

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

WRIT PETITION NO.7761 OF 2014

- 1) Smt.Jayashree Namdeo Thaware
and others - PETITIONERS

VERSUS

- 1) The State of Maharashtra & Ors. - RESPONDENTS

Mr.Narendra D.Sonawane, Advocate for Petitioner;
Mr.VH Dighe,AGP for Respondent Nos. 1 to 3;
Mr.PS Pawar, Advocate for Respondent No.4.

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

DATE : 7th April,2015.

PER COURT:

1) Heard Learned Counsel appearing for the petitioners. He submits that the transfer orders, impugned in this petition, are questioned mainly on two grounds, - i) the transfer orders have been passed out of victimization; and ii) they are in violation of sub-rule (1) of Rule 41 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short,

the said Rules).

. The learned Counsel further submits that the petitioners and other employees have filed various complaints against the respondent/management, and out of grudge and victimization, the respondent/management transferred the petitioners from one school to another to harass the petitioners. The learned Counsel further submits that on plain reading of Rule 41 of the said Rules, in the light of authoriatative pronouncements of this Court in the case of Pawar Bhagwantrao Bhivrao Vs. Swami Vivekanand Shikshan Sanstha and Ors. - 2011 (Supp.) Bom.C.R. 775 and in particular paragraph 4 thereof, it is clear that while invoking Rule 41, three situations are contemplated as exceptions to the general rule for transfer, viz. i) when the transfer become necessary on administrative grounds; ii) when employees being promoted; and iii) when the employee himself requests for transfer. According to learned Counsel for the petitioners, none of the situations/circumstances,

as contemplated in Rule 41 of the said Rules, were available to the respondent/management to make transfers of the petitioners from one school to another. Further, the impugned order of transfer is silent as to whether the said transfer is effected on administrative grounds or otherwise. Therefore, according to counsel for the petitioners, this petition deserves to be allowed and same may be allowed.

2) Learned AGP appearing for the State, invited our attention to affidavit in reply filed on behalf of Respondent Nos.1 and 2; as also learned Counsel appearing for Respondent Nos. 4 and 5, invited our attention to the reply filed on their behalf and submit that the petition is devoid of substance and same deserves to be dismissed.

3) We have given careful consideration to the submissions advanced by learned Counsel for the respective parties. We have also perused the grounds raised in the petition; annexures

thereto; the provision contained in Rule 41(1) of the said Rules and the judgment of this Court in the case of Pawar Bhagwantrao Bhivrao (cited supra); and we are of the opinion that, there is nothing to indicate that the impugned transfer orders were passed either as a result of victimization or they are contrary to the provisions contained in sub-rule (1) of Rule 41 of the said Rules. Upon reading the contents of the transfer orders, it appears that the transfer orders are issued on administrative grounds, though the same ground is not specifically mentioned. In our opinion, the contention of counsel appearing for the petitioners that the transfer orders should mention whether it is made on administrative ground or otherwise, cannot be accepted. Transfer is an incidence of service. It is not the case of the petitioners that the petitioners were appointed on a condition that they will not be transferred from one place to another. The judgment, relied upon by the counsel for the petitioners, in the case of Pawar.

Bhagwantrao Bhivrao (supra) is only helpful to find out the scope of rule 41(1) of the said Rules, while taking decision of transfer. In our opinion, the transfer orders do not appear to be passed as a result of victimization or contrary to the provisions of Rule 41(1) of the said Rules. In that view of the matter, we are not inclined to exercise extra-ordinary writ jurisdiction to interfere in the transfer orders. The petition sans merits and hence rejected.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/