

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

WRIT PETITION NO. 9715 OF 2015

Syeda Wahida Begum w/o. .. Petitioner
Sayyed Abdul Jabbar

Versus

The State of Maharashtra & ors. .. Respondents

Mr.S.S. Thombre h/f./ Mr.M.S. Karad, Advocate for the
petitioner.

Mr.S.B. Pulkundwar, AGP for respondent No.1.

Mr.P.D. Suryawanshi, Advocate for respondent Nos.2 to 4.

Mr.S.J. Salunke, Advocate for respondent No.5.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

RESERVED ON : 27.08.2018

PRONOUNCED ON : 28.09.2018

ORDER [PER : S.M.GAVHANE,J.] :-

1. By this petition, the petitioner has prayed to quash and set aside the order issued by respondent Nos.3 and 4 dated 25.06.2015 thereby transferring respondent No.5 as Head Master in Zilla Parishad, Central Primary School, Patrud, Tq. Majalgaon, Dist. Beed.

2. Mr.Thombre, learned Advocate appearing for the petitioner submitted that initially the petitioner was appointed as a Teacher on 22.10.1982 in Beed district. After promotions from time to time, she was promoted as a Head Mistress on 26.03.2008 and transferred to Longaon, Tq. Majalgaon, Dist. Beed. After serving for five years at Longaon, the petitioner was transferred to Patrud, Tq. Majalgaon, Dist.Beed as a Central Head Mistress by order dated 24.05.2013 and since then she is serving at village Patrud as a Central Head Mistress. The learned Advocate further submitted that respondent Nos.3 and 4 have transferred respondent No.5 by the impugned order to village Patrud illegally and they have not considered the provisions of law and before completion of statutory period of three years, respondent No.5 was illegally transferred on the petitioner's post.

3. Mr. Thombre, learned Advocate further submitted that the respondent authorities have not considered the directions issued by the Divisional Commissioner that

before transfer of any employee, consent of the Divisional Commissioner is necessary to be obtained as per letter dated 23.09.2013. Said directions were ignored while passing the impugned order. So also, the Panchayat Samiti, Majalgaon in the General Body Meeting dated 08.07.2015 resolved that the impugned order needs to be cancelled, but the said resolution was not considered by the authorities. According to the learned Advocate, the petitioner is working as a Head Mistress since 28.05.2013 at Patrud and though the statutory period has not been completed, she was forced to face the inconvenience and harassment at the hands of respondent Nos.3 and 4 to please respondent No.5. The learned Advocate further submitted that the petitioner belongs to Marathi medium and as such she is entitled to retain the post of Head Mistress at Patrud. After passing of the impugned order, respondent No.5 is trying to create problems in the smooth running of the school. The petitioner has given letter dated 25.08.2015 (Exh. "G") in the office of respondent No.2-Chief Executive Officer,

pointing out the entire details. Respondent No.5 though not joined at the place of petitioner, is trying to create record in his favour by making some over-writings in the official record and by pasting some sheets over the muster roll. It is submitted that the petitioner is on leave since 29.08.2015. Respondent Nos.3 and 4 have no power to issue the impugned transfer order of respondent No.5. Thus, learned Advocate has prayed to allow the petition and to set aside the impugned order.

4. Mr. Suryawanshi, learned Advocate appearing for respondent Nos.2 to 4 referring to the affidavit of In-charge Block Education Officer, Panchayat Samiti, Majalgaon filed on behalf of respondent Nos.2 to 4, submitted that under the establishment of Zilla Parishad, Beed, there was one primary school of Marathi-Urdu medium school running at Pathrud. There was one post of Head Master (Urdu) and the petitioner was transferred on the said post vide order dated 24.05.2013. Accordingly, she joined her duties on 28.05.2013. The General Body of

Zilla Parishad has passed Resolution No.86 dated 26.02.2013 and decided to separate the schools of Urdu medium and Marathi medium in the Beed district. Accordingly, the Education Officer (Primary), Zilla Parishad, Beed has issued order dated 26.04.2013 to all the Block Education Officers working under his control. Thereafter, the Block Education Officers issued letters to the Head Masters and communicated the aforesaid decision of the General Body. As such, from 26.02.2013 the schools of Marathi medium and Urdu medium are separate. It is submitted that the petitioner is transferred to the post of Head Mistress of Urdu Medium as per her wish and desire in the counseling. She has submitted her information being Head Mistress in the Urdu Medium school in Unified District Information System for Education (U-Dise), which is one of the projects of the Central Government for collecting collective information of the schools to implement the schemes effectively, as per Exh.R-2. She is having knowledge that she was transferred in the school at village Patrud, wherein only

one post of Urdu medium was sanctioned. The information Exh.R-2 is about the petitioner and bill of salary of staff of Urdu school at Pathrud. It is submitted that considering the strength of the students and separation of Marathi medium school and Urdu medium school one post of Head Master at primary school (Marathi) at village Pathrud, Tq. Majalgaon, Dist. Beed is sanctioned and shown to be vacant. As such, there is one post of Head Master at Primary School, Urdu medium and one post is of Head Master at Primary School, Marathi medium sanctioned at Pathrud. Exh.R-3 - the list is showing the vacant and sanctioned post of Head Master and the teachers in the Majalgaon Panchayat Samiti.

5. Mr. Suryawanshi, learned Advocate further submitted that as one post of Head Master Primary School (Marathi) was vacant, respondent No.5 has been given posting on the said post of Head Master and the petitioner has no concern with the said post. Respondent No.5 joined his duties at Primary School (Marathi

Medium), Pathurd as per the impugned order. Said order does not harm the petitioner. The petitioner has refused to give charge of Head Master of Marathi Medium school to respondent No.5 saying that there is no post of Head Master in Marathi Medium school. The Block Education Officer, Panchayat Samiti, Majalgaon has taken cognizance of this and issued notice dated 02.07.2015 to the petitioner and called her explanation. The petitioner has not replied the said show-cause notice. She has suppressed the fact of said notice. Respondent authorities thereafter issued final show-cause notice dated 13.07.2015 to the petitioner but she has not given charge to respondent No.5. She wants to keep charge of both the posts by hook or crook. It is submitted that respondent No.3 issued letter dated 28.08.2015 to the Police Inspector, Police Station, Majalgaon and requested to provide police protection for the purpose of handing over the charge of Head Master of Marathi Medium school at Pathrud to respondent No.5 and on 29.08.2015 the charge of Head Master of Marathi Medium school at Pathrud

is handed over to respondent No.5 and accordingly panchanama was carried out by the respondent-authorities. It is submitted that passing of resolution by the General Body of Panchayat Samiti, Majalgaon does not create right in favour of the petitioner to hold two posts at a time. She has joined her duties as Head Mistress in the Primary School (Urdu medium) at Pathrud. She has suppressed the fact that there are two posts of Head Master at village Pathrud.

6. Mr. Suryawanshi, learned Advocate for respondent Nos.2 to 4 referring the additional affidavit of Education Officer (Primary), Zilla Parishad, Beed submitted that respondent No.5 came to be retired due to the age of superannuation and at present the post of Head Master of Zilla Parishad, Central Primary School (Marathi) at Pathrud is vacant. On 03.09.2015 respondent No.3 has informed respondent No.2 that inspite of giving intimations to petitioner, the petitioner has not submitted her explanation. She is intentionally ignoring

the work, disobeying the orders and misleading to the higher authorities. Moreover, she is not showing financial documents of the school and not submitting information within prescribed time and therefore the inquiry against her is to be initiated. The petitioner is absent from 29.08.2015 without there being any prior or subsequent permission from the higher authorities. As per record, she is not submitting leave application till today for getting sanction of her leave. Respondent No.3 vide letter dated 01.10.2015 informed about absence of the petitioner to the Education Officer (Primary), Zilla Parishad, Beed. Thereafter, again on 02.01.2017, 05.04.2017, 01.09.2017 and 08.11.2017, respondent No.3 has intimated about the absence of the petitioner from her duties to the Education Officer (Primary). The petitioner was given notice dated 18.08.2018 and her explanation about her absence from 29.08.2015 was called within a period of seven days and it was clarified that if her explanation is not satisfactory, then necessary action would be taken against her. She is not attending

duties from August, 2015 and therefore she is not entitled for salary from August, 2015 till date. Thus, learned Advocate for respondent Nos.2 to 4 submitted that the petitioner has no case on merit and prayed to dismiss the petition.

7. We have also heard learned AGP appearing for respondent No.1 and learned Advocate Mr. Salunke for respondent No.5. Learned Advocate Mr. Salunke supported the impugned order.

8. We have carefully considered the submissions made by the learned Advocates appearing for the petitioner and the respective respondents. With their assistance, we have perused the pleadings of the parties and the documents produced in support of their contentions by the parties.

9. There is no dispute that the petitioner was appointed as a Teacher on 22.10.1982 in Beed district.

Thereafter, on 26.03.2008, she was promoted as a Head master and transferred at Longaon, Tq.Majalgaon, Dist. Beed. Moreover, there is no dispute that during the pendency of the petition, respondent No.5 has retired while serving as Head master of Zilla Parishad Central Primary School,(Marathi),Pathurd,Tq. Majalgaon, on superannuation and said post is vacant.

10. At the cost of repetition, according to the petitioner after she was promoted as Head Mistress on 26.03.2008, after completing five years service at Longaon, she was transferred as a Central Head Mistress in the school at Pathrud by order dated 24.05.2013 and she joined said post on 28.05.2013. According to her respondent Nos.3 and 4 illegally transferred respondent No.5 by the impugned order dated 25.06.2015 in the school where the petitioner was serving and therefore the impugned order is illegal. As referred earlier, the stand of respondent Nos.2 to 4 is that under the establishment of Zilla Parishad, there was one primary

school of Marathi medium and another school of Urdu medium and the petitioner was serving in Urdu medium school and she joined her duties in the said school on 28.05.2013 and the respondent No.5 has been given posting as Head Master in the school of Marathi medium. It appears from the copies of the muster-roll produced on record that there are separate primary schools of Urdu and Marathi medium at Pathrud. However, in the writ jurisdiction, we are not inclined to go into the above controversy as to whether the petitioner is serving as Head Mistress in the school where the respondent No.5 is working or otherwise.

11. In view of the above and having regard to the admitted fact that during the pendency of the writ petition, respondent No.5 has retired, the relief claimed by the petitioner to set aside the impugned order regarding transfer of said respondent No.5 does not survive and as such the relief claimed has become infructuous and we find it not necessary to set aside the

same. We make it clear that in place of respondent No.5, petitioner can be accommodated by respondent No.2, in-case, she is found eligible and suitable to appoint in the school on the vacant post of respondent No.5.

12. As referred earlier, the petitioner claims that since 28.05.2013 she is serving at village Pathrud as Central Head Mistress. Denying the same, respondent Nos. 2 to 4 have claimed that the petitioner is absent from duty as a Head Mistress in the school of Urdu medium since August, 2015 and therefore show-cause notice was given to her on 18.08.2018. We are not inclined to go into that controversy. However, we are leaving this aspect to respondent No.3-the Education Officer to decide, in-case the petitioner moves application/representation to the Education Officer in this regard, the Education Officer to decide the same on its own merits as to whether the petitioner was on duty in the school since August, 2015 and the salary of the said period, after giving her an opportunity of hearing, if

necessary.

13. We are making it clear that the above observations are not made on the merits of the entitlement of the petitioner's claim of posting her in place of respondent No.5 and regarding her presence in the school.

14. The writ petition is disposed of in the light of above observations. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]