

Anand

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

WRIT PETITION NO. 252 OF 2020

Suchita Shirdhar Bhagat

.Petitioner

Vs.

The State of Maharashtra & ors.

.Respondents

Mr. Kalpesh Patil i/b. Mr. A. R. Kapadnis, Advocate, for Petitioner

Mrs. P. N. Diwan, AGP, for Respondent Nos. 1 & 2 – State

Mr. Ashutosh Gavnekar i/b. Mr. C. G. Gavnekar, Advocate, for
Respondent No. 3

**CORAM : S. C. GUPTE &
SURENDRA P. TAVADE, JJ.**

DATE : 23 FEBRUARY 2021

(THROUGH VIDEOCONFERENCING)

P. C.

. Heard learned counsel for the respective parties.

2. The subject matter of the present Petition concerns the Petitioner's transfer as an Assistant Teacher in a Zilla Parishad School. It is not in dispute that the Petitioner was working on a clear vacant post as Assistant Teacher with Respondent No. 3 – Zilla Parishad vide an appointment order dated 4 January 1995. She was transferred to Alibaug Panchayat Samiti, District – Raigad vide order dated 13 August 2014. Her next transfer was to Zilla Parishad School, Varsoli, District – Alibaug vide order dated 29 September 2018. Within six months of such transfer i. e. 7 March 2019, she was once again transferred from Zilla Parishad School, Varsoli, District – Alibaug to Zilla Parishad

School, Kharasi, Taluka – Mhasala vide order passed by Zilla Parishad, Alibaug. It is this order which is the subject matter of challenge in the present Petition. In its reply, Respondent No. 3 – Zilla Parishad has stated that there are about 13 vacant posts in schools run by Zilla Parishad. It is submitted that out of 13 vacant posts, 10 have been kept compulsorily vacant. In any event, as a result of this submission, there appear to be atleast three vacant posts in Alibaug; and one of them can be surely allotted to the Petitioner. It is submitted by the Zilla Parishad that considering that the Petitioner is a widow and has dependent minor children, it has no objection for passing of an appropriate order to accommodate the Petitioner in one of the available posts. Out of 13 posts, there is one post at a School in Alibaug. Though this post is meant to be unavailable, this Court is of the view that some other schools in the list can be shown as having unavailable posts and the Petitioner should be appointed in the school at Alibaug so as to enable the Zilla Parishad to keep ten posts vacant and allot one of the three other posts to the Petitioner.

3. Accordingly, the Petition is disposed of by directing Respondent No. 3 – Zilla Parishad to transfer the Petitioner to the school at Alibaug.

4. Insofar as arrears of salary of the Petitioner are concerned, it is submitted by Respondent No. 3 – Zilla Parishad that ever since her transfer to Mhasala, the Petitioner has not attended the school. She had taken maternity leave for looking after her children. Though the position is contested by the Petitioner, it is not possible for this Court to scrutinize the evidence before it and come to a conclusion one way or the other as to whether any such leave was permissible. As far as the

Petitioner's leave and arrears of salary are concerned, the Petitioner shall make an appropriate representation before Respondent No. 3, who shall decide such representation within a reasonable period in accordance with law.

5. The Petition is disposed of in the above terms.

(SURENDRA P. TAVADE, J.)

(S.C.GUPTE, J.)