2023

PURUSHOTTAM MUKUNDRAO SHINDE

VERSUS

THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS

...

Advocate for the Petitioner : Mr. D.J.Choudhary

AGP for Respondents: Mr.A.M.Phule

Advocate for Respondent Nos. 3 & 4 : Mr. Chalak Amol

Balasaheb

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 08th MARCH, 2024.

PER COURT :

1. In both the petitions the issue involved is the same.

2. Heard the learned counsel for both the parties.

3. Learned Advocate for the petitioner submits that on instructions he is giving up the prayer Clause (B) in both the petitions.

4. He further submits that in view of the order passed by this Court in Writ Petition No. 3336 of 2021 decided on 02.05.2022 with companion matters he is giving up prayer Clause (B). The said matter was also in respect of the orders passed by the Education Officer, (Secondary), Zilla Parishad, Beed. In the present petitions also orders passed by the Education Officer (Secondary), Zilla Parishad, Beed, which are on the similar lines are under challenge. Paragraph No. 15 of the said order reads as under :

“15. In view of the above, these Writ Petitions are partly allowed. We are quashing and setting aside the impugned orders and remitting the proposals of these petitioners to the Education Officer on the following conditions :

a) Wherever the Managements/respondents in these petitions have not intimated to the Education Officer as regards the available vacancies in their Institutions, such Managements shall forthwith issue communications to the Education Officer

within two weeks from today setting forth details of the vacancies available with such Institutions.

b) While considering the above, all such communications which may have already been forwarded to the Education Officer by some of the Managements, the issue of surplus teachers vis-a-vis available vacancies in Beed District, based on their seniority and eligibility, will be considered and recommendation of surplus teachers to particular Institutions for absorption, would be considered by the Education Officer.

c) While approving transfers from unaided to aided category as per the proposals forwarded by the respondents/Managements, the Education Officer shall consider surplus teachers available and while approving such transfers, would also consider whether, an imbalance in reservation is likely to be created in the aided category owing to such transfers.

d) As far as possible, the Education Officer shall ensure that an imbalance is not created in reservation while approving such transfers to the aided category vis-a-vis vacancies that have occurred from the reserved category on account of the teachers, who are exiting employment on account of their superannuation or voluntarily retirement, etc..

e) After considering the above aspects, the Education Officer shall pass reasoned orders in the cases before him, as expeditiously as possible and preferably within two months from the date of communication.

f) Needless to state, those teachers, whose proposals would be approved for transfer from the unaided to aided category, would be entitled for all consequential benefits from the dates on which the transfers are approved.

g) The above guidelines would apply squarely to the cases wherein, the transfers are effected from unaided to partially aided or fully aided or from partially aided to fully aided category, etc..

h) In the event of any grievance of any of these petitioners or any other teacher, persisting or cropping up on account of reservation/ backlog while approving transfers of teachers from unaided to aided or partially aided or from partially aided to fully aided category, the said issue will be left open if there is specific challenge to that extent."

5. The rejection of proposals in these petitions is the transfer from un-aided to aided category on the ground of availability of surplus teachers and backlog of reservation. In

view of the above referred order dated 02.05.2022 passed by this Court, we need not take different view wherein elaborate directions have been given.

6. In view of the fact that we are adopting the same order as referred above, we also say that in view of paragraph No. 15 in the said judgment we are also expressing same view.

(S.G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

mahajansb/