

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 7770 OF 2015****SARIKA MADHUKAR JAMBHAIKAR****VERSUS****THE CHIEF EXECUTIVE OFFICER AND OTHERS**

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Advocate for Petitioner : Mr. Irale Patil D.R.

Advocate for Respondent Nos. 1 and 2 : Mr. Patil Bankar Deelip N.

Advocate for Respondent No.3 : Mr. Deshmukh Bhausaheb S.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.**Dated: February 09, 2016**

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PER COURT :-

This Petition takes exception to the order No. ZPA/EDN/PRI-23/2015-1514-721 dated 21.07.2015 issued by the C.E.O., Zilla Parishad, Aurangabad.

2. The learned counsel appearing for the petitioner invited our attention to the letter written by the Chief Executive Officer, Zilla Parishad, Aurangabad, to the Chief Executive Officer, Zilla Parishad, Jalna and submits that, as a matter of fact, by the said letter the consent was given by the Zilla Parishad, Aurangabad, to accommodate the petitioner by way of absorption by Intra-district transfer of the petitioner from Jalna Zilla Parishad under Zilla

Parishad, Aurangabad. He further invited our attention to the order passed by the Chief Executive Officer, Zilla Parishad, Jalna on 17th May, 2014, by which the petitioner was relieved from the services of the Zilla Parishad, Jalna so as to join in Zilla Parishad, Aurangabad by Intra-district transfer. It is submitted that, after the petitioner was relieved from the services of the Zilla Parishad, Jalna, in pursuant to the order dated 17th May, 2014, passed by the Chief Executive Officer, Zilla Parishad, Jalna, as a matter of fact the petitioner went to the Zilla Parishad Office, Aurangabad, and joined the services in Zilla Parishad, Aurangabad. It is submitted that, by the impugned communication/order, now the petitioner is asked to join at Zilla Parishad, Jalna, and it is observed in the said order that, as and when in future as per the seniority, whenever turn of the petitioner will come, the petitioner can be absorbed in the Zilla Parishad, Aurangabad, and such necessary steps will be taken.

According to the learned counsel appearing for the petitioner, since the petitioner is already relieved from the Zilla Parishad, Jalna, and joined in Zilla Parishad,

Aurangabad. Therefore, by the impugned order such a situation is created about the status of the petitioner as assistant teacher that, she is shown neither serving in Zilla Parishad Aurangabad nor in Zilla Parishad, Jalna. It is submitted that, now Zilla Parishad, Jalna may not allow the petitioner to join in Zilla Parishad, Jalna, since already she has been relieved by the Chief Executive Officer, Zilla Parishad, Jalna by order dated 17th May, 2014. It is submitted that, while issuing notices, this Court by way of ad-interim stay has stayed the impugned order. Therefore, relying upon the pleadings in the Petition, annexures thereto and various documents placed on record, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

3. On the other hand, the learned counsel appearing for the Zilla Parishad, Aurangabad invited our attention to the contents of the letter dated 31.12.2013, written by the Chief Executive Officer, Zilla Parishad, Aurangabad to the Chief Executive Officer, Zilla Parishad, Jalna, and submits that, while granting consent for intra-district transfer of the petitioner from Zilla Parishad, Jalna

to the Zilla Parishad, Aurangabad, it was made clear in the said letter that, as per the seniority, the petitioner stands at Sr. No.149 in general category and at Sr. No. 46 from open category. It is submitted that, without verifying at what serial number the petitioner stands and as per seniority whether her turn has come for absorption in Zilla Parishad, Aurangabad under intra-district transfer policy, unilaterally Zilla Parishad, Jalna has relieved the petitioner on 17th May, 2014. It is submitted that, the petitioner was never allowed to join in Zilla Parishad, Aurangabad. It is only petitioner's application addressed to the concerned authority requesting therein for allowing to join the services in Zilla Parishad, Aurangabad was accepted in Inward section of the Zilla Parishad, Aurangabad. However, there is no order by the Authorities allowing the petitioner to join as assistant teacher in the services of the Zilla Parishad, Aurangabad. Therefore, the learned counsel appearing for the Respondent Nos. 1 and 2 submits that, the Petition may be rejected.

4. The learned counsel appearing for the Respondent No.3 - Zilla Parishad, Jalna submits that, the petitioner insisted for relieving her from the services of the

Zilla Parishad, Jalna, and to that effect the request was made by her and accordingly, the petitioner was relieved from the services of the Zilla Parishad, Jalna. Therefore, the Respondent - Zilla Parishad, Jalna is not responsible for the inaction on the part of the Zilla Parishad, Aurangabad thereby not allowing the petitioner to join the services as assistant teacher.

5. We have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the Respondent Nos.1 and 2 and the learned counsel appearing for the Respondent No.3. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein and annexures and replies filed by the respective respondents.

6. Upon careful perusal of the letter dated 31st December, 2013, addressed by the Chief Executive Officer, Zilla Parishad, Aurangabad, to the Chief Executive Officer, Zilla Parishad, Jalna, it is abundantly clear that, the petitioner, in the list of desirous candidate for the intra-district transfer as per the seniority, stood at Sr. No.149 in

general list and at Sr. No. 46 in the open category. Therefore, the communication by the Zilla Parishad, Aurangabad to Zilla Parishad, Jalna, to accede to the request of the petitioner for intra-district transfer from Zilla Parishad, Jalna to Zilla Parishad, Aurangabad, was subject to following seniority list and status of the petitioner in the said seniority list. It appears that, Zilla Parishad, Jalna without verifying the status and serial number of the petitioner in the seniority list on 17th May, 2014, relieved the petitioner from the services of the Zilla Parishad, Jalna so as to enable her to join the services in Zilla Parishad, Aurangabad. Though the learned counsel appearing for the petitioner submits that, the petitioner filed application in Zilla Parishad, Aurangabad, for allowing her to join at Aurangabad on 17.06.2014, nothing is brought to the notice of this Court that, the Competent Authority in Zilla Parishad, Aurangabad, allowed the petitioner to join the services under Zilla Parishad, Aurangabad. On the contrary more than five applications have been filed by the petitioner to allow the petitioner requesting authorities in Zilla Parishad, Aurangabad to join the services under Zilla Parishad, Aurangabad.

7. Upon careful perusal of the reasons assigned in the impugned communication by the Chief Executive Officer, Zilla Parishad, Aurangabad, to the Chief Executive Officer, Zilla Parishad, Jalna, it appears that, from 1st April, 2013, no posting is given to any employee under couple arrangement by intra-district transfer. It is also stated that, if the petitioner is allowed to join services in the Zilla Parishad, Aurangabad, the said act may cause injustice to other senior teachers, who are shown senior in the seniority list maintained by the Zilla Parishad, Aurangabad. With the said reasons the Zilla Parishad, Jalna is asked to allow the petitioner to join the services in Zilla Parishad, Jalna and with further assurance that, in future as per the seniority, the petitioner will be absorbed in the services of the Zilla Parishad, Aurangabad on priority basis as per the seniority.

8. In the first place, while passing the order dated 17th May, 2014, the Chief Executive Officer, Zilla Parishad, Jalna, ought to have kept in view the seniority list maintained by the Zilla Parishad, Aurangabad, of the employees, who have applied for intra-district transfer, and

after verifying the seniority of the petitioner in the said list ought to have passed the said order. However, it appears that, without verifying the seniority list, unilateral action has been taken by the Chief Executive Officer, Zilla Parishad, Jalna relieving the petitioner from the services of Zilla Parishad, Jalna. However, during the pendency of this Petition, it appears that, by way of ad-interim stay, the effect of the impugned order passed by the Chief Executive Officer, Zilla Parishad, Aurangabad was stayed. It further appears that, the petitioner filed more than five to six applications to the Zilla Parishad, Aurangabad, however, for about one year, Zilla Parishad, Aurangabad did not communicate anything to the petitioner, and on 21st July, 2015, by the impugned communication asked the Chief Executive Officer, Zilla Parishad, Jalna, to take the petitioner back in the services of the Zilla Parishad, Jalna.

9. In the light of the discussion in foregoing paragraphs, we are of the opinion that, unless the petitioner's turn comes for intra-district transfer as per the seniority list maintained by the Zilla Parishad, Aurangabad, the petitioner cannot claim relief against the Zilla Parishad,

Aurangabad that, they should absorb her bypassing seniority, which would cause injustice to other teachers, who are shown senior in the seniority list maintained by the Zilla Parishad, Aurangabad for intra-district transfers. Therefore, in view of the impugned order passed by the Chief Executive Officer, Zilla Parishad, Aurangabad, the Chief Executive Officer, Zilla Parishad, Jalna is bound to allow the petitioner to join the services of the Zilla Parishad, Jalna. We direct the Chief Executive Officer, Zilla Parishad, Jalna to allow the petitioner to join the services of the Zilla Parishad, Jalna within three weeks from today and give her detail posting.

10. However, yet question of salary of the petitioner during interregnum remains to be addressed. The petitioner to file the appropriate application before the Divisional Commissioner Revenue claiming therein salary w.e.f. 16th May, 2014 till the petitioner joins the services.

We direct the Divisional Commissioner (Revenue), Aurangabad Division, Aurangabad, to determine the issue of salary of the petitioner during interregnum i.e.

from 16th May, 2014, till the petitioner will be allowed to join the services by the Zilla Parishad, Jalna. The Divisional Commissioner (Revenue), Aurangabad to hear the petitioner, Chief Executive Officer, Zilla Parishad, Jalna and the Chief Executive Officer, Zilla Parishad, Aurangabad, and give the appropriate directions by fixing the responsibility of the concerned Zilla Parishad, for the payment of the salary for the aforementioned period. However, such decision to be taken, as expeditiously as possible, and preferably within 12 weeks from today.

11. The Petition is disposed of in the above terms.

12. The parties to act upon an authenticated copy of this order.

(**P.R. BORA, J.**)

(**S.S. SHINDE, J.**)

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