HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1007 WRIT PETITION NO.14137 OF 2021

BABU AMRUTRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
....

Mr V. S. Panpatte, Advocate for petitioner;
Mrs M. A. Deshpande, A.G.P. for respondents/State
Mr S. B. Pulkundwar, Advocate for respondent Nos.3 & 4

CORAM : RAVINDRA V. GHUGE
AND
S. G. DIGE, JJ.

DATE : 5th May, 2022

PER COURT:

1. This is a case, in which the Education Department of the Zilla Parishad, as well as the Chief Executive Officer, have indulged in an unconscionable act of directing the petitioner, a teacher in English subject, to teach Mathematics at the Zilla Parishad High School, Bodhadi, Tq. Kinwat, only on the ground that the post of Mathematics teacher was vacant.

2. Strange are the ways, in which the Education Department could function beyond our imagination and comprehension. The petitioner is before this Court for challenging the transfer order dated 30/07/2021, by which, he has been transferred from the

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Zilla Parishad High School, Dharmabad to the Zilla Parishad High School, Bodhadi. He is also aggrieved by the order dated 18/11/2021, passed by respondent No.2 – Deputy Commissioner (Establishment), office of the Divisional Commissioner, Aurangabad Division, Aurangabad, by which his appeal has been dismissed.

3. We have considered the strenuous submissions of the learned Advocates Shri. Panpatte on behalf of the petitioner and Shri. Pulkundwar on behalf of respondent Nos.3 and 4, who has vehemently opposed this petition.

4. Shri. Pulkundwar has repeated his submissions several times, contending that, as the solitary post of English teacher at Bodhadi was filled in and the post of Mathematics teacher was vacant, that the petitioner was directed to teach Mathematics. As no post of a teacher in the tribal area can be kept vacant, the petitioner was transferred to the tribal area to teach the English subject. He was actually directed to teach Mathematics. On instructions, he repeats his submission that, there is no option to the Education Department. Since there was no Mathematics teacher, it directed the petitioner, who is an English teacher, to

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teach Mathematics. There is no dispute that the petitioner is Bachelor of Arts and B.Ed. He has never specialised in Mathematics and had never studied this subject at the graduation level or thereafter.

5. Shri. Pulkundwar once again insists before us with great vehemence that, no post in the tribal region can be kept vacant, and therefore, if there are 23 vacancies for Mathematics subject, the Zilla Parishad will direct anybody, who is available, though he does not teach Mathematics subject, so as to be placed in the said school to teach Mathematics, as per the seniority. He, submits that a senior most teacher would be appointed to teach any subject.

6. We are not only astonished by such submissions, but shocked by the wisdom of the Education Officer. We cannot countenance such stand, by which a person teaching English, is directed to teach mathematics, though his transfer order clearly indicates that he has been transferred on a vacant post of an English teacher at the Zilla Parishad High School, Bodhadi. This, therefore, indicates a fraud played on the petitioner by the Education Department, Zilla Parishad, Nanded.

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7. We put a pointed question to the learned Advocate Shri. Pulkundwar, to explain, as to who is behind this act of transferring him as per the transfer order on a vacant post to teach English and actually direct him to teach mathematics. He submits that, this has been done under the advise of the Chief Executive Officer of the Zilla Parishad, Nanded.

8. We find that the stand taken by the Zilla Parishad before the Appellate Authority i.e. respondent No.2 - the Deputy Commissioner, Aurangabad, was equally unfair of projecting that the petitioner has been transferred to a vacant post for the English subject. With this submission, respondent No.2 did not find anything illegal about the transfer. It is only that the Zilla Parishad is exposed today, by the fact that the petitioner is compelled to teach Mathematics at the place of transfer.

9. The learned Advocate for the petitioner submits that, after the transfer of the petitioner, which he has accepted and reported at Bodhadi, he was helpless, as he could not teach Mathematics. He was, therefore, disallowed from marking his attendance, apparently, since he declined to teach Mathematics. He is, therefore, without salary. He is not averse to transfer and is

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willing to work at any place in the Nanded Zilla Parishad.

10. We are disturbed by the attitude of the Zilla Parishad. Only because there are vacancies in the schools in tribal areas, that non-subject experts, having no knowledge of particular subjects, cannot be compelled to teach an unknown subject. The students in the tribal areas are not to be neglected and are to be imparted with good education. We cannot tolerate an iniquitous approach, as if the students in the tribal areas are lesser human beings.

11. In view of the above, this petition is allowed.

The impugned transfer order issued to the petitioner, transferring him to Bodhadi to teach Mathematics, is quashed and set aside. Since the petitioner is willing to impart education in the English subject, wherever there is a vacancy today under the Nanded Zilla Parishad, we appreciate the said attitude and we direct respondent No.3, to post the petitioner at any of the schools, having vacancy of English teacher, on or before 25/05/2022, so as to facilitate joining time in the said school before the academic session from June 2022 commences.

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12. We direct the Zilla Parishad, to clear the entire unpaid salary of the petitioner till the month of May 2022, so as to ensure that the said arrears are paid in the month of June on the Pay day.

13. Since we are specifically informed that the above conduct of the Zilla Parishad is under the advise of the Chief Executive Office, Zilla Parishad, Nanded, we record our utmost displeasure and we direct the Divisional Commissioner, to issue an appropriate ‘strict warning’ memo to the said Chief Executive Officer and to enter the said warning in her service record.

(S. G. DIGE, J.) **(RAVINDRA V. GHUGE, J.)**

sjk

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