

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

WRIT PETITION NO.10794 OF 2018

Pushpavati Maroti Thube,
Age-58 Years, Occu.: Service,
Presently working as a Primary Teacher,
Z.P. Primary School,
Vasunde, Tq.: Parner, Dist.: Ahmednagar,
R/o.: Vasunde, Tq.: Parner,
Dist.: Ahmednagar

PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary
Department of Rural Development,
Mantralaya, Mumbai-32
2. The Chief Officer,
Zilla Parishad, Ahmednagar
3. The Education Officer,
Primary Zilla Parishad, Ahmednagar

RESPONDENTS

...

Mr. Y. V. Kakade, Advocate for the Petitioner.
Mr. R.P. Gaur, A.G.P. for Respondent No. 1.
Mr. S. T. Shelke, Advocate for Respondent Nos.2 and 3.

...

**CORAM: S.S. SHINDE &
K.K. SONAWANE, JJ.**

**RESERVED ON : 11.12.2018
PRONOUNCED ON: 08.01.2019**

ORDER (Per S.S.Shinde, J.):

By this Petition, the petitioner seeks directions to Respondent No.2 to relieve the petitioner from Zilla Parishad, Ahmednagar, for joining her services with Zilla Parishad Beed, as per order dated 5th September, 2018, issued by the Zilla Parishad, Beed.

2. It is the case of the petitioner that the petitioner is a primary teacher, presently working under Zilla Parishad, Ahmednagar. In the general transfer of employees of Zilla Parishad, the petitioner has applied under disable person category. The petitioner has approached to Government Hospital for getting the disability certificate, but the said certificate has not been properly issued, and hence, the First Information Report came to be registered against the petitioner. On the basis of said

first information report, the further proceedings are pending against the petitioner before the Competent Court.

3. It is the case of the petitioner that due to registration of the offence against her, the departmental enquiry was conducted by the Divisional Commissioner, Nashik Division, Nashik and he submitted inquiry report on 30th May, 2014, thereby exonerating the petitioner from all the charges leveled against her.

4. It is the case of the petitioner that the petitioner was due for retirement. The petitioner applied for inter district transfer during general transfers from Zilla Parishad, Ahmednagar to Zilla Parishad, Beed. The said transfer was with consent and mutual between two teachers. On 10th October, 2017, the Chief Officer, Zilla Parishad, Ahmednagar

has given No Objection for inter district transfer of the petitioner from Zilla Parisahd, Ahmednagar to Zilla Parishad, Beed, subject to outcome of criminal case No.669/2013 which is pending against the petitioner. The Chief Officer, Zilla Parishad, Beed communicated vide letter dated 5th September, 2018 to the Chief Officer, Zilla Parishad, Ahmednagar, that as per the Government Resolution dated 24th April, 2017, if departmental enquiry is pending against the employee, then such employee is not entitled for transfer and therefore, the proposal forwarded for transfer of the petitioner cannot be accepted.

5. It is the case of the petitioner that on 15th March, 2018, the petitioner has again made representation to the Chief Officer, Zilla Parishad, Beed, for

considering the proposal of her inter district transfer. Thereafter again on 2nd April, 2018, the petitioner made representation to the Chief Officer Zilla Parishad, Ahmednagar for her transfer. After considering the request of the petitioner, Zilla Parishad, Beed on 5th September, 2018, accepted the request of the petitioner and granted permission for mutual transfer. However, Respondent No. 2 has not relieved the petitioner from Zilla Parishad, Ahmednagar for joining the services at Zilla Parishad, Beed. The petitioner has made representation on 7th September, 2018 to Zilla Parishad, Ahmednagar, requesting to relieve her. However, Zilla Parishad, Ahmednagar has not taken any decision on the said representations. Hence this Petition seeking directions to Respondent No.2 to relieve the petitioner.

6. Learned counsel appearing for the petitioner submits that Zilla Parishad, Ahmednagar has forwarded the proposal with positive remark to Zilla Parishad, Beed for mutual transfer, and after considering the said proposal, Zilla Parishad, Beed has approved said mutual transfer. Therefore, Respondent No.2 ought to have relieved the petitioner from Zilla Parishad, Ahmednagar. However, Zilla Parishad, Ahmednagar has not relieved the petitioner for joining her services at Zilla Parishad, Beed. Therefore, learned counsel appearing for the petitioner submits that the Petition may be allowed.

7. On the other hand, learned counsel appearing for Respondent Nos.2 and 3, relying upon the affidavit in reply, submits that Zilla Parishad, Beed by its communication

dated 5th September, 2018 informed Zilla Parishad, Ahmednagar, that after verifying the fact as to whether any departmental enquiry is pending against the petitioner or any dues are recoverable from her, and if not, she may be relieved. Accordingly, Zilla Parishad, Ahmednagar, by its communication dated 28th September, 2018 informed Zilla Parishad Beed that the departmental enquiry was held against the petitioner, wherein she came to be exonerated, but disagreeing with the findings of Enquiry Officer, show cause notice of dismissal dated 23rd February, 2017 has been issued to her, and the said show-cause notice is challenged by her, in the High Court by filing Writ Petition No.3582 of 2017, which is pending for final disposal. It was further informed that the petitioner is also facing criminal prosecution in First Information Report No.669 of 2013, and the

charge-sheet has also been filed against her. It was therefore informed that the petitioner is not eligible for inter district transfer as per Government Circular dated 29th September, 2011 and Government Resolution dated 24th April, 2017, and therefore the petitioner cannot be relieved. Moreover, the petitioner stood retired from services on 30th September, 2018. Therefore, learned counsel submits that, the Petition may be rejected.

8. We have given careful consideration to the submissions advanced by learned counsel appearing for the petitioner and learned counsel appearing for Respondent Nos.2 and 3. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the reply filed by respondent Nos.2 and 3.

9. During the course of arguments, learned counsel appearing for respondent Nos.2 and 3 has specifically informed to this Court that after filing of this Petition, the petitioner stood retired from the services of Respondent Nos.2 and 3 on 30th September, 2018, on attaining the age of superannuation. It is also specifically stated in the affidavit in reply filed on behalf of Respondent Nos.2 and 3 that the petitioner stood retired on 30th September, 2018. In that view of the matter, we are not inclined to entertain this Petition, praying to relieve the petitioner from Zilla Parishad Ahmednagar for joining the services at Zilla Parishad, Beed, as the petitioner has already been retired and Petition has become infructuous. Hence the Writ Petition stands rejected.

(K.K. SONAWANE, J)

(S.S.SHINDE, J)