

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5669 OF 2018

Somnath s/o Kawaji Marbhal,
Age-50 years, Occu:Service,
R/o-Ward No.6, Khillari Vasti,
Near Kanda Market, Shrirampur,
Tq-Shrirampur, Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The Deputy Director
of Education, Region Pune,
Tq. & Dist-Pune,
- 3) The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
Dist-Ahmednagar,
- 4) The Secretary,
Rayat Shikshan Sanstha,
Karmaveer Samadhi Parisar,
Near Powai Naka,
Satara-415 001

...RESPONDENTS

...

Mr. Abhay R. Rathod Advocate for Petitioner.
Mr. S.B. Narwade, A.G.P. for Respondent
Nos. 1 to 3.
Mr. V.D. Sapkal Advocate for Respondent No.4.

...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 27TH NOVEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: 19TH DECEMBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India, has been filed with following substantive prayers:

“B] By issuing appropriate writ, order or directions, kindly quash and set aside the order of transfer of the petitioner issued

by respondent No.4 dated 30.05.2018 transferring the petitioner Head Master from Wadala Mahadeo, Shri. Chhtrapati Shivaji Vidyalaya (Tq. Shrirampur, District- Ahmednagar) to Hatola New English School (Tq-Ashti, District-Beed) as Head Master and for that purpose kindly issue necessary directions.

C] By issuing appropriate writ, order or directions, kindly direct the respondent No.4 to continue the petitioner the posting as Head Master, Wadala Mahadeo, Shri. Chhtrapati Shivaji Vidyalaya (Tq.Shrirampur, District-Ahmednagar) and for that, purpose kindly issue necessary directions."

3. By amending the Petition, the Petitioner has also prayed that:

"G] By issuing appropriate writ, order or directions, kindly restrain the respondent No.4 from effecting any recovery proceedings or recovery against petitioner for recovery of so called deficit computer education fee and for that purpose issue necessary

directions.

H] By issuing appropriate writ, order or directions, kindly direct the respondent No.4 to refund to the petitioner the amount of Rs.1,00,000/- collected by it towards so called deficit computer education fees with interest @ 10% p.a. from 10.10.2016 till realization of the amount and for that purpose issue necessary directions."

4. It is the case of the Petitioner that he was duly appointed by Respondent No.4 by way of appointment order dated 24th August, 1992 as Assistant Teacher in New English School, Yesgaon, Tq-Kopargaon, Dist-Ahmednagar. Thereafter, in the year 1994 the Petitioner was transferred in another Government aided school run by Respondent No.4 i.e. New English School, Salabatpur, Tq-Newasa, Dist-Ahmednagar, and accordingly, the Petitioner worked there from 5th February, 1994 to 9th June, 1999. The Petitioner was promoted to the post of Head Master by Respondent No.4 Management,

at New English School, Vinhere, Tq-Mahad, Dist-Raigad and as such he worked there as Head Master from 10th June, 1999 to 30th September, 2000. Thereafter the Petitioner was transferred to New English School, Pargaon (Sa.Ma.), Tq-Daund, Dist-Pune, where he served upto 15th September, 2002 and thus the Petitioner was given posting at the said station for one year and 10 months. Thereafter the Petitioner was transferred as Head Master to New English School, Shirur, Tq-Shirur, Dist-Pune, where he worked upto 31st May, 2007 and thus the Petitioner was given posting at the said station for 4 years and 8 months. Thereafter on 1st June, 2007, the Petitioner was transferred as Head Master of Yashwant Vidyalalaya, Padegaon, Tq-Shrirampur, District-Ahmednagar, where he was posted upto 10th November, 2011. Thereafter the Petitioner was transferred as Head Master of E.K. Aute Vidyalaya, Malunja, Tq-Shrirampur, Dist-Ahmednagar. The Petitioner was given posting of 6

months and 21 days at the said station. Thereafter the Petitioner was transferred to Rameshwar Vidyalaya, Vari, Tq-Kopargaon, Dist-Ahmednagar, where he worked from 1st June, 2012 to 30th June, 2014. Thereafter the Petitioner was transferred as Head Master of Bhaskarrao Galande Patel Vidyalaya, Undirgaon, Tq-Shrirampur, Dist-Ahmednagar on 1st July, 2014 and even there the Petitioner was allowed to work only for two years and some months.

5. It is further the case of the Petitioner that on 1st June, 2017, he was transferred as Head Master of Shri Chatrapati Shivaji Vidyalaya, Wadala Mahadeo, Tq-Shrirampur, Dist-Ahmednagar. At the said station the Petitioner was allowed to work only for one year i.e. upto 31st May, 2018. Thereafter the Petitioner has been transferred to far away place at Hatola, Tq-Ashti, Dist-Beed as Head Master of New English School, Hatola, run by

Respondent No.4. The Petitioner has challenged the said transfer order in this Petition.

6. It is the case of the Petitioner that within one or two years, he has been transferred on number of occasions by Respondent No.4, as pointed out above. These transfer orders are arbitrary, illegal and also made with ill-intention to harass the Petitioner. The reason of subjecting the Petitioner to harassment by transferring him before completion of three years tenure or within one or two years, is that the Petitioner is not enjoying the favour of Respondent No.4 on various grounds. One ground is that, Respondent No.4 has implemented the scheme of Government, namely, ICT (Information and Communication Technology Lab). Under this Scheme, the Government of India has provided Respondent No.4 schools with a Laboratory furnished with computer, instructor for computer, light bill for

computer Lab and also such expenses are incurred by the Government of India. Under the Right to Education Act, there is free and compulsory education for all children from 1st to 8th standard. In spite of that, Respondent No.4 insisted that a particular fees be collected from the students taking computer education in the ICT Lab. The Petitioner did not cooperate for recovery of illegal fees of computer education from class 1st to 8th students, and therefore Respondent No.4 harassed the Petitioner by transferring him from time to time within a short span of time at one station.

7. It is the case of the Petitioner that on 13th December, 2014 Respondent No.4 has issued notice to the Petitioner, stating that from 11th November, 2011 to 31st May, 2012, when the Petitioner was Head Master of Malunje school, at that time he has failed to recover Rs.93,000/-

(Rs.200/- each from 465 students towards computer education fees) It was further stated in the said notice that an amount of Rs.70,810/- has not been recovered, as such by holding the Petitioner responsible for the same, Respondent No.4 has directed the Petitioner to deposit Rs.70,810/- in the account of Respondent No.4 before 31st December, 2014. It is the case of the Petitioner that there is no Government Resolution or Rule empowering Respondent No.4 to charge Rs.400/ per student for computer education in one academic year. But Respondent No.4 has illegally directed the Petitioner to deposit Rs.70,8120/- towards so-called deficit of computer education fee.

8. It is the case of the Petitioner that on 15th July, 2015, Respondent No.4 issued another notice to the Petitioner stating that during the period from 1st June, 2007 to 10th November, 2011, when he was working as Head Master of Yashwant

Vidyalaya, Padhegaon, it was expected that he should have collected Rs.1,35,000/-, from 675 students as Rs.200/- per student, but the Petitioner has deposited Rs.6,760/- only. Thus, the Petitioner was directed to deposit Rs.1,28,240/- towards deficit fees with Padhegaon school of Respondent No.4, on or before 31st July, 2015.

9. It is the case of the Petitioner that on 28th February, 2015, another notice was issued to him by Respondent No.4, calling upon the Petitioner to deposit Rs.70,810/-, which were not deposited by the Petitioner though earlier notice was issued to him on 13th December, 2014, referred herein above.

10. It is the case of the Petitioner that for the said recovery of Rs.70,810/-, again notice was issued on 14th May, 2015, and the Petitioner was

forced to deposit an amount of Rs.50,000/- illegally by Respondent No.4. Hence the Petitioner has prayed that Respondent No.4 be directed to return Rs.50,000/- to him. Again on 31st October, 2015 another notice was issued to the Petitioner and the Petitioner was forced to deposit Rs.1,00,000/- with Respondent No.4. The Petitioner has prayed that Respondent No.4 be directed to return the said amount of Rs.1,00,000/- to him. Thereafter again by notice dated 30th December, 2017, the Petitioner has been directed to deposit Rs.1,27,080/- in the computer head account of Respondent No.4 towards deficit computer education fees. Respondent No.4 issued another notice to the Petitioner on 25th January, 2018 directing him to pay deficit computer education fee amounting to Rs.1,27,080/-. By notice dated 21st February, 2018, Respondent No.4 directed the Petitioner to recover from salary of teachers the deficit computer education fee, mentioned against the name of each

teacher. By letter dated 17th April, 2018, the Petitioner has filed report to Respondent No.4 regarding notice dated 21st February, 2018.

11. It is the case of the Petitioner that because of the incidents pointed out herein above, Respondent No.4, with an intention to harass the Petitioner, has transferred him from one station to another, before completion of three years at one station. Hence it is prayed by the Petitioner to quash and set aside the impugned transfer order.

12. Learned counsel appearing for the Petitioner has submitted that, Right to Education Act provides for free and compulsory education for all children from 1st to 8th standard. Still Respondent No.4 management is recovering fees from the students as computer education fee, which is illegal. It is submitted that the Petitioner did

not cooperate for recovery of such illegal fees, therefore Respondent No.4, with an intention to harass the Petitioner, transferred the services of the Petitioner from time to time before completion of period of three years at one station. It is submitted that from 1st June, 2017, the Petitioner was transferred as Head Master of Shri Chatrapati Shivaji Vidyalaya, Wadala Mahadeo, Tq-Shrirampur, Dist-Ahmednagar, however, before completion of the period of three years, the Petitioner has been transferred at Hatola, Tq-Ashti, Dist-Beed with effect from 31st May, 2018. It is submitted that the said action of Respondent No.4 is illegal. Therefore, learned counsel prayed that impugned transfer order may be quashed and set aside.

13. Referring to the pleadings in the amended Petition, learned counsel appearing for the Petitioner submits that Information and Communication Technology Scheme is being

implemented in the State of Maharashtra. It is submitted that under the said Scheme, the Government is bearing all the expenses including salary of computer instructor, electricity charges, inter-net connection charges etc. It is submitted that as per letter dated 19th November, 2013 issued by the School Education Department, there is no provision to charge any fees from the students towards computer education fees. However, the management is illegally recovering computer education fees from the students. It is submitted that Respondent No.4 forced the Petitioner to deposit an amount of Rs.1,00,000/- under the Head of Computer Education Fee, which is illegal and without any authority. Learned counsel therefore prays that Respondent No.4 be directed to repay the amount of Rs.1,00,000/- to the Petitioner along with interest @ 10% from 10th October, 2016, till realization of the entire amount. Referring to the chart at Page No.18-D of the Petition,

learned counsel submits that Respondent No.4 management has retained some of the Head Masters at particular school for years together and the Petitioner has been transferred before completion of one year and therefore there is discrimination at the hands of Respondent No.4. It is submitted that because of harassment at the hands of Respondent No.4 and due to issuance of impugned transfer order, the Petitioner is suffering from ill-health. Learned counsel therefore, prays that the Petition deserves to be allowed.

13. On the other hand, learned A.P.P. appearing for the State submits that Respondent No.4 transferred the Petitioner on administrative ground and the said action is not punitive. Learned A.G.P. further submits that so far as the issue of recovery of computer education fees is concerned, it raises disputed questions of facts, which cannot be gone into under extra ordinary

writ jurisdiction of this Court. Learned A.G.P. therefore prayed for dismissal of the Writ Petition.

14. Learned counsel appearing for Respondent No.4, referring to the reply filed on behalf of Respondent No.4, submits that Petitioner is challenging transfer order dated 30th May, 2018. It is submitted that the impugned transfer order is issued by Respondent No.4 on administrative ground, and the same is specifically mentioned in the impugned order. Referring to Page No.32 of the Petition, it is submitted that on 28th June, 2014, the Petitioner was transferred to Undirgaon in Bhaskarrao Galande Patil High School as Headmaster. Thereafter, after period of four years, the Petitioner is being transferred to Hatola New English School as Headmaster. It is submitted that post of the Petitioner is being maintained and there is no reduction in the

salary.

15. Learned counsel further submits that computer training is given to the students studying in 5th to 8th standards. There is no financial aid provided by the Government. Therefore, Rs.400/- per student has been charged. It is further submitted that on 11th October, 2000, the Government of Maharashtra has issued directions for providing computer education to the students, and in the said Government Resolution itself there is clause mentioning that expenditure which is borne by the management should be recovered from the students as fees. It is further submitted that for providing computer education to the students from 5th to 8th standard, no grants or funds are given by the Government. Therefore, for implementing the scheme of the Government, therefore fees of Rs.40/- per student is being charged from the students studying in 5th to 8th

standard. It is further submitted that the Petitioner being headmaster of the school, was responsible for recovery of the fees from the students and deposit the same with Respondent No.4.

16. Learned counsel further submits that Petitioner worked as Headmaster since 1st June, 2007 till 10th November, 2011 in Padegaon school. The Petitioner was supposed to recover the computer education fees from the students taking education in 5th to 9th standards, to the extent of Rs.1,35,000/-, however he has recovered only Rs.6060, and thus the Petitioner has not deposited fees to the extent of Rs.1,28,220/-. It is submitted that from 11th November, 2011 till 31st March, 2012 the Petitioner worked as headmaster in Malunje School, in that school fees of Rs.1,86,000/- towards computer education was to be recovered. However, only Rs.22,190/- were

recovered and remaining fees of Rs.1,63,810/- was not deposited in the institution. It is submitted that the Petitioner has filed undertaking that he will deposit the deficit fees, but he has not deposited the fees as undertaken by him on 18th April, 2015. It is submitted that on 19th October, 2015, the Petitioner has undertaken to deposit Rs.50,000/-, however, he failed to do so. It is further submitted that since the Petitioner failed to deposit the fees, he was served with show cause notice dated 23rd June, 2017. As the Petitioner failed to deposit the fees, another show cause notice dated 25th January, 2018 was issued to him. It is submitted that by communication dated 30th December, 2017, the Petitioner was asked to deposit Rs.1,00,000/-. It was the duty of the Petitioner to get fees deposited and further he was responsible for depositing fees in the office of Respondent No.4. Since the Petitioner failed to deposit the fees, he was served with notice dated

7th June, 2018. Learned counsel submits that neither the order of transfer can be interfered with nor the proceedings which are initiated against the Petitioner for recovery of the computer education fees. Hence it is prayed that Writ Petition may be dismissed.

17. We have carefully considered the submissions of the learned counsel appearing for the Petitioner, learned A.G.P. appearing for the State and learned counsel appearing for Respondent No.4. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of Respondent No.4 and affidavit in rejoinder filed by the Petitioner.

18. Admittedly, during the entire period of service, the Petitioner has been transferred from time to time. We have perused the impugned

transfer order issued by Respondent No.4. In the impugned transfer order, it has been specifically stated that the Petitioner has been transferred on administrative grounds. It is pertinent to note that transfer is an incident of service, and the management has every right to post particular employee at particular place, for smooth functioning of the institution. It has been specifically stated in the reply filed on behalf of Respondent No.4 management that the Petitioner served for four years at earlier station and thereafter he has been transferred. In our considered opinion, the action of Respondent No.4 management transferring the Petitioner from one place to another, is not punitive action. Therefore, we are not inclined to interfere in the impugned transfer order issued by Respondent No.4.

19. The Supreme Court in the case of National Hydroelectric Power Corporation Ltd. vs. 1. Shri

Bhagwan, 2. Shiv Prakash¹, in Para 5 of the Judgment, held as under:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

20. In the present case also the Petitioner

¹ (2001)8 S.C.C. 574

has failed to establish that his transfer is an outcome of mala fide exercise of power by the management. On the contrary, as observed earlier, it has been specifically stated in the impugned order that the Petitioner has been transferred on the administrative ground. Therefore, we do not find any substance in the contentions of the Petitioner that Respondent No.4 has illegally transferred him.

21. So far as the contention of the Petitioner that particular teachers have been retained as headmasters at particular places for considerable period is concerned, that raises disputed questions of facts and it is not desirable for this Court to undertake the exercise to decide the disputed questions of facts. In respect of the said grievance, the Petitioner is free to make appropriate representation to Respondent Nos.2 and 3.

22. The Petitioner has also amended the Petition and prayed for directions to Respondent No.4 to refund of Rs.1,00,000/- recovered from him towards deficit computer education fees, and also direction is sought to restrain Respondent No.4 from effecting any recovery against the Petitioner for deficit computer education fees. Upon careful perusal of the amended Petition and also reply filed by the Respondents and rejoinder filed by the Petitioner, in our considered opinion, the issues, whether the Respondent management was entitled to recover computer education fees from the students, whether Petitioner was under obligation to collect the deficit computer education fees, or whether he has promptly deposited the said computer education fees with the treasury of Respondent management, also raises disputed question of facts and therefore, it is not possible for this Court undertake the said

exercise. In that view of the matter, we grant liberty to the Petitioner to make representation for redressal of his grievance about recovery of deficit computer education fees and not to make further recovery from him.

23. In case the Petitioner files the representation/ representations as observed herein above, Respondent Nos.2 and 3 shall decide the same in accordance with law and relevant procedure, as expeditiously as possible, however, within ten weeks from filing such representation/representations.

24. Needless to observe that before taking the decision on said representation/ representations which may be filed by the Petitioner, Respondent Nos.2 and 3 shall give reasonable opportunity to put forth the contentions to the Petitioner and also to

Respondent No.4.

25. In our opinion the transfer of the Petitioner is not punitive and it is issued on administrative ground by Respondent No.4. In that view of the matter, we are not inclined to interfere in the impugned order of transfer. The Writ Petition stands rejected. Rule stands discharged.

[K.K. SONAWANE, J.]

asb/DEC18

[S.S. SHINDE, J.]