

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

WRIT PETITION NO.1408/2016

Dr. Shrikant Dinkarrao Londhe and others

...Versus...

**The State of Maharashtra, through its Principal Secretary Department of Higher
and Technical Education, Mantralaya, Mumbai – 32 and others**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri F.T. Mirza, Advocate for petitioners
Shri N.R. Patil, AGP for respondent nos.1 to 3

**CORAM : SMT. VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.**

DATE : 03.05.2016

By this writ petition, the petitioners seek a direction to the respondent – Authority to transfer the petitioners from their respective Colleges to the places of their preference as per the chart in paragraph no.4, in view of the Government Resolution, dated 6.8.2002. The petitioners have sought the implementation of the Government Resolution, dated 6.8.2002 while seeking their transfers to the places of their choice.

Shri Patil, the learned Assistant Government Pleader appearing on behalf of the respondents raises a preliminary objection to the tenability of the writ petition. It is stated that the petitioners have an alternate efficacious remedy of filing an original application before the Maharashtra Administrative Tribunal under

Section 19 of the Administrative Tribunals Act, 1985. It it stated that the Tribunal is competent to take up the matters pertaining to the services of the petitioners and transfer being one of the conditions of service, the petitioners can as well avail the alternate remedy.

The preliminary objection of the respondents is liable to be upheld. The reliance placed by the petitioners on the judgment of the Hon'ble Supreme Court, reported in *AIR 1999 SC 114* would not be helpful to the claim of the petitioners that an alternate remedy is not available to them. In the judgment before the Hon'ble Supreme Court, only two questions were involved. The Hon'ble Supreme Court had framed the said questions in paragraph no.2 of the judgment. They were (i) whether the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 can entertain a Public Interest Litigation and (ii) whether on the facts of the case the Tribunal has exceeded its jurisdiction in passing the order. In the facts of the case before the Hon'ble Supreme Court a total stranger to the concerned services had made an application before the Tribunal. In the said background, the Hon'ble Supreme Court held that a total stranger cannot be permitted to file an original application under Section 19 of the Administrative Tribunals Act. The Hon'ble Supreme Court held that in the circumstances of the case, when the concerned Authorities were satisfied with the eligibility qualifications of the person concerned, it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person. The reliance placed by the learned Counsel for the petitioners on the said judgment for canvassing that only an "order"

could be challenged before the Administrative Tribunal is not well founded. As a matter of fact, when an appointment is not made, when a promotion is not granted, when a desired pay scale is not applied, an original application is filed before the Tribunal. The learned Counsel for the petitioners cannot pick and choose a word in the judgment of the Hon'ble Supreme Court to state that only against an "order" an original application could be filed. It would be necessary to refer to the provisions of Section 15 (1) (c) of the Administrative Tribunals Act, 1985 while rejecting the claim of the petitioners that an alternate remedy is not available to them.

By upholding the preliminary objection raised on behalf of the respondents, we decline to entertain the writ petition. The petitioners are at liberty to file appropriate proceedings.

The writ petition is disposed of with no order as to costs. The points raised in the petition are kept open.

JUDGE

JUDGE