

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1012 OF 2017

Gangadhar s/o Krushanaji Tathe
Age: 45 years, occu: service,
R/o C/o Zilla Parishad
Central Primary School,
Pandharpur, tq. & Dist. Aurangabad

Petitioner

Versus

- 1 The State of Maharashtra,
through its Secretary
Rural Development Department,
Mantralaya, Mumbai 32
- 2 The Divisional Commissioner,
Division, Aurangabad
- 3 The Chief Executive Officer
Zilla Parishad, Aurangabad
- 4 The Education Officer (Primary)
Zilla Parishad, Aurangabad
- 5 Prakash s/o Raghunath Dane
Age: major, occu: service,
R/o Zilla Parishad Primary School,
Ghardon, tq. & Dist. Aurangabad.

Respondents

Mr. S.R. Kedar advocate for the petitioner
Mr. S.B. Yawalkar Assistant Govt. Pleader for Respondent No.1
Mr. P.S. Pawar h/f Mr. R.S. Bihani advocate for respondent No.5

CORAM : **R. M. BORDE & VIBHA KANKANWADI, JJ**

(Date: September 11th, 2017)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard respective counsel appearing for the parties.

2 Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 The petitioner, who was serving as a Teacher at village Pimpri Raja has been transferred and posted at village Pandharpur by order dated 3.6.2016 passed by the Block Development Officer, Panchayat Samiti, Aurangabad. The transfer has been effected on administrative grounds.

4 The respondent No.5 herein tendered an application to the Divisional Commissioner, Aurangabad requesting him to cancel the order of transfer issued to him on 17.6.2016. Respondent No.5 was functioning as a teacher in Zilha Parishad Central Primary School, Pimpri Raja and was directed to report at village Ghardon, Kachner. It is contended by respondent No.5 that, since

he is the office bearer of the teachers organization, in view of the Government Resolution dated 15.5.2014, he may be posted at Taluka Place or at the District Head Quarters. Respondent No.5 requested the Divisional Commissioner to direct cancellation of the order of transfer and permit him to report at Central Primary School, Pandharpur. The petitioner has objected to the order passed by the Divisional Commissioner on 27.12.2016, accepting the request made by respondent No.5. Since the petitioner was posted at Padharpur, as a consequence of cancellation of the order of transfer issued to respondent No.5, respondent No.5 returned back to village Pandharpur and as such, the order of transfer issued to the petitioner was required to be cancelled and same was accordingly withdrawn.

5 This Court, while directing issuance of notice on 20.1.2017, directed the parties to maintain *status-quo*. It is informed that in view of the order directing maintenance of *status-quo*, the petitioner is retained at village Pandharpur, where respondent No.5 is serving at primary school at Ghardon in observance of the order of transfer dated 17.6.2016.

6 Learned counsel appearing for the petitioner states, on instructions that, the impugned order dated 27.12.2016 has been issued by the Divisional Commissioner, Aurangabad, without

extending an opportunity of hearing and deserves to be quashed and set aside. Since the impugned order dated 27.12.2016 has an impact on the order of transfer issued in favour of the petitioner and since he is affected person, it was necessary for the Divisional Commissioner to extend an opportunity of hearing to him.

7 We are convinced that, since the order issued by the Divisional commissioner on 27.12.2016, affects the entitlement of the petitioner to continue on the transferred post at Pandharpur and adversely affects his interest, he ought to have been extended an opportunity of hearing. Since the order has been issued without observance of the principles of natural justice, the impugned order issued by the Divisional Commissioner on 27.12.2016 deserves to be quashed and set aside and the same is accordingly quashed and set aside.

8 The Divisional Commissioner shall extend opportunity of hearing to the petitioner as well as the respondent No.5 and shall proceed to take appropriate decision on the representation/applications tendered by respondent No.5 on 10.6.2016 and 14.9.2016 as expeditiously as possible and preferably within a period of two months from today and it is accordingly directed.

9 Both the parties shall appear before the Divisional Commissioner on 26.9.2017 and as such no separate notice, requiring their presence before the Divisional Commissioner shall be necessary.

10 Rule is accordingly made absolute.

11 There shall be no order as to costs.

(VIBHA KANKANWADI, J)

(R. M. BORDE, J)

vbd