

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10433 OF 2019

Shaikh Mohd. Quddus Abdul Qadeer
age 48 years, occ. Service as
Secondary Teacher,
R/o Pensionpura, Hingoli
Tq. & Dist. Hingoli

Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary
Rural Development Department
Mantralaya, Mumbai.
2. The Chief Executive Officer
Zilla Parishad, Hingoli
3. The Education Officer (Primary)
Zilla Parishad, Hingoli
4. The Education Officer (Primary)
Zilla Parishad, Beed.

Respondents

Mr. S.S. Thombre, Advocate for the petitioners.
Mr. S.P. Sonpawale, AGP for respondent No. 1.
Mr. V.M. Chate, Advocate for respondent No. 4.

WITH
WRIT PETITION NO. 10440 OF 2019

Kirankumar S/o Prabhakar Musale
Age 42 years, occ. Service as
Secondary Teacher,
R/o Kalamamba, Tq. Kaij
Dist. Beed.

Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary
Rural Development Department
Mantralaya, Mumbai.
2. The Chief Executive Officer
Zilla Parishad, Hingoli
3. The Education Officer (Primary)
Zilla Parishad, Hingoli
4. The Education Officer (Primary)
Zilla Parishad, Beed.

Respondents

Mr. S.S. Thombre, Advocate for the petitioners.
Mr. S.P. Sonpawale, AGP for respondent No. 1.
Mr. V.M. Chate, Advocate for respondent No. 4.

WITH
WRIT PETITION NO. 10539 OF 2019

Ramesh S/o Kisanrao Todkar
Age 40 years, occ. Service as
Secondary Teacher,
Zilla Parishad High School,
Pankanergaon, Tq. Sengaon
Dist. Hingoli

Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary
Rural Development Department
Mantralaya, Mumbai.
2. The Chief Executive Officer
Zilla Parishad, Hingoli
3. The Education Officer (Primary)
Zilla Parishad, Hingoli

4. The Chief Executive Officer
Zilla Parishad, Beed.

Respondents

Mr. S.S. Thombre, Advocate for the petitioners.
Mr. S.P. Sonpawale, AGP for respondent No. 1.
Mrs. Shubhangi More, Advocate for respondents No. 2 and 3.
Mr. V.M. Chate, Advocate for respondent No. 4.

**CORAM : Ujjal Bhuyan &
M.G. Sewlikar, JJ.**

RESERVED ON : 19th March, 2021.
PRONOUNCED ON : 30th March, 2021.

JUDGMENT : (Per M.G. Sewlikar, J.)

1. Rule. Rule made returnable forthwith.
2. By consent, heard both the sides for final disposal.
3. All these writ petitions are being disposed of by common order as common question is involved in all these three writ petitions.
4. Factual matrix as set out in these three writ petitions is as under :-

All the three petitioners were appointed as Assistant

Teacher in Zilla Parishad, Hingoli. As per the policy of the Government, all the three petitioners applied for inter-district transfer from Zilla Parishad, Hingoli to Zilla Parishad, Beed. All the three petitioners were relieved by the Zilla Parishad, Hingoli on 10.06.2016 and when they reported to the Zilla Parishad, Beed for joining the duties on 01.07.2016, they were not allowed to join on the ground that the posts were not available. Therefore, all the three petitioners filed Writ Petition No.10996/2016 (Petitioner in Writ Petition No. 10433/2019), Writ Petition No. 11203/2016 (Petitioner in Writ Petition No. 10440/2019) and Writ Petition No. 10995/2016 (Petitioner in Writ Petition No. 10539/2019). In Writ Petitions No. 10995/2016 and 10996/2016, on 28.08.2018 following order was passed :-

. Under order dated 05.07.2018 we had directed the Commissioner to resolve the anomalous situation that has been created. The petitioners were working with Zilla Parishad, Hingoli. The petitioners were relieved on the request of inter-district transfer and the petitioners were directed to be absorbed with Zilla Parishad, Beed.

2. It is the case of the Zilla Parishad, Beed that vacancies does not exist and already 65 Assistant Teachers are in excess.

3. The Divisional Commissioner pursuant to our order had considered the matter and had directed the Chief Executive Officer, Zilla Parishad, Hingoli to allow the petitioners to join

in Zilla Parishad, Hingoli.

4. Needless to state that as it is not fault of the petitioners, the petitioners would be entitled for the continuity in the service. As far as the salary for the interregnum period is concerned, the petitioner may apply to the Education Officer, Hingoli, which application shall be considered by the Education Officer on its own merits. The Zilla Parishad, Hingoli shall take immediate steps to join the petitioners pursuant to the order passed by the Commissioner.

5. Writ petitions stand disposed of. No costs.

4.1 Similar order was passed in Writ Petition No. 11203/2016

5. Pursuant to this order, all the three petitioners were allowed to join their duties on 09.10.2018. On 31.02.2018, all the three petitioners filed application with Zilla Parishad, Hingoli for release of their salary. Similar applications were filed on 05.12.2018, 09.04.2019 and 22.07.2019. Respondent No. 3, by communications dated 05.07.2019 and 30.07.2019 informed all the three petitioners that they had been granted continuity of service and the period between the date of relieving from Zilla Parishad, Hingoli and the date of joining the duties at Zilla Parishad, Beed would be treated as a period of leave and leave admissible to them would be granted and, if no leave is available to their credit, they would be granted extra

ordinary leave. This communication is impugned in the instant writ petitions.

6. Heard Mr. Thombre, learned counsel for the petitioners, Mr. Sonpawale, learned AGP for the State, Mrs. More, learned counsel for respondents No. 2 and 3 and, Mr. Chate, learned counsel for respondent no. 4.

7. Learned counsel Mr. Thombre submitted that in terms of the policy of the Government in regard to inter-district transfer, the petitioners were relieved by Zilla Parishad, Hingoli. When they reported for joining their duties at Zilla Parishad, Beed, they were not allowed to join as there were no vacancies. He submitted that the order of this Court in all the earlier three writ petitions clearly demonstrate that the petitioners were not at fault. Therefore, to deprive them of salary would be a sheer injustice on them. For no fault of theirs, they are being penalised.

8. Learned counsel for respondents submitted that since the petitioners did not render any work during this period, therefore, they cannot be paid salary. They submitted that since the petitioners

did not work the only option is to treat this period as leave period. Therefore, this course was adopted. They, therefore, prayed for dismissal of the writ petitions.

9. On perusal of the orders passed by this Court in Writ Petitions No. 10995/2016, 10996/2016 and 11203/2016, it is clear that Zilla Parishad, Beed did not allow the petitioners to join their duties as no vacancy existed at that point of time and already 65 teachers were in excess. This Court, therefore, observed that it was not the fault of the petitioners. The petitioners would be entitled to continuity in service.

10. It is pertinent to note that in terms of the Government policy in regard to inter-district transfer, the petitioners applied for inter-district transfer which request was allowed and the petitioners were relieved but they were not allowed to join their duties by Zilla Parishad, Beed. This chronology of events clearly show that the petitioners were not at fault. They were relieved on 10.06.2016 and soon thereafter on 01.07.2016, they reported to Zilla Parishad, Beed for joining the duties. This clearly shows that the petitioners cannot be blamed for the anomalous situation created on account of inter-

district transfer. Therefore, it was not justified on the part of respondent No. 3 to have issued the impugned directions. This amounts to penalising the petitioners for no fault of theirs. Therefore, the order passed by respondent No. 3 is unsustainable.

11. It is not the case of the respondents that the petitioners were not ready to join the duties at Beed or at Hingoli. Therefore, without there being any fault on their part, it will not be proper to treat the period from the date of relieving from Hingoli and the date of joining again at Hingoli as a period of leave. This period is from 10.06.2016 to 28.08.2018. The petitioners are, therefore, entitled to the salary for this period since their continuity in service has been ensured. It is impermissible for the State to say that salary cannot be paid to them as they did not work. The petitioners were ready to join the duties. Thus, they were not responsible for the anomalous situation created by the respondents. For this reason, they cannot be deprived of the salary for the aforesaid period. Therefore, the impugned communication is arbitrary and capricious. It, therefore, cannot be sustained. All the petitions, therefore, will have to be allowed.

12. In view of above, all the petitions i.e. Writ Petition Nos. 10433/2019, 10440/2019 and 10539/2019 are allowed in terms of prayer clauses 'B' and 'C'. Rule made absolute in above terms.

(M. G. SEWLIKAR)
Judge

(UJJAL BHUYAN)
Judge

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