

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11695 OF 2021

MANISHA RAMESH WAKADE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. S.S. Jadhavar
AGP for Respondent No. 1 : Mr. A.S. Shinde
Advocate for Respondent Nos. 2 & 3 : Mr. Ajinkya Reddy

CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.

DATE : 27 JUNE, 2022.

ORAL JUDGMENT [PER : C.V. BHADANG, J.] :-

Rule. Rule made returnable forthwith. Learned AGP and learned counsel for the respondents waive service. Heard finally by consent of parties.

2. The challenge in this petition is to the communication / order dated 26 July, 2021, issued by the third respondent holding the petitioner ineligible for mutual transfer with respondent No. 4 on the ground that the petitioner was not appointed / working as a subject teacher. According to the respondent – Education Officer, the petitioner was selected and was appointed and had assumed charge as

a Physical Instructor.

3. We have heard the learned counsel for the parties and perused record.

4. Learned counsel for the petitioner has submitted that in the year 2006, a common advertisement was issued for recruitment of subject teachers as well as physical instructors. He points out that there were in all four posts of physical instructor. The select list and the waiting list was published in June, 2006. The petitioner was a wait listed candidate. In the year 2006, three candidates namely Shir Prashant Kale, Wagholikar and Ramakant Gurav were issued appointment as against three vacancies. However, in spite of availability of one vacancy, the petitioner was not given appointment along with these three persons. The petitioner came to be issued with an appointment order in August, 2016 as a subject teacher. According to the petitioner, this was done in order to accommodate one Kanta Shankar Rautghol who was appointed on the same date as that of the petitioner, however, as a physical instructor. Learned counsel pointed out that only because the petitioner is also holding the qualification of B.P.Ed. along with B.Ed, it is now claimed that she was working as a Physical Instructor.

5. Learned counsel for the respondent has pointed out that the petitioner was selected as a Physical Instructor. He has also pointed out the letter dated 2 September, 2006, of the petitioner by which the

petitioner had assumed charge as a Physical Instructor. He, therefore, submits that the petitioner, at this distance of time, cannot claim that she was appointed as a subject teacher.

6. We have considered the rival circumstances and the submissions made.

7. It appears that the petitioner is placing reliance on the appointment letter and the fact that the work load allotted to the petitioner was as an English teacher. He has pointed out the copy of the sheet signed by the Head Mistress which is at the page No. 25 of the compilation which indeed shows that the work load as an English teacher was allotted to the petitioner.

8. In so far as the letter regarding assumption of charge is concerned, we find that petitioner cannot be said to have assumed charge which is contrary to her appointment. Thus, if the appointment was in respect of an English teacher and not as a Physical Instructor and further the petitioner was actually working as a Subject teacher as is evident from the work load allotted as a subject teacher in English, the letter assuming charge would not be decisive.

9. We find that the rejection of the claim for mutual transfer on the given that the petitioner was not working as a subject teacher cannot be accepted. Indisputably, respondent No. 4 with whom the mutual transfer is sought for, is working as a subject matter.

10. In that view of the matter, the petition is allowed. Respondent No. 4 – Education Officer shall consider the claim for mutual transfer on its own merits and in accordance with law on or before 29 June, 2022, as the respondent No. 4 is due to retire on 30 June, 2022. The claim shall not be rejected on the ground that the petitioner was working as a Physical Instructor.

11. Both the parties shall act upon authenticated copy of this order.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.