

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7883 OF 2019

Bhausahab Adinath Jagtap,
Age : Major, Occupation : Service,
R/o Loni, Tq.Paranda,
Dist.Osmanabad.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Commissioner Office, Aurangabad.
3. The District Collector,
Collectorate Office at Osmanabad.
4. The Chief Executive Officer,
Zilla Parishad, Osmanabad,
Tq. & Dist. Osmanabad.
5. The Block Development Officer,
Panchayat Samiti, Paranda,
Tq.Paranda, Dist.Osmanabad.

...RESPONDENTS

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Advocate for the Petitioner : Shri D.A. Mane a/w Shri Nagesh G. Talekar
AGP for Respondents 1 to 3 : Shri P.G. Borade
Advocate for Respondents 4 and 5 : Shri R.V. Naiknaware
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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 26th February, 2022

ORAL JUDGMENT :

1. Heard the learned counsel appearing for the respective parties. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. While issuing notice in the writ petition on 30.07.2019, this Court has recorded the stand of the petitioner that the allegation against him that the wife being declared surplus teacher at Loni when he sought transfer from Anandnagar to Loni, is a misleading statement.

3. In furtherance, the petitioner has placed on record the additional affidavit, which makes the position clear that the petitioner preferred an application on 14.04.2018 seeking his transfer to Loni from Anandnagar on the ground that his wife is serving at Loni and considering the policy of the Government to post the husband and wife, as far as practicable, at the same place, his request was considered and the transfer order came to be issued on 28.05.2018 transferring him from Anandnagar to Loni. He joined the transferred place on 29.05.2018.

4. The additional affidavit filed by the petitioner discloses that on 19.01.2018, his wife (Smt.Damare Varsharani Digambar), who was working at Zilla Parishad Primary School, Brahmagaon, by absorption came to be posted in the Zilla Parishad School at Loni on being declared as surplus teacher. She was relieved from the earlier posting in the school

at Brahmagaon to join at Loni. Accordingly, she was relieved under the signature of the Headmaster on 19.01.2018. The Headmaster of the Zilla Parishad School, Loni issued her a certificate that from 20.01.2018 she started working in the Zilla Parishad School at Loni. The petitioner has placed on record various documents including salary drawn by his wife from the school at Loni. However, by order dated 11.06.2018, she was again transferred from the Zilla Parishad School, Loni to the Zilla Parishad Primary School, Brahmagaon, Paranda.

I am not concerned with this order transferring the services of the wife of the petitioner and I need not delve deep into it.

5. The controversy involved in the present writ petition is the action faced by the petitioner for misleading the authorities while procuring the transfer order dated 28.05.2018 by stating that his wife was working at Loni, whereas, she was already declared as surplus teacher at Loni and relieved therefrom.

6. The learned counsel for the respondent/ Zilla Parishad does not dispute the dates and the fact that the petitioner's wife was absorbed at the Zilla Parishad Primary School at Loni on 19.01.2018 and on the date when the petitioner made an application for transfer i.e. on 14.04.2018 she was working at Loni, but subsequently, during the regular transfer orders issued on 11.06.2018 by the Chief Executive Officer, Zilla Parishad, Osmanabad, she was transferred to the Zilla Parishad Primary

School at Brahmagaon, Paranda.

7. In the wake of the aforesaid statement being made by the learned counsel for the Zilla Parishad on the basis of the records made over to him, the allegations levelled against the petitioner do not appear to be correct and the issuance of the show cause notice is also based on erroneous grounds.

8. In the wake of the above, when the impugned order passed by the Chief Executive Officer is perused, he has held the petitioner responsible for misconduct under the Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967 and imposed penalty of withholding of one increment with permanent effect. Since the accusation faced by the petitioner resulting into the said penalty itself is unfounded, the impugned order passed by the Chief Executive Officer, Zilla Parishad imposing the aforesaid penalty cannot be sustained. Further, the impugned order passed by the Divisional Commissioner upholding the order passed by the Chief Executive Officer, though on slightly different ground that the petitioner has wrongly mentioned the distance between two places while the application form being filled in, is equally erroneous and deserves to be quashed and set aside.

9. In the wake of the above and particularly the facts mentioned in the above paragraphs being not disputed by the learned counsel for the Zilla Parishad, on the basis of the records possessed by him, the impugned

orders are quashed and set aside. The Writ Petition is allowed. Rule is made absolute in the above terms.

kps

(SMT. BHARATI H. DANGRE, J.)