

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3778 OF 2024

Shaikh Aqeeluddin Naseeruddin ...Petitioner
Versus
State of Maharashtra and Ors. ...Respondents

**WITH
WRIT PETITION NO. 13779 OF 2022**

Mrs. Sayyada Humaira Firdos Sajjad Quadri ...Petitioner
Versus
State of Maharashtra and Ors. ...Respondents

Ms. Anita Bhaktwani, for the Petitioner in both petitions.
Mr. A.C. Bhadang, AGP for Respondent-State in both Petitions.
Mr. N.R. Bubna for Respondent No.2 in both Petitions.

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 22 AUGUST 2024

P.C.:

1. Heard the learned Counsel for the parties.
2. The Petitioners have sought writ of mandamus to the Municipal Corporation to relieve the Petitioners from Municipal Urdu School at Bhiwandi and transfer them to Aurangabad.
3. As regards the prayer for Mandamus, we have not been shown any

statutory right but the policy of the Municipal Corporation and certain Government Resolutions.

4. According to the Petitioners, they were appointed in the year 2014 in the School at Shantinagar, Bhiwandi. The Petitioners have claimed to be permanent residents of Aurangabad and because of the same, have sought writ of mandamus for their transfer. Considering that the transfer is not an inherent right but also subject to administrative exigencies, before issuance of the writ of mandamus, stand of the Municipal Corporation has to be examined.

5. The Reply affidavit is filed by the Administrative Officer of the Respondent – Corporation wherein it is stated that Petitioners were granted permanent approval in December 2017 (stated to be typographical mistake mentioning 2007) and the Petitioners applied for transfer at Aurangabad on 27 March 2018 and 10 April 2018. It is stated that the Petitioners were only waiting for permanent approval and has no intention to serve in the Respondent – Municipal Corporation at Bhiwandi. The Respondent – Corporation in reply affidavit filed in Writ Petition No. 13779 of 2022 stated as under:

“2. I submit that respondent corporation is getting large number of such applications from teachers who first applied for job with respondent and soon after getting confirmation, want transfer to some other corporation. I say that order dated 16/12/2022 records pendency of 105 such applications, I say that order dated 16/12/2022 also records

that there was shortage of 86 teachers on the date of aforesaid order.

3. I say that teachers can't be appointed directly by respondent corporation, but are to be allotted by Education Department through unified process of Pavitra Portal. I say that even presently shortage of teachers in Urdu Primary Schools run by respondent corporation continues, I say that municipal administration is working with great difficulty to ensure availability of teachers in schools, so that education of students does not suffer.

4. I say that Petitioner's application was duly considered pursuant to resolution dated 27/4/2022 passed by General Body and a well reasoned order is passed which does not require any interference in exercise of writ jurisdiction of this Hon'ble Court. I say that difficulties cited by Petitioner were well within her knowledge since prior to applying for job with respondent corporation. I say that Petitioner has not stated about any attempt by her husband and/or her in laws to shift to Bhiwandi. It is also not stated why she applied for job at Bhiwandi if her entire family was at Aurangabad since prior to applying for job at Bhiwandi.”

The stand taken by the Respondent-Corporation as above cannot be said to be arbitrary. If it is the experience of the Corporation that this facility of transfer is being misused leading to shortage of teachers, it is not possible for us to find fault with the stand and to issue a writ of mandamus disregarding the same.

6. Since the policy decision is taken by the Municipal Corporation, it is expected that the same would be uniformly applied. Learned Counsel

for the Petitioners tenders affidavit-in-rejoinder giving names of the teachers who have been transferred in June 2024-August 2024. The grievance of the Petitioners is that they are being discriminated. However, merely on the ground that there have been some deviations, negative right does not accrue to the Petitioners. However, we direct the Municipal Commissioner of the Respondent No. 2 to examine facts placed before us by the Petitioners by filing affidavits-in-rejoinder regarding transfers of some teachers and if they are against the policy stated before us, to take necessary steps. These steps be taken within a period of 3 weeks from today, as per law and the Petitioners be informed of the same. If no steps are taken in respect of teachers who are mentioned in the rejoinder without justifiable reason and informed to the Petitioners, then we grant liberty to the Petitioners to approach this Court.

7. The Writ Petitions are disposed of in above terms.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)