

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 6432 of 2021

Smt. Sushama Arun Patil

... Petitioner

v/s.

1. The State of Maharashtra
Thr. the Secretary
Rural Development Dept.
Mantralaya, Mumbai 400 032.
2. The Deputy Director of
Education, Kolhapur Region,
Kolhapur.
3. Kolhapur Zilla Parishad,
Kolhapur, through its
Chief Executive Officer.
4. The Education Officer
(Primary), Zilla Parishad,
Kolhapur.
5. Main Rajaram High School,
Kolhapur, Near Old Rajwada,
Bhawani Mandap, Kolhapur,
Through its Head Master.

6. Shri Riyaz Jahiruddin Mulla
M.R. High School & Junior College,
Gadhinglaj, Kolhapur. ... Respondents

Mr. Narendra V. Bandiwadekar a/w. Vinayak R. Kumbhar for the
Petitioner.

Mr. Ramesh Rane for Respondents 3 to 5.
Mr. Y.B. Lengare for Respondent No.6.
Mrs. S.S. Bhende, AGP for the State.

**CORAM : SUNIL B.SHUKRE &
G.A. SANAP, JJ.**

8th April 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE)

Heard learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. Even though learned Counsel for Respondent No.6 has sought time to file reply on the ground that the Petitioner has filed some rejoinder, we do not think that there is any need for granting further

time to Respondent No.6 for giving response to the averments made in the rejoinder for the reason that now, the learned Counsel for the Petitioner has categorically stated that the Petitioner does not rely upon the statements made in the rejoinder. The prayer of learned Counsel for Respondent No.6 is, therefore, rejected.

4. The only issue involved in this Petition is as to whether or not the Hon'ble Minister could have interfered in the administration of affairs of Zilla Parishad by cancelling the transfer order of Respondent No.6 just because Respondent No.6 had approached him by making a complaint. In our view the answer has to be given in the negative for the reasons stated in ensuing paragraphs.

5. The Petitioner, an Assistant Teacher, was transferred from Zilla Parishad School at Gadhinglaj to Main Rajaram High School, Kolhapur vide order dated 12th July 2019 passed by the Respondent No.3. The Petitioner in compliance with her transfer order joined at Kolhapur and worked there for sometime as Assistant Teacher. However, suddenly the Petitioner found herself at the receiving end when she was served with a transfer order dated 29th September 2021 passed by Respondent No.3 who succeeded the Chief Executive Officer who had passed the order dated 12th July 2019. Sometime later, the Petitioner discovered that her subsequent transfer order, transferring her from Kolhapur

School to Gadhinglaj school was passed by the Respondent No.3 by following the directions of Hon'ble Minister of Rural Development issued on 15th January 2021 whereby he directed that transfer of Respondent No.6, together with some other employees, should be cancelled and Respondent No.6 and the other employees be re-posted to their earlier places. Being aggrieved by the subsequent order dated 29th September 2021, the Petitioner has approached this Court questioning the legality and correctness of the same.

6. It is submitted by learned Counsel for Respondent No.6 that Petitioner has alternate remedy and, therefore, this petition is not maintainable. The objection is rejected for the reason that we find that subsequent order dated 29th September 2021 which is impugned herein is without jurisdiction and without following principles of natural justice.

7. The order impugned herein is without jurisdiction because it has been passed in compliance with the directions issued by an authority, the Hon'ble Minister on 15th January 2021, who had no power of transfer under any statute or government decision. Learned Counsel for Respondent No.6 also could not show to us any source of power of Hon'ble Minister to order transfer though he was given an opportunity by this Court to point out to this Court as to under which provision of

law, the Hon'ble Minister could have interfered in the administration of affairs of the Zilla Parishad and directed cancellation of transfer order issued by the Chief Executive Officer. It is obvious that the direction issued by the Hon'ble Minister here was without jurisdiction and so was not binding upon the Chief Executive Officer of Zilla Parishad. But, in the present case the order that was passed without jurisdiction by the Hon'ble Minister has been complied with by the Chief Executive Officer by cancelling transfer of Respondent No.6 to Gadhinglaj school and re-posting him at Kolhapur. This way, Respondent No.3 too has acted without jurisdiction in the present case.

8. The impugned order is illegal for the reason that it has not been issued after giving an opportunity of hearing to the Petitioner. Neither the Hon'ble Minister nor the Respondent No.3 thought it fit to hear the Petitioner before they re-transferred the Petitioner to Gadhinglaj to suit the convenience of the Respondent No.6. Such order of re-transfer brought adverse civil consequences for the Petitioner and, therefore, principles of natural justice required these authorities to hear the Petitioner before the impugned orders were passed, which they did not. Thus, the order dated 29th September 2021 passed by the Chief Executive Officer and the direction of the Hon'ble Minister dated 15th January 2021 are illegal and arbitrary, they having been passed in violation of principles of natural justice. They are, therefore, liable to

be quashed and set aside.

9. Learned Counsel for Respondent No.6 submits that there is no work-load available for the Petitioner to teach her subjects Marathi and Sociology at Kolhapur and, therefore, in any case the Petitioner cannot be directed to be transferred back to Kolhapur. The submission is factually incorrect which could be seen from the reply of Respondent No.4, the Education Officer of Zilla Parishad, Kolhapur. In Paragraph-5 of his reply, details regarding availability of work-load are given and, therefore, we find no substance in the said submission of learned Counsel for Respondent No.6.

10. At this juncture, we would like to dwell upon the conduct of Respondent No.6 which is unbecoming of a Government employee like him. Respondent No.6 had filed a Petition, being Writ Petition No.9881/2019, challenging his transfer from Kolhapur to Gadhinglaj. Seeing that he would not get any relief, the Respondent No.6 withdrew the petition and the petition was disposed of as withdrawn by this Court vide its order dated 17th March 2021. During the pendency of this petition, the Respondent No.6, however, filed a complaint with the Hon'ble Minister on 23rd February 2020 alleging that the affairs of Zilla Parishad, Kolhapur were being run and managed in highly arbitrary manner and that the transfers of teachers were made illegally.

In this complaint, the Respondent No.6 did not mention anything about filing of Writ Petition No.9881/2019, by him questioning the legality or otherwise of his transfer order. Some way or the other the Respondent No.6 succeeded in getting his complaint allowed by the Hon'ble Minister when the latter issued a direction on 15th January 2021 cancelling the transfers of teachers made in the year 2019 and giving a further direction that those teachers be posted after due counseling. Probably, it was this direction dated 15th January 2021 which may have prompted Respondent No.6 to withdraw the petition, being Writ Petition No.9881/2019, but curiously enough the fact of issuance of direction by the Hon'ble Minister on 15th January 2021 was not placed by the Respondent No.6 before this Bench and Respondent No.6 simply sought leave of the Court to withdraw the petition which was granted. Thus, Respondent No.6 suppressed material facts from this Court and also from the Hon'ble Minister and thereby indulged in manipulating the process of law to suit his convenience.

11. As if the above referred undesirable acts were not enough, the Respondent No.6 filed yet another petition before this Court being Writ Petition No.6152/2021 seeking implementation of the directions issued by the Hon'ble Minister on 15th January 2021. After filing of this petition, it appears, the Respondent No.3 issued the impugned order dated 29th September 2021 and thereafter, just on the next date

the fact of passing of the impugned order was brought to the notice of this Court and then this Court was pleased to dispose of Writ Petition No.6152/2021 on 30th September 2021 by taking note of the fact that the order of transfer of the Respondent No.6 from M.R. High School, Gadhinglaj to Main Rajaram High School, Kolhapur had been passed. In doing so, this Court also observed that the Petitioner therein, who is Respondent No.6 in the present matter, would join at the Main Rajaram High School, Kolhapur on 1st October 2021. Even in this matter, Respondent No.6 failed to bring to the notice of the Division Bench of this Court the manipulations done by him before 30th September 2021.

12. Thus, we are of the view that this is a case wherein Respondent No.6 has done everything that was possible for him to manipulate and abuse the process of law and, therefore, it is necessary that suitable costs are imposed upon Respondent No.6, while allowing this petition.

13. In the result, Petition is allowed in the following terms:

- (i) The Petition is allowed.
- (ii) The impugned order dated 29/09/2021 transferring the

Petitioner from Main Rajaram High School, Kolhapur to M.R. High School, Gadhinglaj is hereby quashed and set aside.

- (iii) The impugned order dated 29/9/2021 transferring Respondent No.6 from M.R. High School, Gadhinglaj to Main Rajaram High School, Kolhapur is hereby quashed and set aside.
- (iv) The directions issued by the Hon'ble Minister, Rural Development, Mumbai on 15/01/2021 to the extent they apply to Respondent No.6 are hereby quashed and set aside.
- (v) The order dated 12/07/2019 transferring Petitioner from M.R. High School, Gadhinglaj to Main Rajaram High School, Kolhapur is hereby restored.
- (vi) Respondent No.3 is directed to let the Petitioner join her posting at Main Rajaram High School, Kolhapur with effect from 11th April, 2021.
- (vii) Learned Counsel for Zilla Parishad, Kolhapur is requested

to inform Chief Executive Officer, Zilla Parishad, Kolhapur the aforesaid directions for due compliance.

- (viii) Respondent No.6 shall pay cost of Rs.25,000/- to Prison at Kalamba, Kolhapur for the purpose of purchasing books for Jail Library.
- (ix) Parties to act on an authenticated copy of the order.

(G.A.SANAP, J)

(SUNIL B.SHUKRE, J)

Lata Panjwani, P.S.