



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

24 WRIT PETITION NO. 10481 OF 2018

**ARUN SONU MORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 10487 OF 2018**

**UKHARDU BHILA WALDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 10489 OF 2018
VIJAY NARAYAN DHANRALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 10511 OF 2018
RAJENDRASING WAMANSING PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 5626 OF 2019
SAHEBRAO HARI CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
WRIT PETITION NO. 10480 OF 2018
MOHAN BHAGWAN TADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

WITH
WRIT PETITION NO. 10541 OF 2018
MOHAMMAD KALIM SHAIKH CHAND
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10491 OF 2018
ABDUL MUNAF ABDUL LATIF
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10486 OF 2018
SHILA MANOHAR SONAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10540 OF 2018
SAIED AHMED KHALIDUJJAMA KHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10542 OF 2018
SAHEBRAO RAMDAS SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10493 OF 2018
ABDUL SALAM ABDUL RAUF
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10488 OF 2018
SHAIKH NAIM SHAIKH IBRAHIM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10477 OF 2018
AISHA SHAIKH AKBAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10490 OF 2018
PUSHPA DILIP WAGH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10479 OF 2018
MOMIN MUSTAQ SHAIKH AMIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10485 OF 2018
KAZI SHAIKH IBRAHIM ABDUL RAZAQ
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10492 OF 2018
SAMADKHAN MAJIDKHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10484 OF 2018
VISHNU CHIMAN THAKARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10539 OF 2018
DILIP BHASKAR WAGH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10482 OF 2018
RAJESH SUDHAKAR FIRKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10478 OF 2018
PUSHPALATA SHAMBHU SALI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO. 10483 OF 2018
SAYYED MUBARAK BEGUM HASANALI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. V. P. Patil, Advocate for the Petitioners
Mr. K. S. Hoke Patil, AGP for the Respondent/State
Mr. M. S. Sonawane, Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 18th AUGUST, 2025

PER COURT :-

1. These Petitions involved common questions of facts and law and hence, by consent of both sides heard finally at the stage of admission and decided by this common order.

2. The facts which led to the filing of these Writ Petitions can be narrated in brief as under:-

(i) The Petitioners are Assistant Teachers working to Zilla Parishad. In the year 2013, Zilla Parishad has undertaken process of

transfer of the teachers. The Petitioners and other teachers being aggrieved by the said order of transfers preferred Petitions before this Court challenging the said order of transfer, being Writ Petition No. 4566 of 2013 and others.

(ii) Admittedly during the pendency of the Petition, there was no interim stay to the order of transfer, however, the Division Bench of this Court has passed order on 22/07/2014 in following terms:

"(a) In case, the posts are vacant at the place where the petitioners had requested for transfer, they should be immediately posted at that place.

(b) The petitioners, who had made requests for transfer on the basis of couple convenience, their request may also be considered and if vacancy exists, they may be accommodated.

(c) In case, there is no vacancy available at the place of their request, then, petitioners shall be continued at the place where they are transferred, till the end of this academic year and shall be considered positively for their transfer at the place of their choice, i.e. as per request application which they have already given.

(d) The modalities shall be worked out effectively so as to accommodate all the petitioners.

(e) The respondents shall also consider the cases of those petitioners, who have made request for transfer on their medical ground or of their spouses/kins, as per the availability of vacancies, expeditiously.”

(iii) The Division Bench in this order has granted leave to the teachers to make an Application to the Zilla Parishad for considering the period of their absence as admissible leave. It was directed to consider the Application if filed on its own merits.

(iv) Pursuant to the said direction, the Petitioners made Applications to the Chief Executive Officer of Zilla Parishad for treating their period of absence as the earned leave. There is no dispute about the fact that in respect of all Petitioners, sufficient earned leave was available to the credit. Chief Executive Officer by order dated 19/09/2016 rejected the said request on the ground that the Petitioners have filed the petition challenging the order of transfer without seeking permission of the employer. Hence, the said period of absence was considered as without pay. Against the said order passed by Chief Executive Officer an Appeal came to be filed under Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline And Appeal) Rules, 1964 before the Additional Commissioner, Nashik, Division Nashik. The Appellate Authority dismissed the Appeal, hence these Petitions.

3. Learned Counsel for the Petitioners has drawn attention of the Court to the various orders passed by the Division Bench of this Court in Writ Petition No. 4566 of 2013 and other petitions. It is his submission that while finally disposing of the petitions the Division Bench of this Court has granted leave to the Petitioner to make an Application before the Authority for leave and the Authority was directed to decide the same on merit. It is his submission that except for the reason that the Petitioners had filed petition against the order of transfer without leave of the employer, their Applications were not rejected on any other ground. According to rejection of request on the said ground is wholly unsustainable in law.

4. Learned Counsel for the Zilla Parishad vehemently resisted the Petitions by pointing out the fact that during the pendency of the Petitions in the earlier round of litigation, there was no interim relief granted by this Court to the transfer order and in spite of the same Petitioners remained absent. In such circumstances, according to him the order of treating the leave period as without pay is justified. He further argues that the Petitioners are teachers and their absence has caused prejudice not only to the administration but to the students and on this count too impugned order needs no interference.

5. At the outset it needs to be recorded that the Petitioners

were not required to take any leave of Zilla Parishad before challenging the order of transfer before this Court by filing these petitions. Perusal of the order passed by the CEO indicates that only on this ground, the request for treating the period of absence as leave with pay i.e. earned leave is rejected. Though the Appellate Authority has sought to take into consideration the inconvenience of the administration so also the obligations of the teachers, this is nothing but supplanting the reason which were not there in the order passed by CEO. Needless to say that it is not permissible for the Appellate Authority to supplant the reason which are absent in the original order.

6. Suffice is to say that only for the reason that there was a petition filed by the Petitioners challenging the order of transfer without seeking leave of Zilla Parishad, their request for considering/ treating the period of absence as earned leave is rejected. Since this is the only reason recorded for rejecting the Application, order impugned is not sustainable in law. Admittedly, to the credit of all the Petitioners there were sufficient earned leaves. Thus, it was open for the Chief Executive Officer to treat the said period adjusting as earned leave. It seems that only for the reason that the Petitioners had challenged the order passed by the Zilla Parishad and out of grudge against the Petitioners', leave absence was treated as without pay.

7. In the afore stated facts, more particularly in view of the observations made by the Division Bench of this Court holding that the transfers of Petitioners being not justified and it is only for the reason that since the order passed by the Division Bench finally was after about the year of the filing of the petition, it was thought not necessary to cause interference therein.

8. In such circumstances, when there are adverse observations made by Division Bench of this Court with regard to the correctness of the transfers, this is a fit case to cause interference in the impugned order.

9. Hence, impugned orders are set aside. The period of absence of Petitioners for the period concerning in these Petitions, be treated as earned leave and the same adjusted against the leaves available accordingly. Petitions therefore, are allowed in above terms.

(R. M. JOSHI, J.)

ssp