



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3284 OF 2019

Netaji Panditrao Dhavan,
Age 38 yrs., Occ. Service
as Primary Teacher,
Z.P.P.S. Uttami (Ka),
Tq. & Dist. Osmanabad.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through The Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
- 2 The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3 The Chief Executive Officer,
Zilla Parishad, Osmanabad.
- 4 The Education Officer (Primary),
Zilla Parishad, Osmanabad.

... Respondents

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Mr. M.S. Deshmukh, Advocate for petitioner
Mr. A.V. Lavte, AGP for respondent Nos.1 and 2
Mr. P.P. More, Advocate for respondent No.3

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WITH

WRIT PETITION NO.3285 OF 2019

Ranjit Dattatraya Narsinghe,
Age 38 yrs., Occ. Service
as Primary Teacher,
Z.P.P.S. Laman Tanda, Samudrawani,
Tq. & Dist. Osmanabad.

... **Petitioner**

... **Versus** ...

- 1 The State of Maharashtra
Through The Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
- 2 The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3 The Chief Executive Officer,
Zilla Parishad, Osmanabad.
- 4 The Education Officer (Primary),
Zilla Parishad, Osmanabad.

... **Respondents**

...

Mr. M.S. Deshmukh, Advocate for petitioner
Mr. A.V. Lavte, AGP for respondent Nos.1 and 2
Mr. S.D. Kaldate, Advocate for respondent No.3

...

WITH

WRIT PETITION NO.3286 OF 2019

Nitin Bhimrao Gaikwad,
Age 38 yrs., Occ. Service
as Primary Teacher,
Z.P.P.S. Arangaon,
Tq. Paranda, Dist. Osmanabad.

... **Petitioner**

... **Versus** ...

- 1 The State of Maharashtra
Through The Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
- 2 The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3 The Chief Executive Officer,
Zilla Parishad, Osmanabad.
- 4 The Education Officer (Primary),
Zilla Parishad, Osmanabad.

... **Respondents**

...

Mr. M.S. Deshmukh, Advocate for petitioner
Mr. A.V. Lavte, AGP for respondent Nos.1 and 2
Mr. V.M. Vibhute, Advocate for respondent No.3

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 04th JULY, 2024

PRONOUNCED ON : 12th JULY, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Petitioners approached this Court under Article 227 of the Constitution of India impugning the order dated 12.10.2018 passed by Chief Executive Officer, Zilla Parishad, Osmanabad – respondent No.3 and order dated 25.02.2019 passed by Additional Divisional Commissioner, Aurangabad in exercise of appellate jurisdiction thereby confirming order passed by respondent No.3.

3 Petitioners are employed as teachers with Zilla Parishad, Osmanabad. On 27.02.2017 the State of Maharashtra in its Rural Development Department issued the Government Resolution providing for revised guidelines for transfer of teachers in Zilla Parishad schools. The Government Resolution stipulates special teachers category “Part – II” whose spouses are working in Government, Semi Government or Local Bodies. The policy prescribes for transfer within the distance of 30 k.ms. for couple convenience. On 15.04.2018 the State Coordinator issued guidelines for transfer of teachers from special category. It stipulates to workout distance between the postings of spouses as per Saral Pranali. Petitioners were given

posting considering couple convenience, on the basis of guideline form for category part – II.

4 On 28.06.2018 respondent No.1 issued a circular contemplating minor penalty/action against teachers, who have secured transfers giving incorrect/false information. Petitioners were subjected to action in pursuance of said circular, alleging that they supplied false information regarding distance of postings. Accordingly, petitioners were called upon for personal hearing. Petitioners tendered their explanation. In pursuance of explanation tendered by petitioners, Education Officer issued communication dated 27.09.2018 directing Block Development Officer, Panchayat Samiti to find out correct distance by undertaking travel on two wheeler and submit his report regarding distance measured. According to petitioners, such report has been submitted and favours them, however, without supplying same impugned order came to be passed holding them guilty. Consequently, penalty of withholding one increment permanently has been imposed in terms of Rule 4(2) of Maharashtra Zilla Parishad District Service (Discipline and Appeal) Rules, 1964. Petitioners appeal, filed before Divisional Commissioner also dismissed confirming order imposing penalty.

5 On 17.10.2023 this Court recorded submissions advanced by learned Advocate appearing for petitioner and passed order, which states as

under -

“1. The learned Advocate for the petitioner submits that the committee constituted by the Chief Executive Officer, Zilla Parishad by report dated 10/07/2018 indicated (at page No.91) that after re-verification of the distance, fresh notice should be provided to the petitioner. In pursuance of this, there is even a communication issued dated 27/09/2018 whereby the petitioners were called upon to submit an explanation.

2. The learned Advocate for the petitioner submits that in spite of the explanation being given, without considering the explanation the impugned orders are passed. The learned Advocate for the petitioner submits that Education officer by letter dated 27/09/2018 has written a letter to the Block Education Officer that he should calculate the distance by two wheeler and submit a report. However, the learned Advocate for the petitioner submits that without awaiting the report from the Block Education officer, the impugned order is passed whereby the petitioner's one increment is permanently withheld. The learned Advocate submits that no hearing was granted to the petitioner as contemplated in the report so also in the proceedings which were initiated by the Education officer to recalculate the distance. The learned Advocate for the petitioner submits that the report is in favour of the petitioner, however copy of the same is not given to the petitioner.

3. The learned Advocate appearing for the respondents No.3 and 4 Zilla Parishad make a submission in this regard. The respondents No.3 and 4 to indicate whether the matter can be

remitted back to the authority for re-consideration in view of the submission made by the learned Advocate for petitioner.”

6 In pursuance of the said order learned Advocates appearing for respondent – Zilla Parishad on instructions submits that the Block Development Officer has re-calculated distance and submitted report in terms of communication dated 27.09.2018. Perusal of impugned orders nowhere depicts that report submitted by Block Development Officer, Panchayat Samiti was taken into account or petitioners were served with such reports or they were given opportunity to make submissions in pursuance to such reports. In that view of the matter, writ petitions deserve to be partly allowed with further directions. Hence, this order.

ORDER

1 Writ Petitions are partly allowed.

2 Impugned orders are quashed and set aside.

3 Matters are relegated back to respondent No.3 for afresh consideration.

4 Petitioners shall appear before Chief Executive Officer, Osmanabad on 29.07.2024 or any other date as fixed by Chief Executive

Officer for their appearance in the week commencing from 29th July, 2024.

5 Petitioners shall be entitled to receive copy of report submitted by Block Development Officer in pursuance of communication dated 27.09.2018 issued by Education Officer and tender written submissions to justify their innocence.

6 The Chief Executive Officer, Osmanabad shall grant opportunity of hearing, if so desired by petitioners and pass fresh orders on or before 31.08.2024 and communicate his decision to petitioners.

7 Rule is made absolute in above terms.

8 Writ Petitions stand disposed of.

(S.G. CHAPALGAONKAR)
JUDGE

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