

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2271 OF 2018

1 Shri. Shrikant Tanaji Tibe

2 Prince Shivaji Maratha Boarding Petitioners
House, Kolhapur

Vs.

1 The State of Maharashtra

2 The Education Officer (Secondary)
Zilla Parishad, Kolhapur Respondents

Mr. N.V. Bandiwadekar a/w Mr. Sagar Mane I/by Ms. Ashwini
Bandiwadekar for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondents.

Ms. Charushila Chaudhari, Deputy Secretary, School Education
Department, Maharashtra.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 5th October 2018.

P.C.:

1 Rule. Rule made returnable forthwith with the consent
of the parties.

2 The petitioner being aggrieved by the order dated 10th August 2017 passed by the Education Officer (Secondary), Zilla Parishad, Kolhapur has approached this Court by filing the present writ petition. The petitioner no.2 i.e. Prince Shivaji Maratha Boarding House, Kolhapur is an educational institution, registered under the Bombay Public Trusts Act. The Petitioner no.2 runs “New Madhyamik Vidyalay, Unchgaon, District Kolhapur and Maharashtra High School & Junior College at Kolhapur.

3 The petitioner no.1 belongs to reserved category i.e. Hindu Dhangar caste, which falls into N.T. category. The petitioner no.1 was appointed as a Peon in the school “New Madhyamik Vidyalaya” vide order dated 12th October 2010. The proposal was submitted to the Education Officer for approval of the said appointment. The Education Officer vide order dated 25th November 2010 had approved the appointment of petitioner no.1 as a Peon in the Pay-scale of Rs.4440/- to 7,440/-, G.P. 1300/-.

4 It is submitted that the School had prepared a composite list of employees working in the non-teaching cadre, which included the posts of Laboratory Assistants, Naiks and Peons i.e. Class-IV employees. The employees working on un-aided posts were also included in the said seniority list. That one post of Peon had fallen vacant in Maharashtra High School and Junior College and as per seniority, the petitioner no.1, who was working on un-aided post was entitled to be transferred from the aided post to the aided post. Hence, by an administrative order dated 30th June 2016, the School had transferred the petitioner from un-aided school at Uchgaon to aided school at Kolhapur. He was relieved from Uchgaon on 30th June 2016 and joined the transferred school on 1st July 2016.

5 It is submitted that by letter dated 23rd September 2016, the Headmaster of Maharashtra High School and Junior College, Kolhapur had sent a proposal for approval of the post of the petitioner no.1 on the transferred post. By letter dated 10th August 2017, the Education Officer had refused to grant approval on the basis of GR dated 12th February 2015.

6 Learned counsel for the petitioners submits that the petitioner no.2 has not proposed to fill-in the vacancy of appointment but the vacancy is being filled-in by transferring the Peons from one School to another. It is submitted that there is no prohibition prescribed in the Government policy for effecting such transfers from un-aided to aided school. Learned counsel has placed implicit reliance upon the orders passed by the Hon'ble Division Bench of this Court (Coram : Dr. D.Y. Chandrachud and A.A. Sayed, JJ) in the case of Ms. Sandhya Laxman Ghosalkar Vs. The State of Maharashtra & Ors. in Writ Petition No.5258 of 2012 (with Connected writ petitions) as well the order passed by the Hon'ble Division Bench of this Court (Coram R.M. Borde & S.S. Shinde, JJ) in the case of Dattu s/o Bhima Thorat Vs. The State of Maharashtra & Ors. in Writ Petition No. 2960 of 2012 and has submitted that the case of the petitioner falls in the same category and therefore the order passed by the Education Officer deserves to be quashed and set aside.

7 As against this, the learned AGP has filed an affidavit contending therein that there are no Government orders allowing transfer of non-teaching employee from un-aided schools to aided secondary schools. The Government has appointed a Committee to determine staffing pattern of non-teaching employees in aided secondary schools. According to the learned AGP, both the citations relied upon by the learned counsel for the petitioners cannot be considered in the present case in view of the fact that both the cases referred to are for teaching staff and not for non-teaching staff.

8 Learned counsel for the petitioners submits that when there is no prohibition to transfer the teaching staff, the same is applicable to non-teaching staff.

9 It is true that the order passed by the Education Officer is innocuous in nature and the Education Officer has not assigned any specific reason such as the distinction between the transfer and filling up a vacancy is concerned and has placed only implicit reliance on the GR dated 12th February 2015. The petitioner no.1 is

appointed as a Peon on 25th November 2010 in the Pay-Scale Rs.4440/- to 7,440/-, 1300 GP. It is in these circumstances that the petition deserves to be allowed.

10 The order dated 10th August 2017 passed by the Education Officer (Secondary), Zilla Parishad, Kolhapur is hereby quashed and set aside.

11 The petition is allowed in terms of prayer clause (b).

(SMT. SADHANA S. JADHAV, J.)