

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.513 OF 2015

Bollam Ramdas Mallaya
Age: 52 Yrs., occu. Service,
R/o Dayanand Nagar,
New Mondha, Nanded.

- PETITIONER

VERSUS

Zilla Parishad Nanded
Through its Chief Executive
Officer, Zilla Parishad,
Nanded.

- RESPONDENT

Mr.R.R.Mantri, Advocate h/for Mr. BA Agrawal,
Advocate for Petitioner;

Mr.Y.M.Kshirsagar, Advocate for Respondent.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE OF RESERVING JUDGMENT : 27th March, 2015.

DATE OF PRONOUNCING JUDGMENT: 01st APRIL, 2015

JUDGMENT (PER:- P.R.BORA, J.)

1) Heard. Rule. Rule made returnable
forthwith with the consent of learned counsel for
parties.

2) The petitioner has filed the present
petition, seeking quashment of order dated 21.6.2014

passed by sole respondent, whereby the petitioner has been transferred from Panchayat Samiti, Nanded to Primary Health Sub-Center at Bhayegaon, Tq. Degloor, District Nanded. The petitioner has also sought writ of mandamus, directing the respondent to release salary of the petitioner from June 2014 onwards.

3) Shri Mantri, Learned Counsel appearing for the petitioner, taking us through the transfer policy brought in practice since 2014 for effecting transfers of Zilla Parishad employees, submitted that while transferring the petitioner the said policy has been violated. Learned Counsel invited our attention towards the manner of transfer prescribed in the said transfer policy which reveals that at the time of effecting transfer, counseling is made compulsory by the committee consisting of President and Vice President of Zilla Parishad and Chairman of the concerned committee. It has also been provided that the process of counseling as well as entire process being undertaken for effecting transfer shall be video recorded and as far as possible, transfer orders are to be issued on the same day, on which counseling would take place.

4) Learned Counsel further submitted that for effecting transfers for the year 2014-2015, the date of counseling was fixed on 19th May, 2014. Learned Counsel further submitted that the petitioner was present for the said counseling at the Health Department of Zilla Parishad, Nanded. Learned Counsel further submitted that the transfers of the employees were effected by counseling as per the choices of the employees and they were given transfer orders forthwith. It is further submitted that although the petitioner was present, he was neither called for giving choices nor for counseling and he was also not asked to make any entry or signature in the register kept for that purpose. Learned Counsel submitted that in such situation, the petitioner assumed that he will not be transferred in the year 2014-2015 and, therefore, he took admissions of his children at Nanded and also paid fees for their classes etc.

5) Learned Counsel further submitted that on 21st June, 2014, to the surprise of the petitioner, he received an order, transferring him from Nanded to Primary Health Sub Center at Bhayegaon Tq. Degloor.

Learned Counsel submitted that the petitioner immediately approached the Chief Executive Officer, Zilla Parishad, Nanded and made a representation on 8th July, 2014 and prayed for cancellation of his transfer by stating cogent reasons therefor. Learned Counsel submitted that since his representation has not been decided, he has approached this court invoking writ jurisdiction.

6) Learned Counsel submitted that no one has yet been resumed on the post on which the petitioner is presently working. Learned Counsel submitted that the Respondent is not allowing the petitioner to sign the Muster roll and the petitioner has also not been paid his salary since June 2014. Learned Counsel submitted that the petitioner has been honestly discharging his duties on the existing post at Nanded. Learned Counsel, therefore, submitted that the petitioner is entitled to receive his salary from June 2014 till date and the impugned order of transfer needs to be quashed and set aside.

7) Dr. Kailas Shelke, Assistant District Health Officer, Zilla Parishad, Nanded, has filed an

affidavit in reply on behalf of Respondent, wherein the Respondent has denied the contentions raised and allegations made in the petition. Learned Counsel for respondent, referring to the averments raised in the reply, submitted that the petitioner has been transferred in regular course on administrative grounds and the petitioner has not made out any such ground to set aside the transfer order. It is further submitted that the petitioner has been already relieved from the earlier place, but he did not join at the transferred place and as such, his claim for salary, cannot be considered and the same is liable to be rejected. Learned Counsel prayed for dismissal of the writ petition.

8) We have carefully considered the submissions advanced on behalf of the respective parties. We have gone through the pleadings and documents placed on record.

9) The petitioner has placed on record a Government Resolution dated 15th May, 2014 and has also placed on record the Transfer policy in respect of Zilla Parishad employees, annexed to the said

Government Resolution.

10) Upon perusal of the said transfer policy, it is revealed that the method of counseling is newly introduced before effecting annual transfers. A comprehensive calendar is prepared, providing the stages for effecting transfers. The policy also reveals that the transfers are to be effected by counseling. A particular date is provided for such counseling. In the instant case, it is the specific contention of the petitioner that though on 19th May, 2015, which was the date fixed for such counseling, although the petitioner was present for counseling, he was not called for the counseling. The transfer policy document also reveals that the transfers are to be effected possibly on the same day on which counseling takes place. As has been stated on oath by the petitioner, some such transfers were declared on the day of counseling and the petitioner was, therefore, believing that he may not then be transferred and, therefore, he proceeded ahead for taking admissions for his children and has also paid the fees of coaching classes etc. In so far as contentions raised by the petitioner in this regard,

the reply of the Respondent is silent. Though a plea has been taken by the Respondent in his reply that the petitioner was relieved from the earlier place of posting, no copy of relieving order is filed on record. The Respondent has contended that the petitioner has not worked from the relieving date and, therefore, he cannot claim any salary. However, specific averment, which is made by the petitioner in the petition that he is regularly attending the duties but he is not allowed to sign the muster roll, has not been specifically dealt with. In Para 6 of the reply it is contended that the request application received from the petitioner, requesting for transferring him at any near place from Nanded, such as Primary Health Center Sonkhed, Tq. Loha or any other nearer place to Nanded, has been forwarded to the Divisional Commissioner, Aurangabad along with necessary recommendations on 12th January, 2015. It is further contended that the process for accommodating the petitioner at Primary Health Center at Mughat Tq. Mudkhed, is under consideration.

11) From the material placed on record, it is difficult to record any concrete conclusion as to

whether the petitioner is still working on his earlier post, from which he has been transferred, vide impugned transfer order. As noted earlier, the averment made on oath by the petitioner that he is still working but is not allowed to sign the muster roll, has not been specifically denied by the Respondent. This aspect, therefore, needs to be enquired into and factual position needs to be verified from record and this can only be done by the Respondent by deputing any of its higher official.

12) In so far as alleged transfer, vide order dated 21.6.2014 is concerned, we find that more than nine months have already elapsed. Moreover, we further find substance in the contention raised by the petitioner that no counseling had taken place before passing of said transfer order, when it was mandatory, after new transfer policy is brought into force. As has been submitted by the petitioner had the counseling taken place, perhaps, the petitioner could have put forth his difficulties/grievances in being transferred at far distance from Nanded. Moreover, when the Respondent is now sympathetically considering the request of the petitioner and has

made some positive recommendations to the Divisional Commissioner, the impugned order dated 21.6.2014 has practically become inoperative and redundant. The Learned Counsel appearing for the petitioner submitted that the petitioner is agreeable for his transfer for the next year i.e. 2015-2016, if his case is considered by adopting the procedure of counseling.

13) As is revealing from the affidavit in reply filed by Respondent, the request application made by the petitioner praying for his transfer at some near place from Nanded, is already under consideration. We trust and hope that appropriate decision in this regard would certainly be taken by the respondent, taking into account administrative exigency as well as the difficulties being faced by the petitioner. Thus, the only aspect which remains to be considered is, the claim of the present petitioner for salary for the period since June 2014 till date. We have already observed herein above that this may not be possible for this Court to record any conclusion since there are two different versions on record. However, this controversy can be resolved by

verifying the record whereupon appropriate decision can be taken by the Respondent. If the petitioner would have really worked on his earlier place, he cannot be deprived from wages for the services rendered by him.

14) In view of the discussion made herein above, since the process for accommodating the petitioner at Primary Health Center at Mughat, Tq. Mudkhed is under consideration, we see no hurdle in quashing and setting aside the impugned transfer order dated 21.6.2014 and accordingly it is set aside. Further, we direct Respondent to decide the claim of salary of the petitioner from June 2014 onward by verifying the relevant record and by carrying out necessary enquiry in factual aspects within eight weeks from the date of this order.

14) The petition stands disposed of in the aforesaid terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv

fldr 30.03.15