

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1605 OF 2021

Mrs. Meena Sahadeo Motharkar
@ Dr. Trimurti Laxmikant Lambat,
Aged about 33 years, Occu. - Service,
R/o. C/o. Dr. Trimurti Laxmikant Lambat,
House No.386, Tulshibagh, Belbagh,
Near Maruti and Shiv Mandir,
Mahal Road, Nagpur-440032.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
through its Secretary,
Department of Rural Development,
Mantralaya, Mumbai-32.
- 2) Chief Executive officer,
Zilla Parishad, Amravati.
- 3) Education Officer (primary),
Zilla Parishad, Amravati.

.... **RESPONDENTS**

Shri V. D. Raut, Advocate for the petitioner.
Shri N. R. Patil, A.G.P. for respondent No.1.
Shri S. M. Bhangde, Advocate for respondent No.2 & 3.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 08.04.2021.

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.

2. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of Shri Raut, learned counsel for the petitioner, Shri Patil, learned A.G.P for respondent No.1 and Shri S. M. Bhangde, learned counsel for respondent Nos.2 and 3.

3. The petitioner, who is a Shikshan Sevak appointed in July 2010, has been transferred from non-tribal area to tribal area for the first time in her career. She has been transferred from the school at Chandur Railway, where she is presently working, to a school situated at Sadrabadi. Sadrabadi is admittedly a tribal area. The contention of the learned counsel for the petitioner is that, according to the Government Resolution dated 15.02.2018, the petitioner being woman could not have been transferred to a tribal area. Such a contention cannot be accepted. Firstly, the G.R. dated 15.02.2018 prohibits transfer of women to schools located at extremely remote places. There is a difference between a place which is extremely remote and the place dominantly inhabited by tribals. The petitioner has not filed on record any notification or declaration showing that Sadrabadi is an extremely remote place. On the contrary, Sadrabadi appears to be a town having urban attributes. This inference could be drawn from the

strength of students in Sadrabadi school. The reply of respondent Nos.2 and 3 shows that presently the Sadrabadi school has strength of more than 412 students, who were receiving education there. The reply further shows that this school has a vacancy of mathematics/science teacher and it is badly required to be filled up or otherwise the educational career of large number of students will come in jeopardy. So, the transfer of the petitioner from a school at Chandur Railway to a school at Sadrabadi does not appear to be against any guidelines or directions contained in any of the G.R. including the G.R. dated 15.02.2018 and on the contrary it appears to be in the interest of good administration of school and education of the students. Secondly, there is also a direction issued by this Court in ***Suo-motu Writ Petition No. 3278 of 2010***, which would dis-entitle the petitioner from questioning the validity of her transfer order. The direction given by this Court is to the effect that whenever there are vacancies lying in the tribal areas, such seats must be filled up on priority basis. Although, this direction is in the context of vacant seats in tribal area, this direction could be considered as applicable even to the facts of the present case for the reason that ultimately, the priority is always the education of the students and convenience of the teachers appears at the bottom of the list of priorities. In the school at Sadrabadi, there is in existence one vacancy and considering the students strength in that

school, it is necessary that this vacancy is now filled in without any delay.

4. Then, it is also not the case that the inconvenience suffered by the petitioner has not been appropriately addressed by this Court. When this matter was heard for the first time on 27.08.2020, one difficulty was expressed by the petitioner. It was submitted by her that as she had recently given birth to a child which was on 05.06.2020 and was on maternity leave from 09.06.2020 till 04.12.2020, it was necessary that her transfer order was stayed to enable her to nurse the infant properly. This difficulty of the petitioner was solved by this Court by staying the effect and operation of the impugned transfer order for a period of four weeks or until further orders, whichever occurred earlier. After obtaining such relief from the Court, the petitioner ought to have taken care that this petition was listed on board for hearing before expiry of period of four weeks. But, admittedly, the petitioner did not seek circulation of the petition even once and it is only today that the petitioner has approached this Court with a request for extension of the interim relief granted to her. Such conduct of the petitioner, in our opinion, would also dis-entitle her from any discretionary relief from this Court. Besides, admittedly, the petitioner's maternity leave has expired on 04.12.2020 which would resultantly

indicate that now the petitioner can take care of her child by resuming her duty in the school as Shikshan Sevak.

5. Learned counsel for the petitioner submits that presently there is a ban imposed by the Government on transfers and this ban is still in operation. If there is really any such ban, although no document in this regard has been placed before us by the petitioner, the issue would have to be decided in his own discretion by respondent No.2 by balancing between the Government ban on transfers and educational needs of the students of school at Sadrabadi and if it is found by respondent No.2 that the balance tips in favour of the educational needs of the students of school at Sadrabadi, respondent No.2 would be under a bounden duty to make an exception to the alleged Government ban on transfer and direct the petitioner to join her duty at Sadrabadi with immediate effect.

6. In the circumstances, we find that there is no merit in the petition. The petition stands dismissed.

Rule is discharged. No costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)