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

PUBLIC INTEREST LITIGATION NO.52 OF 2017

Vijay @ Vijaykumar s/o Keshavrao
Bahhadure, Age: 39 years,
Occ: Press Reporter,
R/o. C/o. Yogesh Cavane,
11-A-1-5-149, Shantiniketan Colony,
Pangri Road, Adarsh Nagar, Beed,
now residing at : Honaji Nagar,
Jatwada Road, Near Harsool Jail
Aurangabad, District Aurangabad. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Mantralaya, Mumbai 400 032.
2. The Secretary,
Department of Rural Development
& Water Resources, Mantralaya,
Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Beed.
4. The Principal Secretary,
School Education Department,
Government of Maharashtra,
Mantralaya, Mumbai. ..RESPONDENTS

Mr B.L. Sagar Killarikar, Advocate for petitioner;
Mr A.B. Girase, Government Pleader for
respondent/State;
Mr P.D. Suryawanshi, Advocate for respondent No.3;

WITH

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**CIVIL APPLICATION NO. 11093 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.52 OF 2017**

Gorakhnath s/o Govindrao Rathod,
Age: 36 years, Occ: Service as
Assistant Teacher, Z.P.P.S.
Chahur Tanda, Tal. Majalgaon,
District Beed & ors

..APPLICANTS

VERSUS

Vijay @ Vijaykumar s/o Keshavrao
Bahhadure, Age: 39 years,
Occ: Press Reporter,
R/o. C/o. Yogesh Cavane,
11-A-1-5-149, Shantiniketan Colony,
Pangri Road, Adarsh Nagar, Beed,
Now residing at Honaji Nagar,
Jatwada Road, Near Harsool Jail
Aurangabad, District Aurangabad
& ors

..RESPONDENTS

Mr S.S. Thombre, Advocate for applicants;
Mr B.L. Sagar Killarikar, Advocate for respondent
No.1;
Mr A.B. Girase, Government Pleader for
respondent/State;
Mr P.D. Suryawanshi, Advocate for respondent No.4;

**WITH
CIVIL APPLICATION NO. 11094 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.52 OF 2017**

Pradip s/o Balaji Chate,
Age: 33 years, Occ: Service,
R/o. C/o. Z.P. Primary School,
Mandwa, Tq. Parali,
Dist. Beed & ors

..APPLICANTS

(3)

VERSUS

Vijay @ Vijaykumar s/o Keshavrao
 Bahhadure, Age: 40 years,
 Occ: Press Reporter,
 R/o. C/o. Yogesh Cavane,
 11-A-1-5-149, Shantiniketan Colony,
 Pangri Road, Adarsh Nagar, Beed,
 Now residing at Honaji Nagar,
 Jatwada Road, Near Harsool Jail
 Aurangabad, District Aurangabad
 & ors

..RESPONDENTS

Mr S.R. Kedar, Advocate for applicants;
 Mr B.L. Sagar Killarikar, Advocate for respondent
 No.1;
 Mr A.B. Girase, Government Pleader for
 respondent/State;
 Mr P.D. Suryawanshi, Advocate for respondent No.4

**WITH
 CIVIL APPLICATION NO. 11233 OF 2018
 IN
 PUBLIC INTEREST LITIGATION NO.52 OF 2017**

Kailas s/o Raghunath Chavan,
 Age: 35 years, Occ: Service,
 R/o. Z.P.P.S. Golegaon,
 Tal. Georai, District Beed.

..APPLICANTS

VERSUS

Vijay @ Vijaykumar s/o Keshavrao
 Bahhadure, Age: 39 years,
 Occ: Press Reporter,
 R/o. C/o. Yogesh Cavane,
 11-A-1-5-149, Shantiniketan Colony,
 Pangri Road, Adarsh Nagar, Beed,
 Now residing at Honaji Nagar,
 Jatwada Road, Near Harsool Jail
 Aurangabad, District Aurangabad
 & ors

..RESPONDENTS

Mr Vilas P. Savant, Advocate for applicants;
 Mr B.L. Sagar Killarikar, Advocate for respondent

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No.1;

Mr A.B. Girase, Government Pleader for
respondent/State;

Mr P.D. Suryawanshi, Advocate for respondent No.4;

**CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.**

DATE : 4th SEPTEMBER, 2018

ORAL ORDER :

Heard Mr. Sagar Killarikar, learned Counsel appearing for the petitioner. He submits that the petitioner is a newspaper reporter and he is having vast experience of working of Zilla Parishad. The grievance of the petitioner is Zilla Parishad, Beed failed to perform its duties and comply statutory provisions so as to protect and enforce the rights of citizens in general and teachers in particular.

2. Mr. Killarikar, learned Counsel appearing for the petitioner submitted that Zilla Parishad, Beed effected transfer orders though there are certain modalities and procedure for effecting such transfers. The modalities and procedure was not followed.

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3. On the backdrop of submissions of Mr. Killarikar, learned Counsel, we have gone through the material placed on order as well as order sheet.

4. Perusal of the order dated 3rd July, 2017 refers to communication, which is placed on record at Exhibit-D (page 42 of the paper book). The Division Bench of this Court while considering the document Exhibit-D observed that this Court is not inclined to entertain the petition as a Public Interest Litigation for the simple reason that it relates to service matter. However, Mr. Killarikar, learned Counsel for the petitioner confines his request to consideration and further action on Exhibit-D. That is why this limited direction.

5. Mr. Girase, learned Government Pleader invited our attention to the replies filed by the State. Firstly, affidavit in reply was filed on

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behalf of the Smt. Vandana Krishna, Additional Chief Secretary, School Education and Sports Department, Mantralaya, Mumbai on 7th August, 2018 and then additional affidavit in reply on 27th August, 2018.

6. Mr. Thombre, learned Counsel appearing for the applicants in Civil Application No.11093 of 2018 submitted that the application is filed on behalf of certain teachers who are before this Court with a prayer for permitting them to intervene in the petition. It is submitted by Mr. Thombre, learned Counsel that applicants are the teachers whose transfers are effected. He submitted that the issue of transfer of teachers was already before this Court for consideration and the Division Bench in bunch of petitions namely Writ Petition No.5057 of 2015 and other petitions took the cognizance of the order dated 23rd April, 2015 and the said order was in the nature of general order effected transfers at the instance of Chief Executive Officer of Zilla Parishad, Beed.

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7. It will be useful to refer the observations of the Division Bench in the above referred petitions and same read thus :

"In all these writ petitions, the petitioners are working as Assistant Teachers. They were transferred under the orders of the Chief Executive Officer, Zilla Parishad, Beed. The transfers were on account of couple convenience/mutual transfers/request transfers. It is not disputed fact between petitioners and respondents that pursuant to transfer orders issued to them petitioners had joined at the transferred place and have started discharging their duties. On 23.04.2015 general order is issued by the State to the Chief Executive Officer of Zilla Parishad, Beed that, there are irregularities in the transfers/absorptions of the teachers and that has been observed by the Enquiry Committed appointed by the Additional Commissioner. The said order states that, after following principles of natural justice, further steps be taken.

2. It is submitted that, at the

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Principal Seat at Bombay interim orders are passed with regard to Government Resolution dated 13.12.2013, which deals with the staffing pattern. It is stand of the Government that, because of the said interim orders passed at Principal Seat at Bombay, the Government is not in a position to take decision with regard to sanction of additional posts.

3. An anomalous situation would arise, where the petitioners are already transferred/absorbed at the respective places as per the orders of absorption/transfer and they are discharging their duties and subsequently after more than a year present order dated 23.04.2015 is issued. The same is a general order. It is not pointed out to any petitioner individually. Naturally, the Chief Executive Officer, will have to examine each and every case. It will have to issue notices to petitioners, call for the reply and then take decision.

4. The stand of the Government also appears that, the posts on which the petitioners are transferred/absorbed are pending for sanction. The Zilla Parishad

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has moved proposal to the Government for sanction of said posts, however, the Government is not in a position to take decision because of interim orders passed at Principal Seat at Bombay.

5. Considering the said facts of the case, we feel it appropriate to pass following order.

6. The respondents will allow the petitioners to work at the places on which they were transferred/absorbed, till the decision is taken by the State with regard to sanction of the posts, at the place the petitioners are absorbed/transferred. The State shall move the Principal Seat at Bombay for clarification of the order with regard to Government Resolution dated 13.12.2013 and thereafter take steps in tune with that. Till the decision is taken by the State, with regard to sanction of the posts as submitted by the Zilla Parishad with the State, the petitioners would be retained at the places where they are absorbed/transferred. Of course, the respondents can take further steps after the State takes the decision about the sanction of the posts as per the proposal

submitted by the Zilla Parishad. The Chief Executive Officer is at liberty to examine each and every case on its own merits. The writ petitions are disposed of. No costs."

8. Mr. Girase, learned Government Pleader submitted that the State by considering the orders of this Court thought it fit to review the policy, special meeting was convened. He invited our attention to the additional affidavit dated 27th August, 2018. In paragraph-8 it is stated that, "I further say that some teachers aggrieved by letter dated 23.04.2015 filed Writ Petition NO.5057 of 2015 and others. The Hon. High Court vide order dated 03.08.2015 directed that the decision is taken by the State, with regard to sanction of the posts as per proposal submitted by the Zilla Parishad, Beed on 1.10.2015 thereby retaining the petitioner at the places where they are absorbed/transferred. It is further stated in paragraph-9 that, "I further submit that as per the direction given by the Hon'ble High Court in Writ Petition No. 5057 of 2015 and the proposal

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submitted by CEO, Z.P. Beed regarding increased post as per staffing pattern, the State sanctioned 793 post of teachers vide Government Resolution dated 27.11.2015, annexed and marked as Exh.C of the petition at page no. 39."

9. Paragraph Nos. 10, 11, 12, 13, 14 and 15 of the above referred additional affidavit reply read thus :

"10. I submit that the 793 teachers post were sanctioned subject to following terms and conditions.

(1) As per the provisions of G.R. dated 01.03.2014 Vasti Shala Swayamsevak/Nimsevak may be appointed in Zilla Parishad.

(2) Teachers absorbed by inter district transfer may be posted on sanctioned post as per the prevailing procedure of Rural Development Department.

(3) In this process reservation policy should strictly followed. Those teachers can not be appointed due to roaster point, should be sent back to their original districts.

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(4) Prevailing procedure strictly be followed while appointing teachers transferred by inter district transfer. Even though the teachers transferred by inter district transfer are excessed, those teachers should be sent back to their original districts.

(5) After completion of the process the vacant posts should be filled up following due procedure as per prevailing policy.

(6) Chief Executive Officer, Z.P. Beed should personally look into the matter that no irregularities will be taken place.

(7) The Commissioner of Education and Director of Education should take care of only the salary of the sanctioned increased post will be given.

11. I say that, communication received from the office of Government Pleaders, High Court Bench at Aurangabad dt. 10.8.2018. I convened a meeting with Principal Secretary, Rural Development Department (Respondent No.2), and Education Officer (Primary), Zilla Parishad Beed (on behalf of Respondent No.3). Copy of communication dt. 10.8.2018 is annexed

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herewith and marked as Exh.R-1. In this meeting the following decisions were taken:

I. Education Officer (Primary), Zilla Parishad, Beed should update roaster before 20.08.2018 complying all the queries of Magasvargiya Kaksha.

II. Education Officer (Primary), Zilla Parishad, Beed should repatriate all Excess Teachers as per the roaster sanctioned by Assistant Commissioner, Magasvargiya Kaksh, Aurangabad for the year 2016 to their respective Zilla Parishad immediately. While repatriating excess teachers the junior most teacher should be repatriated first.

III. Due to the process of repatriation, if large number of teachers are being repatriated from some schools, the Education Officer should make sufficient teachers available to these schools at local level, so that the education of children do not suffer.

IV. The Education Officer (Primary), Zilla Parishad Beed should also repatriate the Excess Teachers after getting sanction of roaster for the year 2018 from Assistant Commissioner, Magasvargiy Kaksh, Aurangabad.

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V. The Education Officer (Primary) Zilla Parishad Beed should take care in future to follow the roaster strictly and not to permit additional teachers to be filled in.

VI. The follow up will be taken on 21.08.2018.

Hereto annexed and marked as **Exh.R-2** the copy of the minutes dated 14.08.2018.

12. I say and submit that, the meeting was also held on 21.08.2018 to follow up of the decisions taken in the meeting dated 14.08.2018. In this meeting the Education Officer (Primary), Z.P., Beed informed about the efforts taken by him to get the roaster sanctioned from Magasvargiya Kaksh of Divisional Commissioner Office, Aurangabad. The roaster is finalized on 24.08.2018. The Education officer also submitted that as to how the sanction is given by Magasvargiya Kaksh, excess teachers will be repatriated to their respective Zilla Parishads by Chief Executive Officer and will strictly maintain roaster.

13. I say and submit that, as directed by

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the Hon'ble High Court on 09.08.2018, I have coordinated with the Principal Secretary, Rural Development Department and held two meetings with him to comply the order of the Hon'ble Court. I say that to comply the order of the Hon'ble Court I have taken all the efforts as a head of the School Education Department which is policy making department in respect of Education. The Rural Development Department is Administrative Department in respect of maintaining roaster, transfers, postings and other service matter. The rural Development Department has control and supervision over the Zilla Parishad Education Department as far as reservation and roster is concerned.

14. I say that I have also taken review about the action taken against the responsible officers for not maintaining the roster. The Education Officer produced the letter dated 02.08.2018 of Deputy Chief Executive Officer, Z.P., Beed stating the report of action taken. Shri Rajiv Jawalekar, the then Chief Executive Officer, Z.P. Beed was suspended vide order dated 12.03.2015 for the irregularities committed during inter district transfers. Departmental Proceeding has already been commenced against Shri Jawalekar vide order

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dated 27.09.2017. Shri P. K. Yewale, Jr. Administrative Officer and Junior Assistant Shri S. H. Sherekar have been suspended vide order dated 22.11.2013. Hereto annexed and marked as Exh.R-3 (colly) the copy of the letters dated 02.08.2018, dated 08.08.2018 and 16.08.2018.

15. I say and submit that the efforts have been taken and necessary instructions have been given to Education Officer to get roster sanctioned and repatriate excess teachers to their respective Zilla Parishads. The Rural Development Department has also instructed vide letter dated 08.08.2018 to Education Officer to implement as per the guidelines given in the G.R. dated 27.11.2015. The Commissioner of Education has also instructed Chief Executive Officer, Zilla Parishad, Beed vide letter dated 16.08.2018 to take action as per the guidelines issued vide G.R. dated 27.11.2015."

10. Thus, learned Government Pleader submitted that due care and caution is taken to protect the interest of the teachers. At the same time, the State Government also sought approval from the Backward Cell so as to maintain the roster and an

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attempt is made to see that no prejudice is caused to the teachers to whom certain protection are granted. Thus, what emerges is, the transfers which are already effected and the teacher who are transferred at various places are permitted to join the duties so that the students are not suffered. The exercise of repatriation of teachers is in process. If any personal grievance against repatriation subsists, such a person is certainly having a remedy available for redressal his grievance by approaching competent forum including a judicial forum. The purpose for which the petition is filed is already served. The individual grievance either service benefits or the grievance of depriving any service benefits may be a different issue for which the person may avail appropriate remedy, if so advised.

11. Mr Girase, learned Government Pleader also invited our attention to the statement made in the affidavit-in-reply to submit that the State Government is taking appropriate steps as

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expeditiously as possible. Statement in the affidavit-in-reply reads thus:-

"16. ... the Education Department and Rural Development Department have taken steps on war-footing to implement the reservation policy and repatriation of excess teachers as mentioned above." (Emphasis supplied)

12. Considering the above referred aspects, we see no reason to keep the petition pending as the purpose for filing the petition is already achieved. The State Government is taking appropriate steps under the directions of this Court and exercise of repatriation is going on.

13. We further make it clear that if there is any grievance against repatriation, same is purely a personal grievance and such a person is not prevented from approaching any appropriate forum for redressal of his grievance including a judicial forum, if advised so.

14. With the above referred observation, the petition is disposed of accordingly.

15. In view of disposal of writ petition, civil applications are also disposed of accordingly.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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