

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 589 OF 2019**

Rajendra Dattu Ghatal

...Petitioner

Versus

The State of Maharashtra through its
Secretary & ors.

...Respondents

Ms. Bhavna Khichi a/w Prabhakar Ranshur, for the Petitioner.
Mr. Y. D. Patil, AGP for the State/Respondent nos.1 & 2.

CORAM: N. J. JAMADAR, J.

DATED : 9th MARCH, 2020

Oral Order :-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order passed by the Education Officer (Secondary) Zilla Parishad, Thane - respondent no.2, whereby the proposal submitted by respondent no.4 for transfer of the petitioner from an unaided division to aided division run by respondent no.3 - Society, came to be rejected.
3. The petitioner claims that he was appointed as a teacher from Scheduled Tribe category in the unaided division of School run by respondent no.3 on 13th January, 2014. On 31st May, 2014, one Sau. Chandralata Patil, who was working in the aided division retired. Mr. Sandesh Matekar came to be appointed

by promotion as Head-Master of the said aided school. Thus, a vacancy arose in the aided division. Respondent no.3 – Society passed a resolution on 5th February, 2016 to appoint the petitioner on the post which thus became vacant in the aided division of school, by way of transfer. A proposal was accordingly forwarded on 10th November, 2016 seeking transfer of the petitioner to aided division, to respondent no.2. In the said proposal, it was mentioned that the petitioner was rendering services as a Hindi teacher from 13th January, 2014 in the unaided division of the school.

4. By the impugned order, respondent no.2 was persuaded to reject the proposal for transfer as respondent no.2 was of the view that in view of the provisions contained in the Government Resolution dated 28th June, 2016, the proposal for such transfer from unaided division to aided division of school should have been of the senior most teacher working in the unaided division.

5. Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

6. The learned Counsel for the petitioner would urge that respondent no.2 committed an error in rejecting the proposal as respondent no.3 had made a legitimate recommendation for appointment of a duly qualified candidate. Attention of the

Court was invited to Government Resolution dated 28th June, 2016, and an endeavour was made to demonstrate that the case of the petitioner falls within the four corners of the Government Resolution.

7. On perusal of the impugned order, it becomes evident that the proposal came to be rejected for the reason that there was a teacher senior to the petitioner, who was working in unaided division. Sub-clause (3) of Clause 3 of the Government Resolution dated 28th June, 2016, mandates that the transfer from unaided division to aided division of the school run by the same management ought to be of the senior most teacher.

8. Without disputing that the petitioner was not the senior most teacher, the learned Counsel for the petitioner attempted to salvage the position by banking upon an affidavit allegedly sworn by the senior most teacher Ms. Reena Shirish Chaudhary to the effect that she forges her claim to be appointed as the teacher in the aided division of school. The very fact that there is a teacher senior to the petitioner working in the school and thus eligible for being appointed to the vacancy which arose in the aided division, enjoined the respondent no.3 to submit proposal for her appointment. Conversely, it disentitles the petitioner to the said position.

9. The fact that an affidavit is sworn by the eligible person, relinquishing her claim, is not of much assistance to the petitioner as it is fraught with infirmities. Even otherwise, the said affidavit seems to have been sworn after the impugned order came to be passed. Thus, no fault can be found with the impugned order.

10. Resultantly, the petition stands dismissed.

[N. J. JAMADAR, J.]