

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

WRIT PETITION NO. 4351 OF 2017

Amol Vasantryao Shinde

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri V. D. Sapkal, Advocate h/f Shri A. B. Jagtap, Advocate for the Petitioner.

Mrs. Vaishali N. Patil-Jadhav, A.G.P. for the Respondent No. 1.

Shri Deelip Patil Bankar, Advocate for the Respondent No. 2.

Shri D. G. Nagode, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 08TH MARCH, 2018.

FINAL ORDER :

. Pursuant to our order dated 24th February, 2018, the respondent No. 2 has filed affidavit showing the status of vacancies. The respondent No. 2 in the affidavit has stated that, there appears to be 78 vacant posts from open category. There are 170 posts shown as excess. The 170 posts excess against reserved category are shown and permission is sought to fill in the posts from the open category. Proposal to that effect is also sent. If the Government of Maharashtra gives approval to the proposal, then only open category candidates by inter district

transfer can be filled in.

2. The chart showing vacancies is annexed with the affidavit by the respondent No. 2. The chart is showing many excess posts are filled in from some of the reserved categories and in case of S.C. and S.T. categories there are still vacancies available. In general category 78 vacancies are shown.

3. Present anomalous situation has arisen because of the erroneous orders passed by the Zilla Parishad. The respondent No. 2/Zilla Parishad has come with a stand that the respondent No. 3 suppressed the fact that he is from trained graduate teacher's category and the petitioner is an assistant teacher. In ignorance of the same, consent was given for mutual transfer. However, upon the consent being given, the Dhule Zilla Parishad, where the petitioner was functioning has relieved the petitioner and now the respondent No. 2 is not allowing the petitioner to join on the ground that adjustment by mutual transfer between the petitioner and the respondent No. 3 could not have been made as both are in different pay scales.

4. It appears that, the petitioner and the respondent No. 3 are in different pay scales. However, the anomalous situation has arisen not because of fault of the petitioner, though it was fault of the respondent No. 3 and respondent No. 2 not looking into the

matter scrupulously before giving consent for mutual transfer. The anomalous position will have to be resolved as vacancy exists in the respondent No. 2 from general open category. It would be appropriate for the respondent No. 2 to absorb the petitioner in the vacant post meant for open category.

5. In the light of the above, the respondent No. 2 may give posting to the petitioner as Assistant Teacher in the available vacant post with it, immediately and preferably within a period of fifteen (15) days from today. The writ petition accordingly is allowed. No costs.

[A. M. DHAVALÉ, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 18