

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

WRIT PETITION NO.3978/2016

Shri Sanjay Annaji Shende and others

...Versus...

**The State of Maharashtra, through its Secretary, Department of Rural
Development, 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 P.S. Kshirsagar, Advocate for petitioners
Shri A.S. Fulzele, Addl. G.P. for respondent no.1
Shri J.B. Kasat, Advocate for respondent nos.2 and 3

**CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.**

DATE : 18.11.2016

By this petition, the petitioners challenge their transfer vide Counselling Process that was held on 8.7.2016 in Zilla Parishad, Amravati.

According to the petitioners, the process of counselling was not conducted as per the Government Resolution and the time-schedule was not followed. Certain other grounds are also raised in the petition.

Shri Kasat, the learned Counsel for the respondent – Zilla Parishad points out, on the basis of the affidavit-in-reply filed on behalf of the Zilla Parishad, that the petitioners have agreed to join at the places where they are transferred and have given their consent for their transfer to the places where they are

transferred. It is stated that the consent of the petitioners could be demonstrated by the acknowledgement of the petitioners on their posting orders.

The learned Counsel for the petitioners does not dispute that the petitioners have acknowledged that they could be posted at the places where they are transferred at the time of counselling. It is, however, stated that the acknowledgment is secured by the respondent – Zilla Parishad by undue influence and coercion. It is stated that the petitioners were forced to acknowledge the receipts.

We do not find any averment in the writ petition that the petitioners were forced by the respondent – Zilla Parishad to acknowledge that they could be posted at the places where they are transferred. Even otherwise, the question whether the petitioners had consented for their transfer at the places where they are transferred or not, cannot be decided in exercise of the writ jurisdiction. We have time and again expressed that it would be necessary for the teachers in the Zilla Parishad not to consent for their transfer at the places where they are sought to be transferred by accepting one of the options, if the process is not followed by the Zilla Parishad or if the Zilla Parishad tries to secure the consent of the teachers forcibly. In the instant case, the petitioners appear to have signed on the documents, which speak about their postings at the places where they are transferred and there is no specific averment in the petition that the petitioners were forced to sign on such documents.

Though we are inclined to dismiss the writ petition, in view of the disputed factual position, since the respondent – Zilla Parishad has agreed to consider the cases of the petitioner nos.5 and 6 by considering the husband-wife unification policy of the Zilla Parishad, the petitioner nos.5 and 6 are free to make a representation to the respondent – Zilla Parishad within two weeks and it would be necessary for the Zilla Parishad to decide the same within a period of four weeks from the receipt thereof.

Hence, though we dismiss the writ petition, we permit the petitioner nos.5 and 6 to make a representation to the Zilla Parishad for their transfer at appropriate places, in terms of the husband-wife unification policy and direct the Zilla Parishad to decide the representation within four weeks from the date of receipt thereof.

Order accordingly. No costs.

JUDGE

JUDGE