

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

WRIT PETITION NO. 7341 OF 2014

- 1] Santosh s/o Natha Gerange,
Age : 36 years, occu : Service as
Assistant Teacher in Zilla Parishad
Primary School, Walkeshwar, Tq. Ambad,
Dist. Jalna, R/o Nimbalak, Tq. Nagar,
Dist. Ahmednagar.
- 2] Kakasaheb s/o Sahebrao Pisote,
Age : 39 years, Occu : Service as
Assistant Teacher in Zilla Parishad
Primary School, Mahartakli,
Tq. Gevrai, Dist. Beed.
- 3] Rameshwar s/o Dada Jawale,
Age : 40 years, Occu : Service as
Assistant Teacher in Zilla Parishad
Primary School, Sasta Pimpalgaon,
Tq. Ambad, Dist. Jalna.
- 4] Santosh s/o Namdeo Narsale,
Age : 40 years, Occu : Service as
Assistant Teacher in Zilla Parishad
Primary School, Kawadgaon,
Tq. Ambad, Dist. Jalna.
- 5] Bhagwat s/o Sarjegao Pangare,
Age : 40 years, Occu : Service as
Assistant Teacher in Zilla Parishad
Primary School, Akhatwada,
Tq. Paithan, Dist. Aurangabad.
- 6] Udhav s/o Laxman Bade,
Age : 38 years, Occu : Service as
Assistant Teacher in Zilla Parishad
Primary School, Bangali Pimpla,
Tq. Gevrai, Dist. Beed.

Petitioner/s

Versus

- 1] The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2] The Deputy Director of Education
Pune Division,
Pune.
- 3] The Divisional Commissioner,
Nashik Division,
Nashik.
- 4] The Zilla Parishad, Ahmednagar,
Dist. Ahmednagar,
Through its Chief Executive Officer.
- 5] The Education Officer (Primary),
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar.

Respondent/s

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*Mr. N. V. Gaware, Advocate for the petitioner.
Mr. M. B. Bharaswadkar, AGP for Respondent Nos.1 to 3.
Mr. S. T. Shelke, Advocate for Respondent No.4 & 5.*

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

DATE OF RESERVING JUDGMENT : 14th October, 2015

**DATE OF PRONOUNCEMENT
OF JUDGMENT : 16th November, 2015**

JUDGMENT [PER A.M. BADAR, J]:

- 1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

By this petition, petitioners who are working as Primary

Teachers in the schools run by various Zilla Parishad are praying for declaration that clause No.4 of the corrigendum No. Naya/Pra-0512/Prakra-118/12/AStha-14, dated 18th October, 2012 issued by the State Government be declared as illegal and arbitrary and violative of Articles 14,16,19(1)(g) and 21 of the constitution of India. They are further praying for a writ of Mandamus or any other writ, order or direction directing respondent No.4 i.e. Zilla Parishad, Ahmednagar and its Education Officer to consider the proposal of the petitioners seeking inter-district transfer to Zilla Parishad,Ahmednagar, in accordance with Government Circular dated 29th September, 2011 and consequently for re-fixation of their seniority. Petitioners are also praying for restraining respondent - State Authorities from effecting inter-district transfer by applying clause 4 of the corrigendum dated 18.10.2012.

2] Shri Gaware, learned counsel for petitioners argued that petitioners are working as Primary Teachers with the Zilla Parishad, Jalna and Beed. After completion of more than 10 year service in the school run by those Zilla Parishads, way back in the year 2007, 2009 and 2010, petitioners submitted their proposal for inter-district transfer with the respondent No.4 and 5, i.e. Zilla Parishad, Ahmednagar. As per the requisite procedure, the Zilla Parishad, in which petitioners are presently working have already submitted No

objection for their inter-district transfer to Zilla Parishad, Ahmednagar. Duly completed proposals of the petitioners are still pending with the Zilla Parishad, Ahmednagar. Shri Gaware, learned counsel for the petitioner further submitted that as per the policy of the State Government the conditions of minimum 10 years service at a particular zilla parishad was prescribed for claiming benefit of inter-district transfer to another Zilla Parishad. As per the Government Circular dated 29th September, 2011 (Exhibit C) in submission of learned counsel for petitioners, respondent Zilla Parishad, Ahmednagar considered the application of petitioners and similarly situated primary teachers on principle of seniority and accordingly, a seniority list (Exhibit E) was prepared for absorbing the primary teachers enlisted in that list, in Zilla Parishad, Ahmednagar. According to Shri Gaware, learned counsel for the petitioners, petitioners were entitled for inter-district transfer to Zilla Parishad, Ahmednagar as per this seniority list. By pointing out the Government Circular dated 18th October, 2012 (Exhibit D), Shri Gaware, the learned counsel submitted that this corrigendum and particularly, Clause 4 thereof, is modifying Clause No.18 of the earlier Government Circular dated 29th September, 2011 (Exhibit C) to the prejudice of the petitioners. According to Shri Gaware, this clause 4 of corrigendum dated 18th October, 2012 provides that the employees in whose case condition of completion of 10 years

service has been relaxed prior to issuance of Government Circular dated 29th September 2011, are treated preferentially leading to the discrimination of the petitioners in the matter of inter-district transfers. The primary teachers, whose cases were considered and condition of 10 years minimum service for claiming inter-district transfer is relaxed would unduly be favoured by this clause No.4 of the corrigendum dated 18th October, 2012 (Exhibit D) and employee like petitioners, who had already completed 10 years qualifying service would have to wait until their turn.

3] Because of this corrigendum, as submitted by learned counsel for the petitioner, seniority list came to be re-shuffled and the petitioners were placed down at Sr. No. 518 to 532 though their proposals are pending from the year 2007 to 2010. This action on the part of the State authorities, as per the contention of the learned counsel for the petitioners, is illegal, arbitrary and violative of Articles 14,16, 19(1)(g) of the Constitution of India and, therefore, is liable to be struck down.

4] Shri Bharaswadkar, learned AGP, relying on reply affidavit opposed the petition by contending that the inter-district transfer of employees of the Zilla Parishad from Class II and IV cadres were earlier governed by the circular dated 20th March, 2007 (Exhibit R-1) which

provided for relaxation of condition of 10 years minimum service by the State Government, for Zilla Parishad employee for claiming inter-district transfer to another zilla Parishad. He further submitted that by circular dated 29th September, 2011 (Exhibit C) this circular as well as the circulars governing the field earlier, were superseded and new policy was framed by the State Government for inter-district transfer of the employees of the zilla parishads. Clause No.18 of that circular dated 29th September, 2011, adversely affected Zilla Parishad employees whose cases were considered by the State Government favourably and, therefore, they filed W.P. No. 3528 of 2012 contending that the benefit of relaxation of condition, which was already granted to them earlier, was withdrawn by circular dated 29th September, 2011. In submission of learned AGP, considering this situation, the corrigendum dated 18th October, 2012 came to be issued by the State Government, and relying on the said corrigendum, the writ petition filed by the employees of the Zilla parishad, challenging the Government Circular dated 29th September, 2011 came to be disposed of. As such, in his submission, the corrigendum was issued in order to protect the cases of the Zilla Parishad employees which were favourably considered as per the earlier policy envisaged in Government Circular dated 20th March, 2007 (Exhibit R-1).

5 relying on reply affidavit reiterated similar stand of the Zilla Parishad, Ahmednagar and contended that the corrigendum came to be issued by the State Government which is being acted by the Zilla Parishad, Ahmednagar.

6] With the assistance of the learned counsel appearing for the parties, we have carefully perused the memo of petition as well as annexures thereto, reply affidavits as well as documents relied upon by respondents.

7] It is seen that after completion of 10 years service with Zilla Parishads where petitioners were appointed, they submitted applications for inter-district transfer accompanied by no objection certificate from the Zilla Parishad, where they were working to the Zilla Parishad, Ahmednagar and sought for inter-district transfer to the Zilla Parishad, Ahmednagar. Accordingly, a seniority list Exhibit E of such employees came to be prepared by the Zilla Parishad in pursuance to the Government Circular dated 29th September, 2011. However, subsequently, the State Government has issued corrigendum on 18th October, 2012 thereby deleting sub-para 18 of the Government Circular dated 29th September, 2011, which prescribed new policy for inter-district transfer of the Zilla Parishad employees in the State, after superseding all earlier circulars. In such situation, it will be necessary

to examine, what was the earlier policy and what is new policy and whether the State Government has indulged in violation of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India, by discriminating petitioners whose claim for inter-district transfer on completion of 10 years was pending.

8] Government circular dated 20th March, 2007 (Exhibit R-1) relied upon by the learned AGP shows that prior to bringing in vogue the new policy of inter-district transfer of zilla Parishad employees this subject was governed by circular dated 20th March, 2007. Careful perusal of this circular dated 20th March, 2007 shows that the State Government had prescribed that an employee of the Zilla Parishad can claim inter-district transfer to another Zilla Parishad only on completion of 10 years service in the Zilla Parishad, where he is working. This Government Circular dated 20th March, 2007 has considered the emergent situations, such as serious ailment, helpless situation of zilla parishad employees, difficulties of unmarried, widows and destitute women and prescribed that in such exceptional situation, the State Government shall have powers to relax the condition of minimum 10 years service in parent zilla parishad for seeking inter-district transfer.

9] Thus, as per the policy prescribed by this circular dated 20th March, 2007, in exceptional situations enumerated therein, an employee of the Zilla Parishad was eligible to apply to the State Government for relaxing the condition of 10 years service in Zilla Parishad for seeking inter-district transfer to another zilla Parishad. It is not the case of petitioners that their cases are falling under emergent situation contemplated by Government Circular dated 20th March, 2007 and that they had applied in pursuance to this circular for claiming relaxation of minimum length of service. Rather, they are from regular category of employees who made application for inter-district transfer on completion of usual service of 10 years in their parent Zilla Parishad.

10] This Government Circular dated 20th March, 2007 (Exhibit R-1) came to be superseded by subsequent Government Circular dated 29th September, 2011 (Exhibit C). The State Government after re-examining the issue of inter-district transfer of Zilla Parishad employees superseded earlier circular dated 20th March, 2007 and prescribed new policy vide this Circular dated 29th September, 2011. Clause No.18 of this Circular prescribing new policy, is to the effect that all applications pending with the Government for inter-district transfers are deemed to have been disposed of and no new application will be accepted at Government level. It further mentioned that the

orders earlier issued by the Government for inter-district transfers of Zilla Parishad employees by relaxing condition of length of 10 years service should be implemented as per the terms and conditions of that order. Suffice it to mention that, State Government has considered the aspect that applications regarding relaxation of condition of 10 years service due to exceptional situation decided favourably by it, should be given effect and action should be taken as per those orders irrespective of the new policy.

11] However, it appears from the stand taken by the State Authorities that some of the Zilla Parishad employees in whose cases condition of completion of 10 years service was relaxed by the State prior to issuance of circular dated 29th September, 2011 and particularly, as per the provisions of Government Circular dated 20th March, 2007 preferred a writ petition bearing no. 3528 of 2012, contending that the deeming provision of disposal of all pending proposals on 1st May of the year, is offending the guarantee of equality enshrined in Article 14 of the Constitution of India. Parties have not placed on record either the memo of that petition or the orders passed by this court in the said matter. However, it appears that such employees in whose favour condition of 10 years service was relaxed prior to issuance of circular dated 29th September 2011 had preferred the said petition, challenging the Government Circular dated 29th

September, 2011 as clause No.7 of the said Government Circular is prescribing the time frame for considering the cases of inter-district transfers and sub-clause(c) thereof is containing a deeming provision of disposing of all pending proposals on 1st May, of the concerned year. Therefore, it seems that by way of abundant precaution, the State Government has protected the rights of such employees vested in them because of orders of State Government in relaxing the condition of 10 years continuous service prior to issuance of Government Circular dated 29th September, 2011. The effect of corrigendum dated 18th October, 2012 (Exhibit D) is only to protect cases of Zilla Parishad employees whose cases were considered by the State Government in terms of the Government Circular dated 20th March, 2007 (Exhibit R-1) prior to issuance of Government Circular dated 29th September, 2011 and in whose favour condition of 10 years continuous service in parent Zilla Parishad was relaxed prior to issuance of Government Circular dated 29th September, 2011.

12] The true meaning and effect of corrigendum issued on 18th October, 2012 (Exhibit D) is to give preference to the Zilla Parishad employees in whose cases the condition of 10 years service has been relaxed by the State Government, prior to bringing in force the new policy of inter-district transfer of zilla Parishad employees prescribed by Government Circular dated 29th September, 2011 (Exhibit C). The

corrigendum dated 18th October, 2012 makes it clear that the separate seniority list of such employees in whose cases condition of 10 yrs service for inter-district transfer was relaxed prior to issuance of Government Circular dated 29th September, 2011 be prepared and their inter-district transfers be effected first. Thus, the rights vested in such employees as per the old policy reflected in Government Circular dated 20th March, 2007 (Exhibit R-1) were only protected by the State Government by issuing circular in the nature of corrigendum dated 18th October, 2012. It is now well established that while Article 14 of the Constitution forbids class legislation, it does not forbid reasonable classification. In order to pass the test of permissible classification, two conditions must be fulfilled. Those are :-

[a] the classification must be founded on intelligible differentia which distinguish' persons or things that are grouped together from the others left out of the group and

[b] the differentia must have a rational relation with the object sought to be achieved.

13] Testing on this touch-stone, we find that the State Government has not made discrimination against the employee of Zilla Parishad by issuing circular dated 18th October, 2012 (Exhibit D) which is in the nature of corrigendum, to earlier Government Circular dated 29th September, 2011 (Exhibit C). The State Government has only

protected the rights which were created in favour such Zilla Parishad employees in whose cases, the condition of minimum 10 years continuous service was relaxed prior to issuance of Government Circular dated 29th September, 2011.

14] As such, the petition is devoid of substance and, therefore, the same is dismissed. Rule is discharged. No costs.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-