

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

WRIT PETITION NO.2541 OF 2020

Sujata Vishwanath Suram,
Age : 41 years, Occ. Service as
Assistant/Graduate Teacher,
Presently working with Zilla Parishad
Primary School, Dhorja, Tq. Shrigonda,
Dist. Ahmednagar

..Petitioner

Vs.

1. State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32
2. The Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
3. The Additional Commissioner,
Nashik Division, Nashik
4. The Chief Executive Officer,
Zilla Parishad, Ahmednagar
5. The Education Officer (Primary),
Zilla Parishad, Ahmednagar

..Respondents

Mr.Ketan D. Pote, Advocate h/f. Mr.A.G.Ambetkar, Advocate for
petitioner
Mr.S.P.Tiwari, Advocate for respondent nos. 1 to 3
Ms.Manjushri Shendge-Narwade, Advocate for respondent nos.4
and 5

CORAM : R.G. AVACHAT, J.
RESERVED ON : JANUARY 21, 2021
PRONOUNCED ON : JANUARY 27, 2021

ORDER :-

Heard learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the order dated 30.05.2019 passed by the Chief Executive Officer, Zilla Parishad, Ahmednagar, confirmed by the Additional Commissioner, Nashik, by order dated 18.12.2019. By the impugned order, the petitioner has been imposed with penalty of permanently withholding of her one annual increment.

3. The facts necessary to decide present Writ Petition are as under :-

4. The petitioner was serving as a Teacher at Zilla Parishad Primary School, Devrai, Tq. Pathardi, Dist. Ahmednagar, at the relevant time. The Government of Maharashtra in Rural Development Department issued a Government Resolution (G.R.) on 27.02.2017 regarding intra-district transfers of teachers serving on the establishment of

Zilla Parishads in the State of Maharashtra. Clause (9) of the said Government Resolution speaks of transfer on the ground of couple convenience. The petitioner applied for transfer under said clause from Devrai, Tq. Pathardi to Burhannagar, Tq. and Dist. Ahmednagar, on the ground of her husband has been serving with Health Department, Zilla Parishad, Ahmednagar. Accordingly, the petitioner came to be transferred to Zilla Parishad Primary School, Burhannagar, Tq. and Dist. Ahmednagar.

5. Lateron, it was found that the petitioner had supplied some misinformation and secured transfer to the place convenient for her. The Chief Executive Officer, therefore, on 10.08.2018, issued the petitioner a notice to show cause as to why a departmental action should not be taken against her in terms of clause 4(2) of the the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 (for short, "the Rules of 1964"). The petitioner gave her explanation, in response to the said notice. The Chief Executive Officer did not find the explanation satisfactory. He, therefore, vide order

dated 30.05.2019, imposed penalty of withholding of one increment permanently. The petitioner preferred an appeal against the said order to the Additional Commissioner, Nashik, who vide order dated 18.12.2019, was pleased to dismiss the same.

6. The petitioner's husband was said to have been serving as a temporary employee engaged on contract basis under National Health Mission. This fact is said to have been suppressed by the petitioner while she filled-in the application for transfer on the ground of couple convenience. A copy of the application is on record. It has been stated therein that both the petitioner and her husband are Zilla Parishad employees. According to the disciplinary authority, the petitioner, by misrepresenting her husband to have been in Zilla Parishad service, secured transfer at a convenient place and thereby, she committed misconduct and thus, became liable for imposition of a penalty.

7. The appellate authority (Additional Commissioner) dismissed the appeal on the ground that in spite of the

petitioner's husband having been in service of Zilla Parishad, Ahmednagar, as a contractual employee, it is not clear as to whether the petitioner was entitled for the benefit of the Government Resolution dated 27.02.2017. Moreover, the appellate authority found that the distance between the two places was less than 30 kms., whereas for being eligible for the benefit of the Government Resolution, the distance between the two places has to be more than 30 kms. The appellate authority also held that there was nothing to indicate, whether the petitioner's husband has been continued in employment post 04.02.2019.

8. Learned counsel for the petitioner would submit that husband of the petitioner has been in service as a contractual employee with the Zilla Parishad, Ahmednagar, for little over 10 years. The concerned Government Resolution is silent to state that benefit thereof would not be available to a temporary employee or those who is working on contractual basis. According to him, the appellate authority has introduced a new ground to dismiss the appeal. Learned counsel took me

through the relevant provisions of Government Resolution dated 27.02.2017.

9. Learned counsel appearing for the Zilla Parishad would, on the other hand, submit that in the application moved for transfer, the petitioner has stated her husband to have been a Zilla Parishad employee. This is nothing short of misrepresentation to secure transfer at a convenient place. Learned counsel supports the impugned order.

10. The Government of Maharashtra in Rural Development Department, vide Resolution dated 27.02.2017, introduced a policy regarding intra-district transfers of teachers serving on the establishment of Zilla Parishads. The relevant clause of the G.R. reads thus:-

(९) विशेष संवर्ग शिक्षक भाग - २
पती-पत्नी एकत्रीकरण (जर सध्या दोघांच्या नियुक्तीचे ठिकाण एकमेकांपासून ३० कि.मी. पेक्षा जास्त अंतरावर असल्यास त्यांना विशेष संवर्ग शिक्षणाचा दर्जा प्राप्त होईल)

अ) पती पत्नी दोघेही जिल्हा परिषद कर्मचारी असतील तर,
ब) पती पत्नी दोघांपैकी एक जिल्हा परिषद कर्मचारी व दुसरा राज्य शासकीय कर्मचारी असेल तर,
क) पती पत्नी दोघांपैकी एक जिल्हा परिषद कर्मचारी व दुसरा केंद्र राज्य शासकीय कर्मचारी असेल तर,

ड) पती पत्नी दोघांपैकी एक जिल्हा परिषद कर्मचारी व दुसरा राज्य शासनाच्या स्वायत्त संस्थेचा कर्मचारी असेल तर, उदा. महानगरपालिका / नगरपालिका
 इ) पती पत्नी दोघांपैकी एक जिल्हा परिषद कर्मचारी व दुसरा राज्य अथवा केंद्र शासनाच्या सार्वजनिक उपक्रमातील कर्मचारी
 (ई) पती पत्नी दोघांपैकी एक जिल्हा परिषद कर्मचारी व दुसरा शासन मान्यता प्राप्त संस्थेतील कर्मचारी असेल तर,.....”

11. Clauses (९)(अ) above is relevant here. There is on record documents to indicate that on 15.09.2008, the Secretary-cum-District Health Officer, Zilla Parishad, Ahmednagar, appointed the petitioner's husband as a Junior Engineer for a temporary period of eleven months. Learned counsel for the petitioner has submitted that appointment of the petitioner's husband has been renewed time to time and still, he has been in service. There is no denial to this submission. Close reading of the Government Resolution dated 27.02.2017, would reveal that it is silent to state, whether it would not be applicable if one of the spouses is a temporary employee. It may be noted that said Government Resolution has been issued for convenience of the teachers. The petitioner is a woman. Her husband has been serving as a Junior Engineer, may be on contractual basis, on the

establishment of Zilla Parishad, Ahmednagar. There is nothing in the Government Resolution to indicate the same to be not applicable to an employee who is serving on contractual basis. It has, therefore, to be observed that the petitioner did not submit any misinformation. For over twelve years, the petitioner's husband has been serving on the establishment of Zilla Parishad, Ahmednagar. Since the Government Resolution dated 27.02.2017 is for the benefit of the teachers, its provisions have to be interpreted liberally.

12. It is reiterated that since said Government Resolution is silent to state to be not applicable to a contractual employee, the petitioner cannot be said to have furnished false or untrue information to secure transfer at a convenient place. The impugned order passed by the Chief Executive Officer, Ahmednagar, dated 30.05.2019 is, therefore, liable to be set aside.

13. The notice dated 10.08.2018 does not speak of the distance between the two places to be less than 30 kms. The

Additional Commissioner/appellate authority, therefore, should not have introduced altogether a new ground to dismiss the petitioner's appeal. The order dated 18.12.2009 passed by the Additional Commissioner is also, therefore, liable to be set aside.

14. In the result, the Writ Petition succeeds. The same is allowed in terms of prayer clause (B).

[R.G. AVACHAT, J.]

KBP