

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.154 OF 2015

Sidharth Shripati Ohal,
Age-50 years, Occu-Service,
R/o 193, Sahyognagar,
Nanded, Dist.Nanded

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
2. The State of Maharashtra
Through its Secretary,
School and Sports Department,
Mantralaya, Mumbai-32,
3. The Divisional Commissioner,
Aurangabad Region, Aurangabad,
4. The Zilla Parishad, Nanded,
Through its Chief Executive Officer
5. Renukadas s/o Narayan Dhanorkar,
Age-44 years, Occu-Service,
R/o Superintendent,
Education Department,
Z.P.Nanded.
6. Gajanan Shivajirao Levekar,
Age-45 years, Occu-Service as
Superintended Panchayat Samiti,
Ardhapur, Tq.Ardhapur,
Dist.Nanded

-- RESPONDENTS

Ms.P.S.Talekar h/f Mr.S.B.Talekar, Advocate for the petitioner.
Mr.S.P.Sonpawale, AGP for respondent Nos. 1 to 3.
Mrs.Y.M.Kshirsagar, Advocate for respondent No.4.

Mr.S.R.Choukidar, Advocate for respondent No.5.
Mr.S.S.Gangakhedkar, Advocate for respondent No.6.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 24/11/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have considered the submissions of the learned Advocates for the respective sides at length. Considering the order that I intend to pass, I am not required to advert to their entire submissions.

3. There is no dispute that the petitioner was due for transfer in 2014 as per rules. It is equally undisputed that the petitioner had exercised an option within the rules for being transferred to Ardhapur.

4. While considering the submissions of the learned Advocates on 10/02/2015, I had recorded the contentions of the litigating sides as under :-

“1. Shri Panpatte, learned Advocate appears on behalf of respondent No.4 and prays for time to file an affidavit-in-reply.

2. *Issue notice before admission to the respondents, returnable on 11.3.2015. Learned AGP waives service for respondent Nos.1 to 3. Shri Panpatte, learned Advocate waives for respondent No.4. Hamdast granted for respondent No.5.*

4. *The contentions of Shri Talekar are summarized as follows:-*

(a) The State of Maharashtra in relation to the Zilla Parishads has issued guidelines, dated 15.5.2014, as regards the procedure to be followed for transferring Group "C" and "D" employees of the Zilla Parishad within the district of the Zilla Parishad.

(b) Clause 6 at page No.37 and Clause 4(c)(3) & (5) on page 45 of the petition paper book are mandates which have not been complied with by the respondents while issuing the impugned transfer order dated 18.5.2014.

(c) Clause 4(c)(8) appearing on page 46 indicates that there ought to be a video recording of the counselling sessions, which has been done and respondent No.4 is in possession of such recordings.

(d) Respondent No.5 had not even appeared for the counselling and the video recording indicates the same. Yet, respondent No.5 has been transferred to Ardhapur, which was a preference expressed by the petitioner.

(e) The vacancy position chart dated 16.5.2014, at page 68, indicates one vacancy at Panchayat Samiti, Ardhapur and no vacancy at Panchayat Samiti, Mahur.

(f) The petitioner had declared his option, in writing, for being transferred to Panchayat Samiti, Ardhapur in the counselling session, which is at page 57.

(g) Page 58 is a transfer order, dated 18.5.2014 which was prepared so as to transfer the petitioner to Ardhapur, but has not been issued and does not bear the signature of the Chief Executive Officer, Zilla Parishad, Nanded.

(h) Page 59 is the report of the counselling session, dated 18.5.2014 virtually accepting the request of the petitioner, but transferring him to Panchayat Samiti, Mahur against the option exercised and when there was no vacancy at Mahur.

(i) Page 78 is the order passed by the fourth respondent, dated 9.7.2014, staying the transfer of the petitioner until further orders.

(j) The petitioner preferred an appeal before the Competent Authority, which delivered the impugned order dated 20.11.2014, rejecting the appeal, despite accepting the contentions of the petitioner.

5. In the light of the above, respondent No.4 is directed to make a

statement on oath as regards the events that have transpired during the counselling session and produce the Compact Disc (CD) with regard to the same, with copies to the other sides. Similarly, respondent No.4 shall file an affidavit in reply in the light of the specific contentions set out by the petitioner in the petition and which have been recorded herein above in this order.”

5. The issue, therefore, is limited as to whether the petitioner had given his consent for being transferred to Mahur. There is no dispute on this count that according to the government's rules and regulations applicable, the petitioner has exercised the preference for Ardhapur, which was accepted. The second paragraph of the impugned order of the Divisional Commissioner dated 20/11/2014, by which the appeal filed by the petitioner has been rejected, indicates that in the counselling session, which was recorded vide videography, it is seen that the vacancy at Mahur was not indicated on the video screen and considering the same, the option to be transferred to Ardhapur expressed by the petitioner was accepted. However, while issuing the impugned transfer order, by which the petitioner was transferred to Mahur, the petitioner was kept in the dark and it was beyond his knowledge as to why he was transferred to Mahur.

6. The Government Resolution dated 15/05/2014 which introduced the procedure and the conditions for transfer, clearly indicates in Chapter II under the title of Intra District Transfers vide clause 4(k)(3) that the available vacancies should be brought to the notice of those employees who are liable/due to be transferred, at least 2 days prior to the counselling session. Clause 4(k)(5) thereunder mandates that once the employee expresses an option which is accepted in the counselling session, his signature should be obtained on the documentation and accordingly he would be subjected to transfer to that particular post. Clause 8 thereunder mandates recording of counselling session by videography.

7. It is thus undisputed that the counselling session took place, same was recorded through videography and the option exercised by the petitioner to be transferred to Ardhapur was accepted.

8. The subsequent developments that have occurred cannot be overlooked. Vide order dated 16/10/2015, the petitioner, who had joined at Mahur, which is the place of transfer under challenge, was brought back to the establishment at Nanded. He is accordingly working at the said place pursuant to the said order. The order of the C.E.O., Zilla Parishad, Nanded dated 12/10/2015 indicates the

name of the petitioner at Sr.No.3 by virtue of which he was transferred from the Panchayat Samiti, Mahur to the Health Department, Zilla Parishad, Nanded. Since then, he has been working at Nanded for the past about 14 months.

9. It is informed that the transfer procedure begins sometime in the month of April/May and those employees who are due to be transferred under the rules are called upon to express their options. The procedure as is laid down under the GR dated 15/05/2014 is scrupulously followed.

10. In this backdrop, it is apparent that the impugned transfer order dated 20/06/2014 is rendered unsustainable. The petitioner has already been brought back to Nanded since October 2015. The impugned order being unsustainable in the light of the rules and policies of the respondents, therefore needs to be set aside. However, the petitioner cannot be insulated against transfers since he is due to be transferred, provided the rules and the procedure is followed.

11. It is stated that clause 3(kh) under Chapter I Zilla Parishad Employees Transfer Policy under the GR dated 15/05/2014 creates a restriction on the transfer of an employee who is likely to complete 53

years of age on or before 31st day of May. It is further stated that the petitioner herein is likely to gain benefit of the said clause. I do not have to deal with the said issue since the respondents / State Authorities and the Zilla Parishad are aware of the policies set out in the GR dated 15/05/2014 and they can take a decision in this context.

12. In the light of the above, this petition is partly allowed. The impugned order of transfer dated 20/06/2014 is quashed and set aside. So also, the order dated 20/11/2014 upholding the transfer is also quashed and set aside. The respondent Authorities shall maintain status-quo as existing today till the next phase of transfers and in the event the petitioner is due for transfer, the respondent/ authorities would consider the same strictly in accordance with their rules and the GR dated 15/05/2014. Needless to state, in the event of any unpaid wages of the petitioner during the pendency of these proceedings, the Zilla Parishad shall accordingly ensure that the unpaid wages are paid.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)