

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

WRIT PETITION NO.10037 OF 2018

Swati T. Baviskar .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

WITH
WRIT PETITION NO.10054 OF 2018

Yogita P. Nikam .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

WITH
WRIT PETITION NO.10055 OF 2018

Swati G. Kadam .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

Ms. Leena Patil, for the Petitioner in all the Petitions.
Mr. B. V. Samant, AGP, for Respondent No.1 -State in all the Petitions.
Ms. Manisha Jagtap I/b. J. Shekhar & Co., for Respondent Nos. 2 and 3 in
all the Petitions.

**CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.
DATE : 24th JANUARY, 2019.**

P.C:-

These Petitions arise from the common back-ground. Some individual facts may, however, be different. The central issue being common, we have heard the learned Counsel for the parties for final

disposal of these Petitions and these Petitions would be disposed of by this common order.

Writ Petition No.10037 of 2018

The facts are as under:-

- (i) Petitioner is a primary school teacher, holding a permanent regular post. She was previously working on such post under Zilla Parishad, Aurangabad. The State Government had framed instructions for Inter-District Transfer of Primary School Teachers. The Petitioner desired to be transferred from Aurangabad to Nashik. She, therefore, applied to the authorities in terms of the Government instructions. The Aurangabad authorities approved her request and forwarded the same to the Administrative Officer of Nashik Municipal Corporation School Board, Respondent No.3- herein.
- (ii) On 13th June, 2016, the Nashik Municipal Corporation- School Board, Respondent No.2 herein examined such request of the Petitioner for Inter-District Transfer and also granted No Objection Certificate (for short "NOC").
- (iii) Pursuant to the said NOC, the Petitioner was also relieved from her service by the Aurangabad authorities on 5th July, 2017. The Petitioner immediately reported before Respondent Nos. 2 and 3 for joining duty at Nashik on 7th July, 2017. The Nashik Municipal Corporation authorities, however, did not permit the Petitioner to resume her duties as a primary school teacher under the Nashik administration. The Petitioner was, thus, left without any post. As noted, she was relieved by the Aurangabad authorities, pursuant to

NOC granted by Nashik Municipal School Board. On account of Respondent Nos.2 and 3, not permitting the Petitioner to join her duties in any school at Nashik, she remained without any assignment of duty.

- (iv) She has, therefore, filed the present Petition, praying for directions to Respondent Nos.2 and 3 to continue her in service and to allow to work in any school set up and managed by Nashik Municipal Corporation, through its School Board. The Petitioner has also prayed for releasing her monthly salaries w.e.f. July, 2017 and continue to pay the same regularly in future also.
- (v) Petitioner places heavy reliance on a judgment rendered on 14th December, 2017 passed by the Division Bench of this Court in Writ Petition No. 4778 of 2017 and other connected Petitions, a copy of which is proposed at annexure 'A' to the Petition. We would refer to this judgment later.

Writ Petition No.10054 of 2018

The facts are as under:-

- (i) Petitioner herein also has approached this Court under similar circumstances as in case of Petitioner of Writ Petition No.10037 of 2018. Here also, the Petitioner was holding a permanent regular post as a Primary School Teacher under Raigad School Board. She desired Inter-District Transfer to Nashik for which, she applied.
- (ii) Her erstwhile employer granted approval on such request and forwarded the same to Nashik School Board. The Nashik School

Board granted NOC on 13th June, 2016. She was relieved from her duties on 4th October, 2016. She reported for duty at Nashik on 5th October, 2016. She was not allowed to resume her duty in any school. Hence, this Petition.

Writ Petition No.10055 of 2018

The facts are as under:-

- (i) This Petition also arises in similar back-ground as in the earlier two Petitions. Petitioner was a regular permanent Primary School Teacher under the Ahmednagar School Board. She had also applied for Inter-District Transfer to Nashik.
- (ii) Her erstwhile employer approved the transfer application. The Nashik School Board granted NOC on 13th June, 2016. She was relieved from her duty on 10th August, 2016. She reported for duty at Nashik on the same date i.e. 10th August, 2016. She was not allowed to resume her duty. Hence this Petition.

2 Having heard the learned Counsel for the parties and having perused the facts and documents on record, we find that the issue arising in these Petitions, came up for consideration before this Court in Writ Petition No. 4778 of 2017 and connected Petition in case of Shri Sanjay S. Sanap & Another. By judgment dated 14th December, 2017, the Court disposed of these Petitions, holding that the action of the Nashik Municipal authorities was unsustainable. Having given NOC, they have cited the reason of the non-approval of the General Body of the Municipal Corporation. The Court, therefore, gave suitable directions for posting of the concerned teachers and also for payment of salary. We may reproduce

the relevant portion of this judgment, which reads as under:-

“8:- We find that action on the part of the Respondent-Nashik Municipal Corporation is not allowing the Petitioners to join its services, is totally unjustified, having given its no objection for transferring the Petitioners from their respective Municipal Corporation/ Municipal Council and after they were relieved from the services of their respective Municipal Corporation/ Municipal Council so as to enable them to join the services of Nashik Municipal Corporation. The Nashik Municipal Corporation therefore cannot now refuse the Petitioners from joining its services. We are also of the considered view that action on the part of the Nashik Municipal Corporation, of not allowing the Petitioners to join its services will be hit by the doctrine of promissory estoppel. Having given no objection to the Petitioners to get relieved from the services of their respective Municipal Corporation/ Municipal Council, the Respondent – Nashik Municipal Corporation is estopped from acting contrary to the no objection given by it. Apart from that, we are of the view that such matters, which are purely of administrative nature, need not go before the General Body. Reference in this respect could also be made to the communication dated 5/2/2009 made by the State of Maharashtra to the Nashik Municipal Corporation.

9:- In the result, Petition is allowed. Respondent- Nashik Municipal Corporation is directed to allow the Petitioners to forthwith join the services in the School managed by the Nashik Municipal Corporation. It is further directed that so far as the Petitioner in Writ Petition No.4778 of 2017 is concerned, he shall be deemed to have joined the Nashik Municipal Corporation from the next working day, falling after 15/6/2016. Insofar as the Petitioner in Writ Petition No.5990 of 2017 is concerned, he shall be deemed to have joined the Nashik Municipal Corporation from the next working day, falling after 2/7/2016.

10 The arrears on the basis of aforesaid order shall be paid to the Petitioners within a period of three months from today.

11 Rule is made absolute accordingly.”

3 In the present case also, the Nashik Municipal Corporation authorities have cited similar reason for the inability to absorb teachers in the primary schools. As held by this Court in said judgment, in case of Shri Sanjay S. Sanap & Another (supra), the above stand was invalid. As the Petitioners- teachers having been relieved by the erstwhile employer, acting on the NOC granted by the School Board, Nashik, it had to absorb them in the schools run by the said School Board. The Petitioners' cannot be left without service, without duty and without salary for no fault of theirs. If the School Board had any doubt about absorbing the Petitioners in the Schools, before approval by the Municipal Corporation, NOC should have been withheld till such time that the Municipal Corporation approved the proposal. In fact, this Court in the case of Shri Sanjay S. Sanap & Another (supra) had held that there was no need for the approval by the General Body of the Municipal Corporation.

4 One distinguishing feature, however, in the present cases, we find is that, all the three Petitioners have approached this Court by filing these Petitions after considerable period of time. Writ Petition No.10037 of 2018 was filed on or around 9th July, 2018, Writ Petition No.10054 of 2018 was filed on or around 12th July, 2018 and Writ Petition No.10055 of 2018 was filed on or around 9th July, 2018. The Petitioners ought to have pursued their remedies and if the Respondent-Authorities were not acting on their representations, they ought to have filed Writ Petitions within reasonable time. This, of course, would not non-suit the Petitioners. However, when the question of paying idle wages arises, we cannot completely loose sight of the time consumed by the Petitioners in approaching the Court. Petitioners cannot claim idle wages on the

principle of no-work-no-pay. We would consider the period of six months from the date of the reporting by the Petitioners before the Nashik Municipal School Authorities as a sufficient period to enable the Petitioners' to have filed these Petitions. Any period beyond such time, would not entail the liability on part of the Respondents to pay wages till the date of his order.

5 Under these circumstances, all these **Petitions** are **disposed of** with the following directions:-

- (a) Respondent Nos.2 and 3 i.e. the authorities of the Nashik Municipal Corporation, shall forthwith absorb the Petitioners in the School Board establishment as Primary School Teachers and appoint them in any of the the Schools run by the Nashik School Board;
- (b) The said Respondents would also pay full salary and allowances to the Petitioners attached to such posts for a total period of six months from the date of they were relieved by their erstwhile employers. For the remaining period till today, Petitioners shall not be entitled to salary, but continuing in service.
- (c) These directions, would not however, take away the Petitioners' benefit of seniority, continuity of service, pay fixation and increments falling due from time to time as per Rules and Regulations.
- (d) The Respondents, in any case, will pay full salary and allowances to the Petitioners from today onwards.

Parties to act on an authenticated copy of this order duly signed by the Associate of this Court.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)