

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

WRIT PETITION NO.6743 OF 2016

Mrs. Farzana Begum Pathan
Age: 42 years, Occu: Service
R/o : Opp. Sami Bakery, Azam Colony,
Roshan Gate, Aurangabad. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Secretary,
Education Department,
Maharashtra State, Mantralaya
Mumbai-32.
2. The Education Officer (Primary)
Zilla Parishad, Aurangabad
3. Anjuman Ishaat-E-Taleem Trust,
Through its Secretary
Gulam Mohamad Akhtar
Age 54 yrs, Occu.Business,
R/o. National Colony
Opp. Azad Colony, Rauze Bagh,
Aurangabad.
4. The Head Mistress,
Ziaul Uloom Boys Primary School,
Town Hall, Aurangabad **RESPONDENTS**

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Mr.N.V.Gaware,Advocate for the petitioner
Mr.A.G.Magre, AGP for Respondent – State
Mr.V.D.Salunke, advocate h/f. Mr.S.S.Kazi,
Advocate for respondent no.3.

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

Date: 28.07.2016.

ORDER: (Per S.S.Shinde, J.):

1. Heard.

2. This Petition takes exception to the impugned transfer order dated 14.06.2016 bearing Outward No.1175 (vi)/AIT/2016 issued by respondent no.3.

3. The learned counsel appearing for the petitioner submits that the President of respondent no.3 – trust has indulged into various illegalities and thus has mismanaged the affairs of the trust. There is illegal demand of money by respondent no.3 from the petitioner. The petitioner and her husband on 10th June, 2008, submitted an affidavit, duly sworn before the Joint Charity Commissioner, Aurangabad in Enquiry No.23/2008, filed under Section 41-D of the Maharashtra Public Trusts

Act against the office bearers of respondent no.3 trust including the President of the said trust. It is submitted that in case the illegal demand of the President is not fulfilled, in past transfers of such employees have been effected by respondent no.3. The petitioner was transferred from Aurangabad to Urdu Primary School, Paithan on administrative ground in the year 2011. The said transfer was nothing but *mala fide* and colourable exercise of powers under the garb of administrative ground. The petitioner filed a Writ Petition, challenging the said transfer order, however, the said Writ Petition was disposed of by the High Court, observing that after the petitioner completes tenure of 2 years at Paithan, the petitioner would make an application for her transfer back to the Aurangabad.

4. It is further submitted that the impugned transfer order is not on the

administrative ground, but *mala fide* exercise of power of the President of respondent no.3. The learned counsel for the petitioner also invited our attention to the fact that many employees, who have served for number of years at Aurangabad are not transferred, but the petitioner, who is not due for transfer, is transferred from Aurangabad to Paithan. Therefore, he submits that the Petition may be allowed.

5. On the other hand, the learned counsel appearing for the respondents relying upon the averments in the affidavit-in-reply submits that the petitioner is of complaining nature. The petitioner's husband was in service of the Institution, now he retired from the services. However, he is in political field and particularly member of rival group of Dr. Abdul Gafar Quadri, who is the President of the respondent trust, and therefore, since beginning the petitioner and

her husband made false allegation of harassment and demand of money. The transfer is purely on administrative ground. The petitioner has served at Aurangabad for period of 8 years till the year 2007 and thereafter she was transferred from Aurangabad to Paithan. The petitioner's transfer is after two and half years service at Aurangabad, therefore, the learned counsel appearing for the respondent management submits that the Petition may be rejected.

6. We have heard the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent – State and the learned counsel appearing for the respective respondents. With their able assistance, perused the pleadings in the petition, grounds taken therein, annexures thereto, reply filed by the respondents and the rejoinder filed by the petitioner. Upon perusal of the contents of the order of

transfer, it is mentioned that the same is on administrative ground. In the case of Sayada Mumtaz Jahan Sayad Ahteshmuddin Vs. Talat Shikshan Mandal, Aurangabad¹, while interpreting the provisions of Rule 41 (1) and (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the Division Bench of the Bombay High Court, Bench at Aurangabad, has taken a view that the management cannot transfer the employee except on the administrative ground. However, such transfer should not be effected in the middle of the term unless there is an exceptional case for such mid-term transfer. Rule 41 enables the management conducting more than one School to transfer any of its employees from one school to another only on administrative ground.

7. There is no denial to the assertion of the respondent management that the

¹ 2016 [4] Mh.L.J. 511

petitioner was retained at Aurangabad for about 7-8 years till the year 2007. Before the impugned transfer order is passed, the petitioner has served at Aurangabad for two and half years and now the petitioner is transferred at Paithan.

8. In that view of the matter, we are not inclined to entertain this Writ Petition, hence the Writ Petition stands rejected.

Sd/-

[P . R . B O R A]
JUDGE

Sd/-

[S . S . S H I N D E]
JUDGE