

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6464 OF 2017

1 Madhuri Taturam Nimase
and ors. Petitioners
vs
1 The State of Maharashtra, through
the Ministry of Rural Development,
Mantralaya, Mumbai.
2 The Chief Executive Officer,
Z. P, Thane
3 The Chief Executive Officer,
Zilla Parishad, Palghar
4 The Education Officer,
Zilla Parishad, Thane
5 The Education Officer,
Zilla Parishad, Palghar Respondents

ALONG WITH
WRIT PETITION NO. 4198 OF 2017

1 Shankar Ambo Bhoir and ors. Petitioners
vs.
1 The State of Maharashtra and ors. Respondents

ALONG WITH
WRIT PETITION NO.4207 OF 2017

Shirish Shivaram Vekhande & ors. Petitioners
vs.
1 The State of Maharashtra and ors. Respondents

ALONG WITH
WRIT PETITION NO. 6465 OF 2017

Deepak Belawale and ors. Petitioners
vs.

1 The State of Maharashtra and ors. Respondents

AND ALONG WITH
WRIT PETITION NO. 6466 OF 2017

Suchita Sanjay Hendre & ors. Petitioners

vs.

1 The State of Maharashtra and ors. Respondents

Mrs. Preeti Walimbe for the petitioners in all matters.

Mr. A.A. Kumbhakoni, Advocate General with Mr. A.B. Vagyani, Government Pleader and Mr. C.P. Yadav, AGP for respondent No.1 in all matters.

Mr. S.P. Thorat for Respondents 2 to 5 in all matters.

**CORAM: B. R. GAVAI &
 RIYAZ I. CHAGLA, JJ.**

DATE : June 23, 2017

ORAL JUDGMENT (Per B. R. Gavai, J.) :

1 Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

2 Since the issue raised in all these Petitions is common, therefore, this common Judgment.

3 The Petitioners have approached this Court being aggrieved by the Government Resolution dated 22nd July, 2016 (for

short, “July Resolution”) vide which Government Resolution dated 29th February, 2016 (for short, “February Resolution”), has been withdrawn and the guidelines stipulated in the February Resolution have been substituted.

4 The brief facts leading to the present Petitions are thus. The Government of Maharashtra decided to bifurcate the erstwhile Thane District into Thane and Palghar Districts vide Notification dated 31st August 2014. As a consequence thereof, the erstwhile Thane Zilla Parishad was also required to be bifurcated into Thane and Palghar. As a further consequence thereof, all the employees working in various Departments, including Revenue Department etc were required to be bifurcated and allotted to two districts. The Government has issued various Government Resolutions for the said purpose with regard to the various Departments. In so far as the primary teachers in the Zilla Parishads are concerned, the February Resolution was issued laying down certain guidelines. However, we find that only three clauses of the said Government Resolutions would be relevant for adjudication of the present proceedings. The relevant official translated version of relevant clauses of February Resolution is

as under:

“clause 5) While making absorption, both the Zilla Parishads should make a process of absorption, as per the point roster.

Clause 11) While making such kind of absorption, a precaution should be taken to see that, as far as possible, percentage of vacant post from all the cadres in original Zilla Parishad and newly created Zilla Parishad, remains equal. For this purpose, if some employees are fallen short for any Zilla Parishad, as per requirement, then the junior most employee in the seniority list, should be transferred to the concerned district.

Clause 12) While taking the aforesaid action, if a decision, contrary to the option exercised by the employees for absorption, is required to be taken then a separate list of such employees should be prepared by both the Zilla Parishads, as per the seniority. The proportion, in which recruitment of new employees will be made, in such proportion, the services of employees, in the said list should be transferred to the original Zilla Parishad as per their service seniority and as per their option. While doing so, their service seniority in original Zilla Parishad shall remain intact.

While giving appointment (posting), as per the preferential order, for the absorption in respect of the employee mentioned at para 10, if posts are not available, as per point roster then for such employees posting is required to be given contrary to their option. In respect of such employees, who had to be given posting in such a manner, their preferential order in the separate seniority list as mentioned hereinabove, shall be higher in order.”

5 In principle, the effect of the said provision was that, the

allocation would be done as per the roster point of both the Zilla Parishads. The another provision was that if a person is allotted to a particular Zilla Parishad against his choice, he will be entitled to revert back to the Zilla Parishad of his choice after recruitment drive, when a candidate belonging to the category to which such a candidate belongs was available. On such returning back to the Zilla Parishad of his choice, such a candidate would re-gain his seniority.

6 However, by the impugned July Resolution, the February Resolution has been withdrawn. The Petitioners are basically aggrieved with clause (2) and clause (5) of the July Resolution, the true official translation of which reads thus:

“(2) Final seniority list of the date 1st January, 2015 of original Zilla Parishad should be deemed as a basis for absorption in respect of employees from all cadres, working in Thane and Palghar Zilla Parishads. The cadre in respect of which final seniority list of the 1st January, 2015 is not available, for such cadre, the available final seniority list shall be held valid and process of absorption should be made, as per seniority.

(5) Separate pattern has been sanctioned for two Zilla Parishads viz. Thane and Palghar and accordingly the sanctioned posts in the District should be filled up first by absorption as per option and the said recruitment should be done as per the seniority list.”

7 The effect of the said Government Resolution is that a seniority list of the teachers as per their appointment in the Thane Zilla Parishad would be the criteria for considering their choice for their allotment in Thane and Palghar Zilla Parishads.

8 The matter was argued before the earlier Bench. When the matter was listed before us on 7th June 2017, we were prima facie of the view that if the allotment is done only on the basis of seniority, an anomalous situation may arise, inasmuch as there might be a concentration of a particular category of candidates in one District and likewise there might be a concentration of other categories in the other District. In our order dated 7th June 2017, we had, therefore, observed that this would create an imbalance.

9 In the said order, recording our limitations about the interference in the policy matters, we had directed the Principal Secretary, Rural Development Department to file an affidavit explaining the rationale behind the July Resolution. We have also passed an interim order directing the Respondents/Zilla Parishads, not to issue any relieving orders and have also directed that if relieving

orders are already issued, they shall not be given effect to.

10 When the matters were kept on 21st June 2017, an affidavit was filed by the Secretary to the Rural Development and Water Conservation Department. An attempt was made to justify the Government's decision. However, upon perusal of the affidavit, we were of the considered view that the affidavit did not answer the concern of the Court regarding the imbalance being created in both the Districts in various categories. As such, we had requested the learned Government Pleader to find out workable solution and adjourned the matter to 22nd June 2017.

11 When the matters were adjourned to 22nd June 2017, the learned Government Pleader expressed his inability to find out a workable solution. We were of the considered view that the July Resolution was not sustainable in law. However, an interference at this stage would have amounted to disruption of the entire primary education in Thane and Palghar Districts. Per chance, the learned Advocate General happened to be in Court and we requested him to use his good offices to sort out the issue.

12 We had informed the learned Advocate General that the Court is not interested only in protecting the interest of the teachers, but is also interested in protecting the interest of the students. We had, therefore, suggested that if the Government withdraws the July Resolution, we will consider permitting the Government to act on the basis of the July Resolution for some time provided it undertakes to complete the exercise as per the February Resolution within a stipulated period. The learned Advocate General sought a day's time to seek instructions.

13 When the matter is listed today, the learned Advocate General, after taking instructions, from the Secretary of the Rural Development Department, has placed the following Note before the Court. The same is taken on record and marked "X" for identification purposes. The same is reproduced as under :

"NOTE

The State proposes to take following action:-

- 1 The Government Resolution dated 22nd July, 2016 (Page 38) will be withdrawn.
- 2 Resultantly, the original Government Resolution dated 29th February, 2016 (Page 30) will get restored.
- 3 The Government reserves liberty to modify the said

Government Resolution dated 29.02.2016 appropriately, if and when found requisite.

4 However, while doing such an exercise, the Government will not disturb the following two aspects of the said Government Resolution dated 29th February, 2016.

(a) Applicability of the Roster and the relevant consequential aspects of applicability of the Roster as envisaged by the said Government Resolution dated 29th February, 2016.

(b) The mechanism contemplated by Clauses 11 and 12 of the said Government Resolution dated 29th February, 2016.

5 In order to avoid any disruption of educational activities of the current academic year that have already commenced, the orders of transfer that have been issued will not be disturbed till the end of present academic year 2017-18.

6 Appropriate exercise under the Government Resolution dated 29th February, 2016 with modification thereto, as stipulated hereinabove, if and when required, will be carried out and completed before the end of February, 2018.

7 All the Interim Orders passed in the present proceedings may kindly be vacated and the Petitioners be directed to resume their duties forthwith.

Sd/- (Girish Bhalerao)

Dy. Secretary, R.D.D.”

14 We find that the Note submitted to the Court by the learned Advocate General answers the concern of the Court as well as, protects the interest of the teachers as well as the students.

15 The main grievance of the teachers was that by July Resolution, there will be concentration of a particular category of

teachers in particular Zilla Parishad which will lead to imbalance. We find that if the February Resolution is implemented, the said grievance would no more survive. The another grievance of the Petitioners was that under the February Resolution, a choice was available to them if they were compelled to go to the Zilla Parishad against their choice, to come back to the Zilla Parishad of their choice as and when, in the recruitment process a candidate of the category to which they belong was available. It was further their grievance that the February Resolution also provided for regaining the seniority in the Zilla Parishad after they return to the Zilla Parishad of their choice. It was, however, their grievance that this choice was taken away in the July Resolution. We find that in the Note submitted by the learned Advocate General it is specifically stated that clauses (11) and (12) of the February Resolution would not be effected and as such it squarely takes care of the grievance of the Petitioners in that regard.

16 We find the suggestion given by the learned Advocate General that in order to protect the interest of the students, the orders which are already issued should continue to operate till the end of the academic session is also in the larger interest of the students. We find

that if there is a sword of uncertainty over teachers and likelihood of they being shifted in the mid-term, there would be no commitment to complete the course. We find that the outer date of end of February would also provide a sufficient cushion to the aggrieved teachers if they are aggrieved by any of the decisions taken by the Zilla Parishad Authorities in pursuance to the Note submitted by the learned Advocate General.

17 We are, therefore, inclined to make the Rule absolute in terms of the Note submitted before us by the learned Advocate General.

18 Before we part with the matter, we place on record our gratefulness to the learned Advocate General for using his good offices in the shortest possible time. We also place on record our appreciation to the learned Advocate General for assisting us in finding out a solution to an issue which otherwise could have ramifications of creating a chaos in the entire primary education system in the Thane and Palghar Districts.

(RIYAZ I. CHAGLA J.)

(B. R. GAVAI J.)