



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 635 OF 2018

PETITIONER : Vijay S/o. Madhukar Wakode, Aged  
about 41 years, Occupation : Service,  
R/o. at post Goregaon Khurda, Tah. &  
Dist. Akola.

//VERSUS//

RESPONDENTS : 1. The Zilla Parishad, Akola, through its  
Chief Executive Officer.  
2. The Block Education Officer, Panchayat  
Samitee, Akola.  
3. The Zilla Parishad, Washim, through its  
Chief Executive Officer.

\*\*\*\*\*

Mr. N.B. Kalwaghe, Advocate for the Petitioner.  
Mr. U.J. Deshpande, Advocate for Respondent Nos.1 & 2.  
Mr. A.S. Deshpande, Advocate for Respondent No.3.

\*\*\*\*\*

CORAM : SMT. ANUJA PRABHUDESSAI AND  
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 6<sup>th</sup> DECEMBER, 2023.

ORAL JUDGMENT (Per: Smt. Anuja Prabhudessai, J.)

. **Rule.** Rule made returnable forthwith. Petition is  
heard finally with the consent of learned counsel for the respective  
parties.

02] The Petitioner has challenged the legality of the order dated 22.01.2018, issued by Respondent No.1-Zilla Parishad, Akola through its Chief Executive Officer cancelling his appointment by transfer and has further sought direction against the Respondent No.1-Zilla Parishad, Akola to retain him on the post of Assistant Teacher in its establishment.

03] The Petitioner was appointed as a Primary Teacher in Zilla Parishad School, Washim under an appointment order dated 30<sup>th</sup> October, 2002 from open category. His appointment was on clear, vacant and permanent post. Upon completion of probation period, the services of the Petitioner came to be confirmed on 13<sup>th</sup> March, 2006. The Petitioner got married on 10<sup>th</sup> May, 2006. The wife of the Petitioner was appointed as a Laboratory Attendant in Jagdamba Vidyalaya, Dongargaon, District Akola. The Petitioner applied for transfer from Zilla Parishad, Washim to Zilla Parishad, Akola in view of prevailing policy of the State Government *vide* Government Circular dated 21.09.1974. The Petitioner also gave consent that his seniority may be counted from the date on which he joins the services at Zilla Parishad, Akola by treating the same as fresh appointment. The proposal was forwarded to the Office

of Education Officer, Zilla Parishad, Washim and subsequently by order dated 29.05.2007, the Petitioner came to be appointed as an Assistant Teacher and posted in Akola Panchayat Samiti. The Petitioner belongs to Kunbi OBC category and his appointment on transfer was on a vacant post reserved for Other Backward Class (OBC). The Petitioner was relieved *vide* order dated 31.05.2007 and he joined the services at Panchayat Samiti, Akola on 08.06.2007.

04] The Respondent No.1, by notice dated 08.11.2012, called upon the Petitioner to submit caste validity certificate. The Petitioner made an application to the Divisional Caste Scrutiny Committee, Akola and submitted the same to the Office of Respondent No.2. The caste claim of the Petitioner was forwarded to Akola Committee. It is alleged that the Akola Committee returned the caste claim on the ground that the initial appointment of the Petitioner at Zilla Parishad, Washim was in open category. After a period of more than 10 years, the Respondent No.1 by impugned order dated 22.01.2018 held that the initial appointment of the Petitioner was from the open category and his inter-district transfer on a post reserved for OBC

category was illegal. Hence, by the impugned order, the Petitioner was ordered to be posted at Zilla Parishad, Washim.

05] Learned counsel for the Petitioner has relied upon the decision of the Co-ordinate Bench of this Court in Writ Petition No.6956 of 2017 (*Yogita Marotrao Khope @ Yogita Manoj Wadkar Vs. State of Maharashtra & Others*), wherein on similar facts this Court had quashed the order cancelling the transfer after more than 10 years. The facts of the present case, as noted above, are similar. Though the Petitioner was appointed as an Assistant Teacher in Zilla Parishad, Washim in open category and absorbed in the post earmarked for OBC in Zilla Parishad, Akola, he does possess a caste validity certificate in that regard. Furthermore, the request of the Petitioner to transfer him from Zilla Parishad, Washim to Zilla Parishad, Akola was as per the prevailing policy of the State Government *vide* Government Circular dated 21.09.1974. It is also not in dispute that the said appointment was in accordance with the provisions of Rule 6(7)(8)(9) of the Maharashtra District Services Recruitment Rules, 1967 (for short “the Rules of 1967”).

06] Having considered the request of the Petitioner in terms of the government policy and having passed the order in accordance with the provisions of Rule 6(7)(8)(9) of the Rules of 1967, there is no justifiable reason to cancel the transfer after a period of more than 10 years, particularly when there is nothing to demonstrate that the order of transfer itself was illegal. In such circumstances, the impugned order is illegal and is liable to be quashed and set aside.

07] Hence the petition is allowed. The impugned order dated 22.01.2018, issued by the Respondent No.1-Zilla Parishad, Akola is quashed and set aside. The Respondent No.1-Zilla Parishad, Akola is directed to retain the Petitioner on the post of Assistant Teacher in its establishment.

08] Rule is made absolute in the above terms. No order as to costs.

(VRUSHALI V. JOSHI, J.)

(ANUJA PRABHUDESSAI, J.)