

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

WRIT PETITION NO. 8046 OF 2019

Ku. Nisha D/o. Raghunathji Dhoke,
Aged about 44 years, Occu. - Service,
R/o. C/o. Rashtriya Madhyamik Vidyalaya,
Satona, Tq. & Distt. Gondia.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
Department of School Education,
through its Secretary,
Mantralaya, Mumbai 32.
- 2) Education Officer (Secondary)
Zilla Parishad, Gondia,
Tq. & Distt. Gondia.
- 3) Swarupchandji Bahuuddeshiya
Shikshan Sanstha, Gondia,
Through its President/Secretary,
Tq. & Distt. Gondia.
- 4) Rastriya Madhyamik Vidyalaya,
Satona, through its Headmaster,
Tq. & Distt. Gondia.

.... **RESPONDENTS**

Shri S. U. Ghude, Advocate for the petitioner.
Shri N. R. Patil, A.G.P. for the respondent Nos.1 and 2.

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

DATED : 05.04.2021.

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 the learned counsel appearing for the parties.
3. The prayer made in this petition, as it appears in prayer clause (a), is as follows :-

“a. direct the respondent no.2 Education Officer, Zilla Parishad, Gondia to grant permission to respondent no.3 and 4 Secretary, Swarupchandji Bahuuddeshiya Shikshan Sanstha, Gondia and Headmaster, Rastriya Madhyamik Vidyalaya Satona schools to absorb/transfer the service of the petitioner in respondent no.3 and 4 school on 100% grant in aid vacant post;”

This prayer does not seek absorption/transfer of the petitioner from any particular date and it only seeks the relief of transfer and absorption of the petitioner. This relief, as could be seen from the statements made in the reply of respondent No.2, has already been made available to the petitioner. In paragraph No.9 of the reply, it

is stated that the petitioner has been transferred/absorbed on the aided post and as the aided post become vacant due to retirement of aided teacher, Shri A. G. Wanjari, such transfer has been effected from 18.01.2021.

4. It appears that the petitioner is also seeking a direction to respondent Nos.2 to 4 to pay salary to the petitioner from September 2018 till date together with 18% interest per annum and also further direction to not fill and absorb other employees other than the petitioner in sanctioned posts. As far as the direction restraining the respondents for filling up the vacant posts is concerned, in our opinion, it does not survive as the purpose of the petitioner has already been served in the present case. About the direction to pay the salary to the petitioner from September 2018, we are of the opinion that same cannot be granted unless the petitioner specifically challenges her transfer and absorption w.e.f. 18.01.2021, which has not been done by the petitioner. Therefore, such prayer in the present petition cannot be granted.

5. In the result, the petition is partly allowed in terms of the statement made in paragraph No.9 of the reply filed by respondent

No.2 with liberty to the petitioner to challenge the date from which her transfer has been given effect to, if there are any valid reasons to do so.

Rule accordingly. No costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)

Kirtak