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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 13112 OF 2023

Smt.Gitabai Mahadev Khedkar,
Age-49 years, Occu-Service as
Assistant Teacher presently working
with Zilla Parishad Primary School,
Chinchpur Ijade, Tal.Pathardi,
Dist.Ahmednagar

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
School Education and Sport
Department, Mantralaya,
Mumbai – 32.

2. The Deputy Director of Education
(Primary),
Maharashtra State, Pune.

3. The Chief Executive Officer,
Zilla Parishad, Ahmednagar.

4. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.

5. The Block Development Officer,
Panchayat Samiti, Pathardi,
Tal.Pathardi, Dist.Ahmednagar

6. The Block Education Officer,
Panchayat Samiti, Pathardi,
Tal.Pathardi, Dist. Ahmednagar

-- RESPONDENTS

Mr.D.R.Kale h/f Mr.A.G.Ambetkar, Advocate for the Petitioner.
Mr.P.K.Lakhotiya, AGP for Respondent Nos. 1 and 2.

Mr.V.P.Narwade h/f Ms.M.V.Narwade, Advocate for Respondent
Nos.3 to 5.

(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)

DATE : FEBRUARY 22, 2024

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by
the consent of the Parties.

2. The Petitioner has put forth prayer clauses B, C, D and E-1
as under :-

*“B. By issuing writ of certiorari or any other writ or direction in the like
nature, this Hon’ble Court may be pleased to quash and set aside
impugned letter dated 03.10.2023 issued by Respondent No.3 – Chief
Executive Officer, Zilla Parishad, Ahmednagar and for that purpose
issue necessary orders.*

*C. By issuing writ of mandamus or any other writ, order or directions in
the like nature, this Hon’ble Court may be pleased to direct the
respondent No.3 to consider the based on students strengths till
September 2023, while finalized the staffing pattern for the academic
year 2022-2023 as per the Government Resolution dated 18.05.2011.*

*D. By issuing writ of mandamus or any other writ, order or directions in
the like nature, this Hon’ble Court may be pleased to direct the*

respondents to hold and declare that the Petitioner is not surplus or excess teacher with Zilla Parishad Primary School Chinchpur Ijade, Tq.Pathardi, Dist.Ahmednagar.

E-1. By issuing writ of Mandamus or any other appropriate writ or direction in the like nature, the Hon'ble Court may kindly be pleased to quash and set aside the impugned order dated 01.01.2024 issued by the Respondent No.5.”

3. The Petitioner is an Assistant Teacher with the Zilla Parishad, Ahmednagar, having been appointed on 27.12.1996. It is undisputed that she has been granted approval and is in employment for almost 28 years. As per the staffing pattern (संच मान्यता), there are 3 posts of Assistant Teachers sanctioned for the Z P Chinchpur Ijade Primary School. Actually there are 4 teachers working in the said school. As per the staffing pattern, for the academic year 2022-2023, the strength of the students as in September 2022 was taken into account in November, 2022 and 2 teachers were shown to be surplus. By the transfer orders dated 17.05.2023 and 14.06.2023, 2 excess teachers have been relieved.

4. The Petitioner submits that Respondent No.3 has transferred 1 teacher namely Mr.Prasad Bhise to the Primary School at

Chinchpur Ijade without considering the students strength. Mr.Bhise has joined on 18.05.2023. On 01.10.2023, the Petitioner has been declared to be a surplus teacher from the same school considering the staffing pattern with relation to the students strength for the academic year 2022-2023. For assessing the strength of the students before transferring the Petitioner on 01.01.2024 by declaring her to be surplus, the cut off date to be taken into consideration was September, 2023 and the staffing pattern should have actually been formalised in November, 2023.

5. The Zilla Parishad has filed it's affidavit in reply through the Education Officer dated 03.11.2023 and has taken a stand that the staffing pattern for the academic year 2022-2023 has been sanctioned and only 2 posts of Assistant Teachers are approved / sanctioned at the Chinchpur Ijade School. Since there were 3 teachers, the Petitioner being the seniormost, was removed from the said school and he was transferred to the primary school, Wagheshwar Nagar at Pathardi.

6. We have considered the monthly report of the strength of the students as on 01.08.2023, which indicates that there were 62

students in the Chinchpur Ijade School. The monthly report for September 2023 indicates that there are 64 Adhar card validated students in the said school. Per contra, the school at Wagheshwar Nagar, where the Petitioner has been transferred, have 8 students. These strengths of the students in the both schools are with regard to the Primary School. Surprisingly, a teacher Shri Bhise, was transferred to Chinchpur Ijade school taking the strenght of the teachers to 3 and then the Petitioner has been declared surplus and is transferred on 01.01.2024 on the basis of the staffing pattern of 2022-2023, instead of formalizing the said pattern for 2023-2024.

7. It is undisputed before us that in a school having more than 60 students, 3 Assistant Teachers have to be allocated. In a school having less than 60 students, 2 teachers are sanctioned. As such, the weird situation before us is that in a school having 64 students, there are 2 teachers at Chinchpur Ijade, instead of 3. Going by the staffing pattern, there may not be any dispute with regard to Wagheshwar Nagar School wherein 2 teachers have been deployed to teach 8 students.

8. The learned Advocate for the Petitioner submits that the Zilla Parishad, with regard to the school at Chinchpur Ijade, has considered the circular dated 10.06.2022 addressed to all the CEO's of all the Zilla Parishads in Maharashtra, thereby directing that the staffing pattern / (संच मान्यता) should be finalized on the number of strength of the students as in September of that academic year and based on such data, the transfer orders have to be issued in the General Transfer period in view of the GR dated 18.05.2021.

9. The fact situation before us is that the Petitioner has been transferred in the middle of the term by order dated 01.01.2024 on the basis of the (संच मान्यता) of the academic year 2022-23, when, in fact, it should have been the academic year 2023-24. It is also undisputed that by September of each academic year, the strength of the students has to be taken into account and the staffing pattern has to be formalized in November. The learned Advocate for the Petitioner has conveyed to us that the School Education and Sports Department, Government of Maharashtra, has uploaded on the students portal for the academic year 2023-24 that the number of students linked with their aadhar cards and who are known as aadhar validated students, are 64 in number for the

Zilla Parishad Primary School, Chinchpur Ijade and there are 9 students in the Zilla Parishad Primary School, Wagheshwar Nagar. Despite this situation, the Petitioner has been transferred on 01.01.2024 and not during the general transfer period.

10. In view of the above, **this Writ Petition is partly allowed.** We direct Respondent No.2 to formalize the staffing pattern on the basis of the strength of the students at the Chinchpur Ijade Primary School within 15 days from today. Once the staffing pattern is formalized and 3 teachers are allocated to the Chinchpur Ijade school, the Petitioner would get a right to return to the said school after the academic curriculum of the school for the primary students is completed in the academic year 2023-2024. The Zilla Parishad shall fill in the vacancy at Wagheshwar Nagar, simultaneously by deputing an eligible surplus teacher for the academic year 2024-2025, so as to have the strength of 2 teachers at Wagheshwar Nagar School for teaching 9 primary school students.

11. Rule is made partly absolute in the above terms.

(R.M.JOSHI, J.)

(RAVINDRA V. GHUGE, J.)