

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

**WRIT PETITION NO. 3393 OF 2015**

Vijaykumar Shivling Gonge

.. Petitioner

**Versus**

The State of Maharashtra and others .. Respondents

Shri V. G. Salgare, Advocate for the Petitioner.

Shri K. N. Lokhande, A.G.P. for the Respondent No. 1.

Shri R. K. Ingole Patil, Advocate for Respondent Nos. 2 and 3.

Shri V. V. Bhavthankar, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND  
R. G. AVACHAT, JJ.**

**DATE : 15TH OCTOBER, 2018.**

**FINAL ORDER :**

. Mr. Salgare, the learned advocate for the petitioner submits that, the petitioner is a primary teacher. He was working with the Zilla Parishad Thane. The case of the petitioner for inter district transfer was considered. The petitioner was relieved by the Zilla Parishad, Thane, however, when he came to Zilla Parishad, Nanded to join, the respondent/ Zilla Parishad Nanded did not allow the petitioner to join. The learned counsel submits that, the petitioner is not paid any salary. The petitioner is not at fault. After following proper

procedure, the petitioner was relieved from Zilla Parishad Thane so as to join at Zilla Parishad, Nanded. The learned counsel submits that, the petitioner possesses qualification of B. A. B. Ed. The petitioner is resident of Nanded and his wife is serving with the Zilla Parishad, Nanded. Under the couple convenience inter district transfer was permitted. The Zilla Parishad Thane issued no objection letter to his inter district transfer on 23.02.2010 to Zilla Parishad Nanded. The Chief Executive Officer, Zilla Parishad Nanded on 21.02.2014 issued posting order to the petitioner under Panchayat Samiti, Mukhed. The petitioner belongs to Special Backward Class category. The petitioner is required to be absorbed. Enquiry was also conducted against the then Chief Executive Officer of the Zilla Parishad and it was found that the documents produced by the petitioner are genuine one.

2. Mr. Ingole, the learned advocate for the Zilla Parishad Nanded submits that, the documents relied by the petitioner are not genuine. The enquiry is initiated against the then Chief Executive Officer, Nanded for misdeeds committed by him. There are 177 posts of Special Backward Class category. There is no vacancy in the said category. The petitioner cannot take advantage of the forged documents.

3. Mr. Bhavthankar, the learned counsel appears for the

respondent No. 5, the then Incharge Chief Executive Officer and submits the documents placed on record and relied by the petitioner are genuine.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. There are rival contentions regarding genuineness of the documents. It would not be appropriate for this Court to exercise powers under Article 226 of the Constitution of India to enter into the investigation of the genuineness of the said documents.

6. The Divisional Commissioner is a superior and Appellate Authority over the Chief Executive Officer, Zilla Parishad.

7. Considering rival claims made by the Zilla Parishad, Nanded and the then Incharge Chief Executive Officer, it would be appropriate to direct the Commissioner to consider the gamut of the dispute, genuineness of the documents and thereafter take decision with regard to the absorption of the petitioner in Zilla Parishad, Nanded on any vacant post.

8. The petitioner may approach the Commissioner within a period of two weeks from today. The Commissioner upon receipt of the application/representation of the petitioner shall after

hearing the respondents take decision upon the claim of the petitioner to be accommodated at Zilla Parishad, Nanded on its own merits, in accordance with law, expeditiously and preferably within a period of three (03) months from the date of submission of the representation. While deciding the claim of the petitioner, the Commissioner shall also consider claim of the petitioner for payment of salary on its own merits. The writ petition is disposed of. No costs.

**[R. G. AVACHAT, J.]**

**[S. V. GANGAPURWALA, J.]**

*bsb/Oct. 18*