

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1955 OF 2017

Ramrao Suresh Falke

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Hemant U. Dhage, Advocate for the Petitioner.

Shri A. V. Deshmukh, A.G.P. for the Respondent No. 1.

Shri V. D. Sonwane, Advocate for Respondent Nos. 2 to 4.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

DATE : 13TH AUGUST, 2018.

FINAL ORDER :

. Mr. Dhage, the learned advocate for the petitioner submits that, the petitioner was transferred from Ahmednagar district to Aurangabad district. The petitioner was relieved from Ahmednagar district on 25.06.2015. The learned counsel submits that, when he came to Aurangabad, he gave joining letter to the Zilla Parishad, however, posting was given at far away distance from the place of work of his wife. The petitioner thereafter found another similarly situated employee and applied for mutual transfer. The mutual transfer was sanctioned on 26.10.2015. The petitioner went to join the post, however, vacancy was not available. Thereafter fresh transfer order was

issued to the petitioner on 22.02.2016. The petitioner joined the said place on 23.02.2016, however, the period the petitioner was relieved by Ahmednager Zilla Parishad till 22.02.2016 is not counted as a joining period and is considered as a paid leave. The same is erroneous.

2. Mr. Sonwane, the learned advocate for the Zilla Parishad submits that, the petitioner was required to join at the transferred place. The petitioner did not join. The order of transfer itself states that, the period the petitioner was relieved till he joins will be considered as admissible paid leave. The petitioner has accepted the said order.

3. After the petitioner was relieved from Ahmednagar Zilla Parishad and the petitioner was issued with the posting order on 16.07.2015, the petitioner was duty bound to join that transferred place. The petitioner has taken the risk by not joining at the transferred place and the petitioner thereafter sought mutual transfer at another place. Subsequently on 26.10.2015 fresh order was issued for transfer at Borsir. It was communicated by the Head Master of the said school that there is no vacancy available. Again further order was issued on 22.02.2016.

4. It is not the fault of the petitioner in not joining the school at Borsir as per order dated 26.10.2015. The communication of

the Center Head clearly states that, there is no vacant post available to accommodate the petitioner. Thereafter fresh orders are issued only on 22.02.2016. So far the period from 26.10.2015 to 22.02.2016, the petitioner is not at fault. The said period ought to have been considered as a continuous officiation period. However, the period upto 25.10.2015 is concerned, the said period will have to be considered as an admissible paid leave, because it is the petitioner who did not join the place of the posting.

4. Considering the above, the respondent Nos. 2 to 4 shall treat the period from the date petitioner was relieved till 25.10.2015 as an admissible paid leave. The period after 26.10.2015 shall be considered as an officiating period. The writ petition is accordingly disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug. 18