

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

WRIT PETITION NO.5177 OF 2015

Nitin Ashruba Tidke,
Age 33 Years, Occu. Service,
R/o.Bhogalwadi, Taluka Dharura,
District Beed.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Department of Rural & Water Conservation,
Mantralaya, Mumbai
- 2] Zilla Parishad, Beed
Through its Chief Executive Officer
- 3] Zilla Parishad, Gondia
Through its Chief Executive Officer
- 4] Block Education Officer,
Panchayat Samiti, Wadwani,
District Beed
- 5] Education Officer [Primary],
Zilla Parishad, Beed,
Taluka and District Beed

RESPONDENTS

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Mr.S.S.Jadhavar, Advocate for the petitioner
Mr.A.V.Deshmukh, AGP for Respondent No.1
Mr.S.S.Dambe, Advocate for Respondent Nos.2,
4 and 5.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 15.06.2016
Pronounced on : 23.06.2016

JUDGMENT: [Per S.S.Shinde, J.]:

This Petition is filed with the following prayer:

B] By issuing writ of *mandamus* or any other appropriate writ, order or direction, Respondent Nos.2, 4 and 5 may kindly be directed to get Petitioner joined as an Assistant Teacher [Primary] in view of the order dated 30.08.2014 issued by Respondent No.2 [Exhibit-B].

2] The learned counsel appearing for the petitioner submits that the petitioner was appointed as an Assistant Teacher [Primary], on the establishment of respondent no. 3 on 26th December, 2003. Since place 'Gondia' is far away from 'Beed', the petitioner submitted an application with respondent nos.2 and 3 for his inter-District transfer from the establishment of respondent no.3 to the establishment of respondent no.2.

After considering the application of the petitioner, respondent no.3 consented for inter-District transfer of the petitioner, by communication dated 16th August, 2014. Respondent no.2 also granted a permission for transfer of the petitioner from Gondia to Beed, and directed his absorption on the establishment of the Panchayat Samiti, Wadwani, by his communication / order dated 30th August, 2014. However, the authorities of respondent no.3 did not relieve the petitioner immediately. On 9th April, 2015, the petitioner was relieved by the Headmaster of the Zilla Parishad Primary School, Jabbarkheda, District Gondia. On 10th April, 2015, the petitioner reported at the office of respondent no.4 in order to join duties. However, respondent no.4 communicated respondent no.5 that due to problem of absorption of surplus teachers, the petitioner could not be permitted to join

duties. Thereafter, the petitioner approached the office of respondent nos.2 and 5 and requested them to permit him to join duties, however, the petitioner was not allowed to join duties. Hence this Petition.

3] The learned counsel appearing for the petitioner further submits that when the Chief Executive Officer, Zilla Parishad, Beed, and that of Gondia had consented and permitted inter-District transfer, respondent no.4 should have allowed the petitioner to join at Wadwani. He submits that since the petitioner is relieved from the earlier establishment, he is without any work. He is not getting salary. Therefore, relying upon the pleadings in the Petition, annexures thereto, and in particular the orders issued by the Zilla Parishad, Gondia and Zilla Parishad, Beed, the learned counsel for the petitioner submits that, the Petition may be allowed.

4] The learned counsel appearing for respondent nos.2, 4 and 5 relying upon the affidavit-in-reply submits that though there were no vacant posts and further there was problem of excess / surplus teachers in Zilla Parishad, Beed, the then Chief Executive Officer approved the proposals for inter-District transfers of Vasti School teachers. Therefore, enquiry was conducted against the then Chief Executive Officer and about regularization of employees in Zilla Parishad, Beed, certain guidelines were issued by the State, vide Government Resolution dated 27th November, 2015. He further submits that the Chief Executive Officer, Zilla Parishad, Beed communicated to all Zilla Parishads in Maharashtra, by letter dated 29th November, 2014 that as there was a problem of salary of teachers due to excess teachers in Beed Zilla Parishad, they should

not relieve any teachers for joining on the establishment of Zilla Parishad, Beed, even if they received any order of inter District transfer from Zilla Parishad, Beed.

5] The learned counsel then submits that the petitioner belongs to NT [D] category, and as per the roster maintained by the respondent Zilla Parishad, Beed there is no vacancy available to accommodate the petitioner on the same roster point as well there was no vacancy from open category. There were already about 384 NT [D] category candidates in excess than the posts reserved for NT [D] category in Zilla Parishad, Beed. The petitioner was relieved after the communication by respondent no.2 [i.e. Zilla Parishad, Beed]. Since there was no post available for accommodating the petitioner, he has not been allowed to join at Zilla Parishad, Beed, till today. Therefore, the learned counsel appearing for respondent nos.

2, 4 and 5 submits that the Petition may be rejected.

6] Respondent no. 3 has also filed affidavit-in-reply. It is stated in the said affidavit-in-reply that respondent no.2 granted no objection in favour of the petitioner with condition that the petitioner would be relieved after completion of the academic session; and after verifying whether any departmental proceedings are proposed or pending against the petitioner, and no dues of the Zilla Parishad, Gondia are to be recovered from him. Accordingly, after verifying the aforesaid factors, he was relieved on 9th April, 2015 and therefore, it is prayed that the Petition being without any substance, the same may be rejected.

7] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned

counsel appearing for the respective respondents. On perusal of the documents at Exhibit-B Page-13 i.e. the order issued by the Education Department, Zilla Parishad, Beed, the name of the petitioner is mentioned in the said order and his place of joining is shown as Panchayat Samiti, Wadwani. The said order was issued on 30th August, 2014. However, respondent nos.2, 4 and 5 have placed on record the copy of the Government Resolution dated 27th November, 2015, issued by the School Education and Sports Department, Government of Maharashtra, wherein it is stated that already there were surplus teachers in the Beed District, and in order to accommodate those surplus teachers, 793 basic posts have been sanctioned. There is also copy of the letter dated 29th November, 2014 placed on record by the said respondents addressed to the various Zilla Parishads wherein it was communicated that

though there were orders issued, giving consent for inter-District transfers, those employees should not be relieved and in case such employees were relieved, those would be sent back to the concerned Zilla Parishad.

8] Upon careful perusal of the documents placed on record, it is clear that though the consent was given by respondent nos.2 and 3 for the inter-District transfer in the month of August, 2014, the petitioner was relieved in the month of April, 2015. It further appears that by that time, there were a number of surplus teachers on the role of the Zilla Parishad, Beed, and in order to absorb the said surplus teachers, some additional posts were required to be sanctioned by the State Government. Despite receiving the letter dated 29th November, 2014, respondent no.3 relieved the petitioner for joining the establishment of respondent no.2.

9] In the light of the discussion in the foregoing paragraphs, we are not convinced to issue mandatory directions to respondent no.3 to allow the petitioner to join as an Assistant Teacher [Primary], in view of the order dated 30th August, 2014 issued by respondent no.2. However, we direct respondent no.3 [i.e. Zilla Parishad, Gondia] to allow the petitioner to rejoin as an Assistant Teacher [Primary] on its establishment and give him posting within its jurisdiction. As stated above, in view of the communication issued by the Zilla Parishad, Beed, on 29th November, 2014, to all the Chief Executive Officers of the Zilla Parishads in Maharashtra, the petitioner should not have been relieved from the services of the Zilla Parishad, Gondia.

10] In that view of the matter, we hope and expect that respondent no.3 will allow

the petitioner to join as an Assistant Teacher within three weeks from receiving the copy of this order.

11] So far as the claim of the petitioner for Beed District is concerned, respondent no.3, keeping in view the length of service of the petitioner and seniority, if any, for inter-District transfer, consider the request of the petitioner for transfer from Gondia District to Beed District, as and when the posts would be available in Beed District.

12] The Writ Petition is partly allowed on the above terms, and the same stands disposed of accordingly.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE