

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

WRIT PETITION NO.4918/2016

Mohd. Arif Ur Rahman Sk. Daud and others

...Versus...

The State of Maharashtra, Rural Development Department, through its Secretary
(Primary 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 P.S. Gawai, Advocate for petitioners
Mrs. H.N. Prabhu, AGP for respondent no.1
Shri K.S. Malokar, Advocate for respondent nos.2 and 3

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

DATE : 20.12.2016

By this petition, the petitioners challenge the orders passed by the Block Development Officer, Panchayat Samiti, Patur, dated 22.8.2016, cancelling the orders transferring the petitioners to Patur in the years 2012 and 2013. The petitioners have also challenged the seniority list maintained by the Panchayat Samiti. The petitioners seek a declaration that the decision taken by the Chief Officer of the Zilla Parishad in the meeting, dated 19.7.2016 is illegal. The petitioners also seek a direction against the respondents to allow the petitioners to work at Patur.

In the years 2012 and 2013, the petitioners were transferred to Patur as per their request. The orders of transfer

were however passed by the Block Development Officer that was not competent to pass the orders. The orders transferring the petitioners were passed though there were no posts at Patur on which the petitioners could have been appointed to teach in the Urdu medium. Though the petitioners were said to have been transferred to Patur in the years 2012 and 2013, the salaries of the petitioners were drawn from the erstwhile school in which they were working before 2012 and 2013 and before the orders of transfer were passed. The petitioners are receiving the salary from the erstwhile school as on date. The irregularity and the illegality in the matter of transfer of the petitioners on their request were considered and it was found in the enquiry that the Block Development Officer had without the concurrence of the Zilla Parishad passed the orders of transfer. Since the petitioners were receiving the salary from the erstwhile school and since there were no posts on which the petitioners could have been transferred to the school in Patur, the petitioners were brought back to the erstwhile school by the impugned orders. The petitioners have challenged the impugned orders asking the petitioners to join in the erstwhile school. The petitioners have also challenged the seniority list.

We do not find any merit in the submission made on behalf of the petitioners that the petitioners should have been heard in the matter before the impugned orders were passed. A list of 47 employees was prepared by the Zilla Parishad and all of them including the petitioners were asked to remain present in the conciliation proceedings. The said document is annexed to the petition. Despite the fact that the petitioners were directed to remain present in the conciliation proceedings, the petitioners

failed to remain present in the proceedings and instead, challenged the orders directing them to join in the erstwhile school. The petitioners cannot be heard to say in the set of facts that the petitioners were not heard before the impugned orders were passed. We also do not find any merit in the submission made on behalf of the petitioners that since the petitioners were transferred to Patur, the orders of transfer could not have been nullified by the impugned orders, as there were no vacancies in the school at Patur to teach the subjects in Urdu medium and hence, though the petitioners were said to have been transferred to Patur on their request they were receiving their salary from the erstwhile school only. In the aforesaid set of facts, it cannot be said that the respondents have committed any illegality in directing the petitioners to join their services in the erstwhile school.

As the impugned orders cannot be faulted with, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

Wadkar