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

WRIT PETITION NO.8307 OF 2017

Vijay s/o Gaba Borse ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Ms Surekha Mahajan, Advocate for petitioner
Mrs. A.V. Gondhalekar, A.G.P. for State
Shri A.P. Yenegure, Advocate for respondent No.4
.....

CORAM: PRASANNA B. VARALE AND
MANISH PITALE, JJ.

DATED : 11th OCTOBER, 2018.

ORAL ORDER :

1. Heard learned counsel Ms Mahajan for the petitioner. The petitioner in the present petition is challenging the transfer order dated 3.5.2017, issued by the respondent No.4 and the letter dated 16.6.2017 issued by respondent No.2. The further prayer of the petitioner is, the petitioner be re-transferred to his original position in respondent No.5 school.

2. The petitioner submits that, the petitioner is having

academic qualification of B.Sc. B.Ed. and he was appointed as an Assistant Teacher on 24.6.1991. It is also stated that the petitioner received approval w.e.f. 24.6.1991 and the petitioner since beginning is serving in respondent No.5 school. The petitioner was transferred from respondent No.5 school to respondent No.6 school and the transfer is effected by the order dated 3.5.2017. Learned counsel Ms Mahajan, placing heavy reliance on the provisions of rules namely the Maharashtra Employees of Private Schools (Conditions of Service) Rules, submitted that, the transfer of the petitioner effected by way of order dated 3.5.2017 is clearly unsustainable. It would be useful for our reference to refer to the said provision on which reliance is placed on Note 7 of Schedule F of the M.E.P.S. Rules.

"7. Where one of the schools is a Girls' school and where the Management desires to maintain a separate seniority list of teachers in that school, the management shall resolve accordingly and forward a copy of the resolution to the Education Officer or, as the case may be, the Deputy Director of Education. Such a decision shall not, however, be revocable at any time in future. Further, where the Management decides to do so the candidates to be appointed to the teaching posts shall be given a clear understanding to the effect that they shall not have any claim on the promotional posts in other schools run by the same Management. The services of the members of the teaching staff in such a school shall not be permanently transferable to any other school and vice

versa. The temporary transfer of services of the members of the teaching staff in such a school shall also be with the prior permission of the Education Officer or, as the case may be, the Deputy Director of Education."

3. Learned counsel Ms Mahajan submitted that, when there is a specific provision which mandates that the management, before effecting such temporary transfer, must seek a prior approval/ permission from the authorities giving go-by to the provisions and effecting transfer is clearly in contravention of the provisions of the rules. The learned counsel then, inviting our attention to the affidavit-in-reply filed on behalf of respondent No.4, submitted that, though it is stated in the affidavit-in-reply that the permission was sought for, and the document is placed on record of granting the permission, the exercise undertaken by the management was clearly after effecting the service. the learned counsel submitted that, such a permission granted by the authority was in the nature of ex-post-facto sanction, which is clearly not expected of in view of the rules. It was also the submission of the learned counsel that, this is not a solitary instance when such transfer is effected by the management, but certain employees were before this court, raising the similar grievance.

4. The learned counsel then submitted that, the

Education Department authorities forwarded the communications dated 25.5.2017 and 16.6.2017. These communications refer to a petition pending in this Court namely Writ Petition No.6110/2013. It is also submitted by the learned counsel that, initially the order of transfer was cancelled, then again on the ground that the petition is pending in this Court, the order of cancelling the transfer itself was cancelled. The learned counsel then submitted that, even this exercise was also not in consonance with the factual position. Learned counsel invited our attention to an order passed by this Court, dated 2.12.2013 in Writ Petition No.6110/2013. It is submitted that, the order clearly reflects that the Writ Petition No.6110/2013 is disposed of by this Court. As such, the learned counsel submitted that the management and the authorities are either passing the orders or exchanging the communications on material which is clearly erroneous and unsustainable.

5. After hearing the learned counsel for the petitioner, the learned counsel appearing for the respondent management submitted that the grievance of the petitioner is now redressed. The learned counsel submits that, the petitioner is transferred back to his original school i.e. respondent No.5 school and the order is of 13.7.2018, giving effect of the order from 1.8.2018. In view of the transfer order, the grievance of the petitioner is

redressed and the order meets the satisfaction of prayer clause (B).

6. There is some substance on principle, raised by Ms Mahajan, the learned counsel for the petitioner. The learned counsel was justified in submitting before this Court that in spite of the specific provisions under the Rules, the authorities are not cautious enough to see that the provisions are complied with. We hope and trust that henceforth the authorities would consider the matters of the temporary transfers having a strict compliance of Note 7 of Schedule F of the M.E.P.S. Rules so that the teaching staff is not subjected to any hardship or disturbance in the service. Even though the petitioner submitted that the letter dated 16.6.2017 created hurdle, but then it seems that, these communications were forwarded probably in view of interim order passed by this Court. As of now, Writ Petition No.6110/2013, it is disposed of, the authority of the Education Department, by taking note of this fact also, not to insist upon an interim order which is passed in Writ Petition No.6110/2013.

7. The learned counsel Ms Mahajan then submitted that there is some difficulty in receiving salary of the petitioner and the period for which the petitioner worked, the salary is not paid. The petitioner, on the backdrop of this grievance, is at liberty to

approach the Education authorities by way of any representation/ application to the appropriate and competent authorities through proper channel as expeditiously as possible and not later than six weeks from the receipt of the application by the authorities.

8. Writ Petition is accordingly disposed of with above directions.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-