



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

WRIT PETITION NO.6017/2023

Sushma d/o Dattataj Thakare and others

Vs.

The State of Maharashtra through its Secretary, Rural Development Department,
Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Dhengale, Advocate for petitioners
Shri N.R. Patil, AGP for respondent No.1
Shri A.Y. Kapgate, Advocate for respondent No.3 (through V.C.)
Shri B.M. Lonare, Advocate for respondent No.4

CORAM : ANIL S. KILOR AND
SMT. M.S. JAWALKAR, JJ..
DATED : 14/03/2024

At the outset, the learned Counsel for petitioners seeks permission to delete respondent No.3 from the array of respondents, as nothing survives against him.

2. As such, permission is granted at the risk of the petitioner.

3. This matter pertains to Husband Wife Unification Policy, of which, the benefits has been denied to the petitioners on the ground that they have not completed three years at the present working school.

4. The Division Bench of this Court has already, while dealing with the similar matters, has held that the teachers falling under Special Category Teacher Part -I and Special Category Teacher Part -II has not availed the benefit of transfer earlier, the requirement of completing 3 years tenure at present posting would not apply. Thus, the

present case is squarely covered by the judgment of this Court dated 31/01/2023 passed in Writ Petition No.7667/2022 and other connected matters, wherein it is held thus:

“3. *It is fairly not disputed on behalf of the State that the issue is covered by the decision of the Co-ordinate Bench at Aurangabad in **Datta Rushiket Salunke Vs. The State of Maharashtra (Writ Petition 13344/2022, decided on 06.01.2023)**. The Co-ordinate Bench has held that if the Teacher falling under Special Category Teacher Part-I or Special Category Teacher Part-II has not availed the benefit of transfer earlier, the requirement of completing 3 years tenure at the present posting would not apply. The Co-ordinate Bench has observed that the communication dated 23.11.2022 issued by the Deputy Secretary, Maharashtra State must be read and understood in the backdrop of the Government Circular dated 21.02.2019 which enables the said Teachers to seek transfer without completing 3 years tenure. While during the course of hearing, learned Additional Government Pleader, Mr. S.M. Uke, did submit that the Government Circular dated 21.02.2019 is superseded by the Government Resolution dated 07.04.2021, we note that the relevant provisions in the Government Circular dated 21.02.2019 and Government Resolution dated 07.04.2021 are identical.”*

5. In this view of the matter and for the reasons recorded by the Co-ordinate Bench at Aurangabad while disposing of Writ Petition No.13344/2022, since we are agreeable with the view taken by the Co-ordinate Bench of this Court, we pass the following order:-

ORDER

i) The Writ Petition is disposed of with direction to the concerned authority to entertain the applications of the petitioners provided the applications are made online after the portal is opened by the Government. Their request for transfer on the basis of couple convenience would be considered for the academic year June-2024 to April-2025. All other rules and policy applicable to such cases would be duly considered while deciding the claims of these petitioners on their merits.

ii) Needless to observe, since the transfers have to be given effect from the academic year April-2024, the process shall be initiated well within the time.

JUDGE

JUDGE

R.S. Sahare