

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5650 OF 2014

(Veena w/o Sahebrao Lawhale vs. The State of Maharashtra thr. its Secretary, Urban Development,
Department & Ors.)

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 &
A.P. BHANGALE, JJ.
FEBRUARY 16, 2015.**

Heard Shri Gaikwad, learned counsel for the petitioner, Shri Kale, learned AGP for respondent No. 1 and Shri Shingane, Advocate for respondent Nos. 2, 3 & 4.

The transfer order of the petitioner from Rahatgaon School to School at Jewad dated 26.08.2014 was implemented and she joined at Jewad. On 07.10.2014, as per orders of Municipal Commissioner dated 25.09.2014, three such transfer orders have been cancelled. The petitioner's order is one of them. The petitioner was, therefore, supposed to join back at Rohatgaon.

She approached this Court on 17.10.2014 and this Court granted status quo, however, since then the petitioner has not been permitted to join at Jewad.

Shri Gaikwad, learned counsel submits that only because the transfer order was issued by the Deputy Municipal Commissioner, it could not have been

cancelled by the Municipal Commissioner.

Shri Shingane, learned counsel submits that as per law, the Municipal Commissioner is the Principal Executive Officer and hence he has to issue transfer orders. As the transfer order was not issued by him or without his consultation, it has been rightly cancelled.

The learned AGP supports the arguments of Shri Shingane, learned counsel.

There are no allegations of malafides by the petitioner against any officer. Similarly, the respondents also have not alleged any malafides against the petitioner. The petitioner obeyed transfer order and joined at Jewad. The said order stood cancelled on account of administrative difficulties mentioned supra, after about two months. The petitioner is not party for the administrative difficulties. She, therefore, cannot be blamed in this respect.

The Municipal Commissioner while cancelling the transfer order has not assigned any reason. He has not found that the Deputy Municipal Commissioner has gone out of way to accommodate the petitioner at a particular place. In the absence of such a finding, effort by the Municipal Commissioner ought to have been to find out first whether the said transfer order could have been ratified or approved. Merely because it is issued by a subordinate, after its execution, it ought not to have been cancelled.

We, therefore, direct Respondent Nos. 2, 3 & 4 to allow the petitioner to join back at Jewad and to

allow her to work there as before.

The Municipal Commissioner shall extend an opportunity of hearing to the petitioner and then take proper decision whether to transfer the petitioner or otherwise. As the petitioner cannot be blamed for transfer order or its cancellation, period during which she was not working anywhere shall be regularized by the Municipal Commissioner by taking sympathetic view in accordance with law. The displacement of the petitioner, if it is necessary, shall be considered while effecting regular transfers in the month of April-May 2015.

With these directions, we partly allow and dispose of the petition. No order as to costs.

JUDGE

JUDGE

*GS.