

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

WRIT PETITION NO.10925 OF 2018

Jyoti Ganpatrao Kardile
Age-36 Years, Occu.: Service,
R/o Amalner (Bhandyache)
Tq. - Dist. Beed.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary
School Education Department
Mantralaya, Mumbai-32
2. The Chief Executive Officer,
Zilla Parishad, Ahmednagar
3. The Education Officer,
Primary Zilla Parishad, Ahmednagar
4. Pushpawati Maroti Thube
Age-57 years, Occ-Service,
R/o Wasunde, Tq. Parner,
Dist-Ahmednagar.
5. The Chief Executive Officer,
Zilla Parishad, Beed,
Tq. & Dist. Beed.

RESPONDENTS

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Mr. P.R. Katneshwarkar holding for Ms.K.S. Bhale,
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.

Mr. G.A. Gadhe, Advocate for respondent No.4 (Absent)

Mr.V.M. Chate, Advocate for respondent No.5 (Absent)

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

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

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

This Petition is filed with the following substantive prayer :-

"B) By issuing writ of mandamus or any other writ, order or direction, this Hon'ble Court may be pleased to direct Respondent No.2 and 3 that to absorb the petitioner in her service as a assistant teacher on the place of respondent no.4 as per the order dated 05/09/2018 issued by Z.P. Beed and for that purpose issue necessary writ, order or direction and oblige."

2. It is the case of the petitioner that the petitioner is a primary teacher,

presently working at Zilla Parishad Primary School at Amalner K. Amalner, Tq. Patoda, Dist. Beed, under Zilla Parishad, Beed. The petitioner came to be appointed as assistant teacher on 28th August, 2005 from open category. The petitioner has completed her 11 years and 4 months service, and therefore, she is eligible for inter district transfer, as per the Government Resolutions dated 29th September, 2011, 16th May, 2017, 18th May, 2018 and 31st May, 2017.

3. It is the case of the petitioner that Respondent No.4, who at the relevant time, was working as assistant teacher at Zilla Parishad School, Wasunde, Tq. Parner, Dist. Ahmednagar. Due to some family problems and health issues, the petitioner and respondent No.4 mutually decided to file applications under inter district transfer

policy. Accordingly Respondent No.4 filed her application on 15th March, 2018 and 2nd April, 2018 with Zilla Parishad, Beed. Even after making the applications, no decision has been taken on the said representations, therefore, Respondent No.4 filed applications before the Commissioner, Aurangabad on 10th April, 2018 and 6th June, 2018. The Commissioner, Aurangabad directed Zilla Parishad, Beed to take immediate action on the applications submitted by Respondent No.4.

4. It is the case of the petitioner that, Zilla Parishad, Beed on 18th May, 2017 has given No objection to the petitioner and Respondent No.4 for inter district transfer. However, Respondent No.2 is neither relieving respondent No.4 from her services nor absorbing the petitioner even after the said communications. The petitioner and respondent

No.4 have on 14th September, 2018 and 7th September, 2018 made representations before Respondent No.2 and requested to comply the earlier communications made between Respondent No.2 and Respondent No.5, and permit them to join the services at their respective places. However, no decision whatsoever has been taken on the said representations. Hence this Writ Petition.

5. Learned counsel appearing for the petitioner submits that considering the applications filed by petitioner and respondent No.4, Zilla Parishad, Beed on 18th May, 2017 given No objection to the petitioner and Respondent No.4 for their inter district transfer. However, Respondent No.2 is neither relieving respondent No.4 from her services nor absorbing the petitioner. The said action of Respondent No.2 is erroneous. Therefore, learned counsel

appearing for the petitioner submits that the Petition may be allowed.

6. 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 Respondent No.4 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 conducted against respondent No.4, 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 against

Respondent No.4, 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 Respondent No.4 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 Respondent No.4 is not eligible for inter district transfer as per Government Circular dated 29th September, 2011 and Government Resolution dated 24th April, 2017, and therefore Respondent No.4 cannot be relieved. Moreover, Respondent No.4 stood retired from service on 30th September, 2018. It is also submitted that as per Government Resolution dated 24th April, 2017, there is no provision for inter district transfer and periodical transfers are to be effected by computerized

method at Government level. However, as per Government Circular dated 16th May, 2017, it is directed that in case of inter district mutual transfer, both Zilla Parishad should have issued the orders of relieving and absorption prior to 18th May, 2017. The exercise in respect of eligible primary teachers for inter district transfer is complete and at present there are no Government instructions for inter district transfer, and therefore, such transfer cannot be done. Therefore, learned counsel submits that, the Petition may be rejected.

7. 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.

8. During the course of arguments, learned of counsel appearing for Respondent Nos.2 and 3 has specifically informed to this Court that after filing of the Petition, Respondent No.4 stood retired from the services of Respondent No.2 on 30th September, 2018, on attaining the age of superannuation. It is also mentioned in the affidavit in reply filed on behalf of Respondent Nos.2 and 3 that the respondent No.4 stood retired from the services on 30th September, 2018. In that view of the matter, since the employee on whose place, the petitioner has requested to transfer her under inter district transfer policy by mutual transfer, already stood retired. Hence, we are not inclined to entertain the Petition. The Writ Petition stands rejected.

However, we make it clear that the petitioner would be at liberty to make representation to Respondent Nos.2 and 3 for redressal of her grievance raised in this Petition. In case, such representation is filed by the petitioner, Respondent Nos.2 and 3 to decide the same on its own merits and in accordance with the policy, as expeditiously as possible and preferably within three months from filing such representation.

(K.K. SONAWANE, J)

(S.S.SHINDE, J)

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