

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

WRIT PETITION NO.401 OF 2017

Jyoti d/o. Vithalrao Khadke,
Age : 36 years, Occ. Service as
Assistant Teacher,
r/o. c/o. T.S. Wadiyar, Saikripa,
Plot No.85/86, Chhatrapati Nagar,
Purna Road, Nanded ..Petitioner

Vs.

1. The State of Maharashtra
Through Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai – 32
2. Divisional Commissioner,
Aurangabad Region,
Aurangabad
3. The Chief Executive Officer,
Zilla Parishad, Nanded
4. Education Officer (Primary),
Zilla Parishad, Nanded ..Respondents

--

Mr.V.S.Panpatte, Advocate for petitioner
Mrs.A.V.Gondhalekar, AGP for respondent nos.1 to 2
Mr.S.B.Pulkundwar, Advocate for respondent nos.3
and 4

--

**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
RESERVED ON : APRIL 13, 2017
PRONOUNCED ON : MAY 03, 2017**

JUDGMENT (PER SANGITRAO S. PATIL, J) :

Rule. Rule made returnable forthwith.
With the consent of the learned Counsel for the
contesting parties, heard finally.

2. The petitioner, who is an Assistant Teacher (Primary), has challenged the order dated 03.06.2016 issued by respondent no.3 – Chief Executive Officer, Nanded, transferring her from Loha, Tq. Hadgaon, to Nandgaon-Tanda, Jaldhara, Tq. Kinwat, District Nanded.

3. The learned Counsel for the petitioner submits that the husband of the petitioner is serving as an Assistant Teacher in a private school situate in Dnyaneshwar Nagar at Nanded, which post is not transferable. The petitioner has been transferred to a place which is at a distance of about 200 kms. from the place, where her husband is serving. He submits that the guidelines given in the Government Resolution dated 15.05.2014 in the matter of effecting

transfers have been totally ignored. The transfers have not been made in a transparent manner. Some of the teachers have been shown favour, while others like the petitioners, have been treated differently. The couple convenience policy also has not been followed, which mandates that the place of transfer of a spouse shall be within 30 kms. from the place where the wife/husband is serving. He submits that under the garb of filling up vacant posts in tribal area of Kinwat Taluka, imbalance has been created and many posts have been kept vacant in non-tribal area like Ardhapur and Hadgaon Talukas. According to the learned Counsel, the transfer of the petitioner is most inconvenient and also is against the guidelines given in the Government Resolution dated 15.05.2014. Moreover, when the petitioner went to join the place of her transfer on 10.10.2016, she was not allowed by the Headmaster to join there for want of vacancy. He, therefore, submits that the impugned order of transfer may be set aside

and respondent no.3 may be directed to transfer the petitioner at a place within the radius of 30 kms. from the place where, her husband is serving.

4. Respondent no.3 filed reply and opposed the claim of the petitioner. The learned Counsel for respondent no.3 submits that the petitioner never worked in tribal area and she has worked in Hadgaon Taluka only for more than 18 years. He submits that it is mandatory to fill-up all the vacancies in the tribal area of Kinwat and Mahur Talukas. Accordingly, the primary teachers, who never worked in tribal Talukas, were transferred there. He submits that maximum care was taken to see convenience of a large number of primary teachers, but all the primary teachers could not be considered for want of vacant posts. He submits that the petitioner did not join the place of her transfer. It is only when the this Court directed all the petitioners to join the place of their new postings, the petitioner also tried to join at her post of transfer. However, since the petitioner

did not join there till 10.10.2016 and since it was not possible to keep the said post vacant, with a view to impart education to the students admitted in the school in the tribal area, temporary arrangement was made and some other teacher was posted in the school where the petitioner was transferred. Therefore, when the petitioner went to join the said place, the Headmaster of the said school, could not allow her to join there. He submits that the petitioner cannot take benefit of her own wrong and she would be accommodated at the place of transfer. He submits that the transfer of the petitioner has not been effected with any *mala fide* intention. It would not be possible for respondent no.3 to satisfy all the primary teachers by giving the posts as per their choice. He submits that the Writ Petitions of the primary teachers similarly situated to that of the present petitioner, have been dismissed by this Court with costs. He submits that the common judgment delivered in

those petitions is very much applicable to the facts of the present case also. He, therefore, prays that the present Writ Petition may be dismissed with costs.

5. A copy of the common judgment dated 27.02.2017 delivered by this Court in the case of **Sou. Sunita Damodharrao Deshmukh Vs. The State of Maharashtra and others in Writ Petition No.5984 of 2016 and connected Writ Petitions**, has been produced on record. The petitioner - Sunita Damodharrao Deshmukh, Primary School Teacher, was transferred from Zilla Parisad School, Degloor, District, Dist. Nanded to Gokunda Marathi, Center Nayacamp, Taluka Kinwat, a tribal area in Nanded District. The distance between the place where she was transferred and the place where her husband was serving, was about 230 kms. All the points which have been raised by the learned Counsel for the present petitioner, were raised while challenging transfer of Sunita Damodharrao Deshmukh. The said Writ Petition came to be

dismissed with costs of Rs.15,000/-. The observations made by this Court while dismissing the said Writ Petition still hold good.

6. We find no reason to take a contrary view in the present Writ Petition. However, we are inclined to show some leniency to the present petitioner by not imposing costs of Rs.15,000/-.

7. In the above circumstances, we do not find any reason to interfere in the order of transfer issued by respondent no.3 in respect of present petitioner. The Writ Petition is devoid of any substance. It is liable to be dismissed.

8. Hence, the order :-

(i) The Writ Petition is dismissed.

(ii) Rule is discharged accordingly.

(iii) No costs.

[SANGITRAO S. PATIL, J.] [S.V. GANGAPURWALA, J.]

kbp