

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

WRIT PETITION NO.2490 OF 2021

Sayali Shashank Atak	.. Petitioner
Versus	
State of Maharashtra & Ors.	.. Respondents

Mr.Balaji Shinde for the petitioner.
Mr.N.C. Walimbe, AGP for the respondent nos.1 & 2-State.
Mr.Ramesh D. Rane for the respondent nos.3 & 4 in both petitions.

**CORAM : R.D. DHANUKA
R. I. CHAGLA, JJ.
DATE : 8th September 2021
(through video conferencing)**

P.C.:-

. Rule. Learned AGP waives service for the respondent nos.1 & 2. Mr. Rane, learned counsel waives service for the respondent nos.3 & 4. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order and direction against the respondent nos.3 & 4 to give posting to the petitioner in any school within the radius 30 kms from the working place of her husband in view of Government Resolution dated 27th February 2017 and 7th April 2021

under the head of couple convenience and prays for setting aside the order dated 15th April 2021 passed by the respondent no.2.

3. The petitioner got married with Shashank Atak on 28th April 2001 who is working as Assistant Teacher with the respondent nos.3 & 4 school. On 27th February 2017, State Government issued Government Resolution laying down the procedure for transfer. A special provision is made for transfer under the head of couple convenience. The Zilla Parishad employee whose husband/wife is working with other Zilla Parishad, his/her claim should be considered for transfer within 30 kms from his/her spouse.

4. On 15th February 2018, the respondent no.1 issued a Resolution and directed all Zilla Parishads that woman shall not be posted in difficult areas and remote places. The Zilla Parishad directed to declare the names of the schools which are difficult or unfit for woman.

5. On 11th June 2019, the petitioner and her husband both applied for transfer under one unit. The husband of the petitioner however, was not transferred. The petitioner however, was transferred by the respondent nos.3 & 4. On 9th September 2019, the petitioner

made complaint to the Divisional Commissioner. The respondent no.3 prepared a list of difficult place/unfit for women in which the school of the petitioner is at serial no.1. On 5th October 2020, the petitioner filed an appeal/complaint to the respondent no.2 which came to be dismissed vide order dated 15th April 2021.

6. Learned counsel for the petitioner invited our attention to various documents annexed to the petition and would submit that though the respondent nos.3 & 4 are entitled to transfer the employees, the transfer has to be within the radius 30 kms from the working place of his/her spouse. In view of Government Resolution dated 27th February 2017 and 7th April 2021 under the head of couple convenience, the petitioner has been transferred to school within the radius 88 kms from the working place of her husband. He submits that even otherwise, the said school is unfit as per Government Resolution dated 15th February 2018.

7. In support of this submission, learned counsel for the petitioner invited our attention to various documents and more particularly Exhibit 'F' and would submit that the school in Aare village does not have any Doctor facility and other necessary facilities for survival.

8. Mr.Rane, learned counsel for the Zilla Parishad, on the other hand, strongly placed reliance on the affidavit-in-reply dated 23rd August 2021 filed by the Zilla Parishad and would submit that the petitioner has suppressed the fact in the writ petition that by an order dated 5th March 2019, after considering the Couple Convenience Policy, the petitioner was already transferred Z.P. School Sonavade Traf Haweli, Tal. Kudal which is within 27 kms from the working place of her husband.

9. It is submitted that in any event, there is no vacancy in Kudal Taluka where the petitioner seeks transfer. He submits that though there may be some posts in that Taluka, the said posts are required to be filled under quota 'compulsory vacancy.' He submits that his client has no objection if the State Government declares any post vacant in the said Kudal Taluka.

10. Mr.Walimbe, learned counsel for the respondent nos.1 & 2 states that all such posts are reserved under 'compulsory vacancy' as canvassed by Mr.Rane, learned counsel for the respondent nos.3 & 4. No affidavit-in-reply is filed by the State Government.

11. Learned counsel for the petitioner in his rejoinder arguments

submits that the petitioner has not made any suppression in the writ petition filed by the petitioner. He submits that since there were irregularities made in the transfer order issued to the petitioner, the petitioner had made a complaint. He submits that the respondent nos.3 & 4 did not transfer the husband of the petitioner though he had made an application for transfer simultaneously. The respondents however, transferred within the radius of 88 kms away from the working place of her husband.

12. It is lastly submitted that this Court shall issue a direction to the State Government to transfer the petitioner in the School in Kudal Taluka which is within 30 kms distance from the working place of her husband as and when vacancy of this post arises. Statement is accepted.

13. A perusal of the list annexed at Exhibit 'F' to the petition issued by the Zilla Parishad and more particularly at Serial No.26 indicates that there is no medical facility in the said area where the said school is situated. There are no other necessary facilities required for survival.

14. According to the Government Resolution dated 15th February

2018 and more particularly Clause 2 thereof, the woman employee if required to be transferred has to be transferred at the place where it is not unfit for an women employee. In our view, the transfer of the petitioner thus made by the respondent nos.3 & 4 to the present school being not a convenient place and unfit for a woman employee, the respondent nos.3 & 4 could not have transferred the petitioner in the said school which is within the radius of 88 kms away from the working place of her husband and is unfit. In our view, the said transfer is contrary to the Government Resolution dated 27th February 2017 and 7th April 2021 under the head of couple convenience.

15. We therefore pass the following order :-

- (i) The respondent nos.1 & 2 are accordingly directed to transfer the petitioner to the convenient school in the Kudal Taluka within the radius of 30 kms from the working place of her husband if there is any vacancy available for the said post expeditiously.
- (ii) The impugned order passed by the respondent nos.3 & 4 for transfer the petitioner is accordingly quashed and set aside

with aforesaid directions.

16. Writ petition is disposed of in aforesaid terms. Rule is made absolute accordingly. No order as to costs.

17. Place the matter on board for 'reporting compliance' on 18th October 2021.

R. I. CHAGLA J.

R.D. DHANUKA, J.