

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

WRIT PETITION NO.2504 OF 2020

Hasina Shamshuddin Tamboli,
Age : 45 years, Occ. Service as
Assistant Teacher, Presently
working with Zilla Parishad
Primary School, Shimpore New,
Tq. Karjat, 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, and confirmed by the Additional Commissioner, Nashik, by order dated 20.12.2019. By the impugned order, the petitioner has been imposed with penalty of withholding her one annual increment, permanently.

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

4. The petitioner, at the relevant time, was serving as an Assistant Teacher at Zilla Parishad School, Pisorekhand, Tq. Shrigonda, Dist. Ahmednagar. 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

Parishad 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 Pisorekhand, Tq. Shrigonda to Baburdi Ghumat, Tq. and Dist. Ahmednagar, on the ground of her husband to have been serving at Ghospuri, Tq. and Dist. Ahmednagar. Accordingly, the petitioner came to be transferred to Zilla Parishad Primary School, Baburdi Ghumat, 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 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 annual increment permanently. The petitioner preferred the appeal against the said order. The Additional Commissioner, Nashik, vide order dated 20.12.2019, was pleased to dismiss the same.

6. The petitioner's husband was said to have been serving as a temporary employee. 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 the petitioner's husband is serving in a Government approved organisation. According to the disciplinary authority, the petitioner, by misrepresenting her husband to have been serving as a permanent employee in a Government approved organisation, secured transfer at a convenient place and thereby, she committed misconduct and thus, became liable for a penalty.

7. The appellate authority (Additional Commissioner) dismissed the appeal on the ground that it is not clear as to

whether the petitioner was entitled for the benefit of the Government Resolution dated 27.02.2017, as the petitioner's husband is serving in Co-operative credit society. 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 said Government Resolution, the distance between the two places has to be more than 30 kms.

8. Learned counsel for the petitioner would submit that the husband of the petitioner is an employee of a Government approved organisation, since 2003 as Branch Manager. The concerned Government Resolution is silent to state that benefit thereof would not be available to an employee of Government approved co-operative credit society. 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 respondent nos.4 and 5 - Zilla Parishad would, on the other hand, submit that in

the application moved for transfer, the petitioner had stated her husband to have been an employee of the Government approved organisation. This is nothing short of misrepresentation to secure transfer at a convenient place. Learned counsel supports the impugned orders.

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

"(९) (ई) पती पत्नी दोघांपैकी एक जिल्हा परिषद कर्मचारी व दुसरा शासन मान्यता प्राप्त संस्थेतील कर्मचारी असेल तर,
....."

11. There are on record documents to indicate that the petitioner's husband is serving as a Manager with Yashanjali Gramin Bigar Sheti Sahakari Patsantha Maryadit, Ghospuri, since 01.08.2003 and that his services have been permanent since 01.08.2005.

12. 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 working in a Co-operative credit society. It may be noted that the Government Resolution has been issued for convenience of the teachers. The petitioner is a woman. Her husband has been serving as a Manager in the co-operative credit society. There is nothing in said Government Resolution to indicate the same to be not applicable to an employee who is serving in a co-operative credit society. It cannot be gainsaid that a co-operative credit society is required to be registered with the Registrar of The Co-operative Societies and on such registration, it becomes a Government approved institution. It has, therefore, to be observed that the petitioner has not submitted any misinformation. For over fifteen years, the petitioner's husband has been serving with a government approved co-operative credit society. Since the Government Resolution is for the benefit of the teachers, its provisions have to be interpreted liberally.

13. It is reiterated that since the Government Resolution dated 27.02.2017 is silent to state to be not applicable to a spouse working in co-operative credit society, the petitioner cannot be said to have furnished false or untrue information to secure transfer at a convenient place. The impugned order dated 30.05.2019 passed by the Chief Executive Officer, Ahmednagar, is, therefore, liable to be set aside.

14. The notice dated 10.08.2018 issued to the petitioner by the Chief Executive Officer does not speak of the distance between 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 20.12.2009 passed by the Additional Commissioner is, thus, liable to be set aside.

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

[R.G. AVACHAT, J.]