

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

23 WRIT PETITION NO.13171 OF 2022

SAMBHAJI KESHAV JADHAV
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Avinash S. Khedkar.
AGP for Respondent Nos.1 & 2 : Mr. V. M. Kagne.
Advocate for Respondent No.3 : Mr. A. D. Aghav.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 02nd January, 2023.

P.C.:

1. The petitioner has put forth prayer clauses 'A' to 'C' as
under:-

- "A. By issuing a writ of Mandamus or any other appropriate writ, order or direction as the case may be; the respondent No. 1 may kindly be directed to accept the online transfer application of the petitioner in ongoing transfer program.
- B. By issuing a writ of Mandamus or any other appropriate writ, order or direction as the case may be to quash and set aside the impugned communication dated 23.11.2022 issued by the Deputy Secretary Rural Development Department Mantralaya Mumbai.
- C. By issuing a writ of Mandamus or any other appropriate writ, order or direction as the case may be, the respondent No. 3 may kindly be directed to transfer the petitioner wherever within a periphery of 30 km from the working place of his spouse."

2. Issue Notice. The learned AGP waives service of notice on behalf of respondent Nos.1 and 2. Mr. Aghav, the learned advocate waives service of notice on behalf of respondent No.3 on telephonic instructions.

3. Having considered the submissions of the learned advocates for the respective sides, in the light of the Government Resolution dated 7th April, 2021, we find that a couple has to be accommodated in such a way that both are posted within 30 kilometers of each other. The petitioner's wife works in a school under the Ahmednagar Zilla Parishad at Rahuri. The petitioner has been posted under a transfer order dated 11th June, 2018 at the Zilla Parishad School, Shimpore Nave, Taluka Karjat, District Ahmednagar. Both are more than 30 kilometers away from each other. What is germane is that the transfer of the petitioner from Newasa to Karjat, vide order dated 11th June, 2018, is purely for administrative exigency. It is an admitted position that the said transfer was not on account of couple convenience. Clause 4.3.6 of the Government Resolution dated 7th April, 2021 mandates that if a couple avails transfer on the ground of couple convenience, which falls in the Special Category Part – 2, the couple cannot seek transfer for a period of three years from the date of joining.

4. After the petitioner received the order dated 11th June, 2018 and since he was due for promotion, he declined promotion and eventually joined at the school at Taharabad, Taluka Rahuri, District Ahmednagar. The wife of the petitioner works at the Zilla Parishad School at Kukkadwedhe, Taluka Rahuri. Both are 31 kilometers away from each other.

5. Considering the above and more specifically in view of the petitioner's transfer being due to administrative exigency and he having never availed of the couple convenience benefit, we are of the view that the Government Circular dated 21st February, 2019, permitting a couple to move an application for transfer in the Special Category Part – 2 (couple convenience) would not be bound by the condition of completing a particular tenure at a particular place. Since the petitioner has already completed three years at the present place of work on 25th July, 2022, he would be eligible to move an application for transfer by couple convenience, in the light of the Government Resolution dated 7th April, 2021.

6. In view of the above, though the impugned order rightly holds that, on the cut-off date 30th June, 2022, the petitioner had not completed three years at his present posting, he would stand to gain the advantage of the Government Circular dated 21st February, 2019,

which was specifically issued for enabling teachers to move applications for transfer, in the light of the four categories, which are set out in the circular and clause 3 of the said circular.

7. As such, this petition is partly allowed. The impugned communication dated 23rd November, 2022 would not bind the petitioner's case. The petitioner would be eligible to move an application online for seeking transfer by couple convenience. Respondent No.1 would consider such online application strictly in accordance with the rules, policies and the vacancies available.

8. We make it clear that we have not expressed any view or opinion as regards the merits of the claim of the petitioner. If the case of the petitioner can be considered, as per the rules and policies taking into account the vacancies, we expect the authorities to deal with his application without causing unnecessary delay. We direct respondent Nos.1 and 3, in coordination, to deal with the application of the petitioner strictly in accordance with the rules, policies and available vacancies, considering the Government Circular dated 21st February, 2019 without unnecessary delay.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]