

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3651/2014.

Akhil Gondia District Primary Teachers Association, Dhakni.

-VERSUS-

The State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI
& P.N. DESHMUKH, JJ.**

DATE : SEPTEMBER 04, 2015.

Heard Smt. Neeta Jog, learned counsel for the petitioner, Mrs. B.H. Dangre, learned G.P. for respondent no.1 and Shri A.Y. Kapgate, learned counsel for the respondent no.2.

2. The Association of primary teachers in Gondia District is before this Court with a grievance that the provisions for loss of seniority in case of inter-district transfer made vide Rule 6[8][iii] of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 is un-conscionable and arbitrary.

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3. She states that normally the services in rural area and in exceptional circumstances, considering the situation of an incumbent, transfer is permitted to other Zilla Parishad. Hence, asking him to forgo his seniority is too harsh and violative of Article 14 of the Constitution of India.

4. Learned Government Pleader as also Shri Kapgate, learned counsel submit that employment is always with a particular Zilla Parishad and hence, in exceptional circumstances, provision has been made to allow the change in employer. It is not a condition of service, as such, rules contemplate that such person choosing new employer must be accommodated against a vacancy to be filled in by direct recruitment and he cannot be accommodated against a promotional vacancy. As he is absorbed against direct vacancy, his seniority in new Zilla Parishad is rightly computed from the date on which he joins new employment as a direct recruit. It is further urged that as this is a concession provided to the employees, the employees have to make a conscious decision keeping in mind the legal provision. If the circumstances are so pressing so as to prefer loss of

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seniority, then only they have to opt for transfer to another district. They therefore, submit that the unequal treatment or un-conscionable, arbitrary provision, as pressed into service is really not in existence. According to them, it is an informed choice to be made by every employee in exceptional circumstances and hence, Article 14 cannot have any application.

5. During arguments, our attention has also been invited to the provisions of Rule 6[8][ii], to urge that if such transfer is mutual, the incumbent is permitted to retain his original seniority i.e. his seniority with his former employer or then to opt for seniority of the person who goes out of that Zilla Parishad. It is submitted, that when such an arrangement has been made, the treatment given to a person who goes on unilateral request vide clause 6] [8][iii] is hostile.

6. Learned Government Pleader and Shri Kapgate, learned counsel state that in case of mutual transfer because one employee is going out of Zilla Parishad, an option has been given to person coming in, and the said option does not militate with the

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purpose of the scheme not to disturb the seniority of employees working in the Zilla Parishad, where such new person joins.

7. We find that contentions based upon alleged inconsistency, interse between Rules 6[8][ii] and 6[8][iii] are not been expressly pleaded. Moreover, the State Government appears to have conferred a concession upon the Zilla Parishad employees, while the arguments show that the petitioner seeks to assail a policy decision.

8. As petitioner is an Association and indirectly there is a challenge to the Scheme of Rule 6[8], with express prayer to quash and set aside Rule 6[8][iii], we grant petitioners leave to move appropriate representation to the State Government for ventilation of their grievances.

9. If a comprehensive representation is moved within a period of four weeks from today, the State Government shall examine it in accordance with law, within next four months. Keeping all rival contentions open and with above directions, we dispose of the Writ Petition. No costs.

JUDGE

JUDGE

Rgd.