

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7131 OF 2017

Smt. Sunita Bajarang Kumbhar ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

WITH

WRIT PETITION NO. 7130 OF 2017

Smt. Varsha Gahininath Avhad ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

WITH

WRIT PETITION NO. 7132 OF 2017

Smt. Rahini Tukaram Sable ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

WITH

WRIT PETITION NO. 7133 OF 2017

Smt. Supriya Dinesh Mahadik ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7134 OF 2017**

Smt. Varsha Vishwanath Shitole ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7135 OF 2017**

Smt. Madhuri Govind Shitole ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7136 OF 2017**

Smt. Megha Madhukar Khandagale ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7137 OF 2017**

Smt. Alka Narayan Shinde ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7138 OF 2017**

Smt. Ashwini Shrirang Thorat ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7139 OF 2017**

Smt. Aarti Vitthal Urmode ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7140 OF 2017**

Smt. Swarda Pandurang Khedekar ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7141 OF 2017**

Shri Rahul Shilaman Gaikwad ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7142 OF 2017**

Smt. Poorva Sanjay More ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7143 OF 2017**

Shri Sunil Sarangdhar Shelke ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7144 OF 2017**

Smt. Shubhangi Ramesh Gawde ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7451 OF 2017**

Smt. Ashwini Tukaram Bhosale ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 7452 OF 2017**

Smt. Vaishali Subhash Shelke ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

**WITH
WRIT PETITION NO. 11215 OF 2017**

Ashabai D/o. Kisan Lohakare ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

**WITH
WRIT PETITION (st.) NO. 20444 OF 2017**

Shir Santosh Muralidhar Dhawade ... Petitioner.

V/s.

Pune Municipal Corporation & Ors. ... Respondents.

Mr. Saurabh S. Pakale, Advocate, a/w. Shankar Maruti Katkar
for the Petitioner(s) in all the Petitions, except WP-11215/17.

Mr. Ashwin Kapadnis for the Petitioner in WP No. 11215 of
2017.

Mr. Rajdeep S. Khadapkar, Advocate for the Respondent Nos. 1
and 2 in WP Nos. 7131, 7130, 7132, 7135, 7136, 7139 of 2017
& WP No. 7452 of 2017.

Mr. Nitin P. Deshpande, Advocate for Respondent No.3 in WP Nos. 7131, 7130, 7132, 7133, 7137, 7138, 7139, 7452, 7141, 7142, 7143, 7451 of 2017 and WP (L) No. 20444 of 2017.

Mr. R. M. Pethe, Advocate for the Respondent Nos. 1 and 2 in WP No. 7140 of 2017 and WP No.11215 of 2017 & W.P. No.7133 of 2017.

Ms. Geetanjali Koli, Advocate, i/by Mr. Vijay Killedar, Advocate for the Respondent No. 3 in WP No. 7140 of 2017 & in WP No. 11215 of 2017 for Respondent No.4.

Mr. S. B. Kalel, Assistant Government Pleader, for the State in all the Petitions.

**CORAM : B. R. GAVAI AND
SMT. BHARATI H. DANGRE,JJ.**

DATE : FEBRUARY 26, 2018

P.C. :

1 This group of writ petitions is being disposed of by this common order since the facts and controversy involved therein is identical.

2 All the writ petitions are filed by the teachers, who are working in the schools run by the various Zilla Parishads and are seeking implementation of the policy of the State

Government, contained in Government Resolution dated 29.09.2011, providing for inter district transfers of Class III and Class IV employees in Zilla Parishads. In two writ petitions (w.p.no. 7140 of 2017 and w.p. 11215 of 2017), the Petitioners have already been relieved from their erstwhile posts in Zilla Parishad, which they are holding, to resume on the posts which are on establishment of the Pune Municipal Corporation; however, in the remaining cases/petitions, such transfers were put on hold by the State Government and it is this action of State Government which is clamped as arbitrary.

3 In order to appreciate the facts involved in these petitions, a reference needs to be made to the Government Resolution / Circular issued by the State Government through Rural Development and Water Conservation Department dated 29th September 2011, pertaining to Inter District Transfers of Class-III and Class-IV employees of the Zilla Parishad. The said government circular sets out the policy of the State Government, permitting the transfers of Class III and Class IV

categories of the Zilla Parishad employees outside their districts and stipulates the parameters for availing such transfers through the competent officers i.e. Chief Executive Officers of the Zilla Parishad. As per the said policy, those employees of Zilla Parishad, who are desirous of seeking transfer to another Zilla Parishad would prefer an application to the Zilla Parishad from which he/she is seeking transfer alongwith the requisite reasons, accompanied with the necessary information about his/her service. The criteria for such transfer has been fixed as of rendering at least 5 years continuous service in the Zilla Parishad and it is only such an employee who has completed the service is held to be eligible to be considered for inter district transfer, which would include the period of service rendered as "Shikshan Sevak". This facility of inter district transfer is permissible only once during the entire service tenure. The Government Resolution also sets out the criteria for entertaining such applications and actual implementation of such transfers, made in furtherance of the policy of the State Government. The said Government Resolution relaxes the

condition of rendering service of five years for two categories, namely, amalgamation of husband and wife and these employees are appointed under ex-servicemen category. The said government resolution in Clause 10; by referring to the policy of the State Government which is in existence and contained in government circular dated 29th March, 2010 in relation to the amalgamation of husband and wife, fixed the preferences of these categories while effecting the inter district transfer. The said government resolution sets out preference for effecting the inter district transfers of the Zilla Parishad employees with an object of amalgamation of husband/wife and following preferences are expected to be followed :

- (i) If both, husband and wife are employees of Zilla Parishad.
- (ii) Out of husband and wife either one is an employee of Zilla Parishad and other is of State Government.

- (iii) Out of husband and wife, one is employee of Zilla Parishad and other the Central Government employee.
- (iv) Amongst the husband and wife, one is Zilla Parishad employee and other is employee of autonomous institution of the State Government, for example Municipal Corporation or Nagar Parishad, etc..
- (v) Amongst the husband and wife one is employee of Zilla Parishad and other is the employee of public undertaking, under the State Government or Central Government.
- (vi) Out of husband and wife one is Zilla Parishad employee and other is an employee of a Society, which is approved by the Government, and
- (vii) Out of the husband and wife, one employee is of Zilla Parishad and other is an employee in private society.

Apart from the such preferences, the Government Resolution also prescribes the preference of the employees,

who are disabled, inflicted with the serious ailment and unmarried employee/widow employee and also for amalgamation of husband and wife as well as ex-servicemen.

4 The said government resolution makes a reference to section 6 of the Maharashtra Zilla Parishad, District Service (Recruitment Rules), 1967. The Maharashtra Zilla Parishad District Service (Recruitment Rules) 1967 which are made in exercise of the powers conferred by clause 39 of sub-section (2) of Section 274 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 apply to the recruitment of all posts in District Technical Service (Class III), District Service Class (III) and District Service Class (IV). The term “District Service” defined in clause (2) (IV) of the said Rules of 1967 to mean a District Technical Services (Class III), a District Service (Class III) or a District Service (Class IV of a Zilla Parishad, constituted under clause (b) of Section 239 of the Act. Rule 6 of the Rules of 1967 provides for appointment by nomination, promotion or transfer. The said Rule prescribes

the mode in which the post falling in the aforesaid cadre can be filled in i.e. either by way of nomination, promotion or transfer.

Sub-Rule 8 prescribes the mode of filling up of the post by way of transfer and it reads thus :

“Rule 6(8) : Notwithstanding anything contained in these rules, the Chief Executive Officer may on an application made by any member of a District Service of another Zilla Parishad, appoint such member to a post in the District Service in which he held such post under that Zilla Parishad on such terms and conditions as may be mutually agreed upon between the two Zilla Parishads and subject to the following further conditions, namely :-

(i) Such appointment shall not be made to posts to be filled in exclusively by promotion and that they shall be made in vacancies which are reserved for appointment by nomination.

(ii) On such appointment on mutual exchange the person appointed shall, retain his seniority of the former Zilla Parishads or take the seniority of the Zilla

Parishad servant with whom he has exchanged, which ever of the two shall be lower.

(iii) On such appointment on his request the person appointed shall have his seniority in the cadre from the date of such appointment in the latter Zilla Parishad.

Clause (ii) and (iii) were substituted by G.N.of 14.1.1991.

5 The controversy before us is whether the policy formulated by the Rural Development and Water Conservation Department would contemplate absorption of an employee, working with the Zilla Parishad to a post on the establishment of the Municipal Corporation and, in specific, we have cases before us where the petitioners are the employees of the Pune Zilla Parishad, the Sangli Zilla Parishad who are seeking their transfer to a post on the establishment of the Pune Municipal Corporation. The petitioners before us relying upon the said policy of the Government, as contained in Government Resolution dated 29.9.2011, had preferred applications, seeking inter district transfer on the establishment of the

Pune Municipal Corporation. It is an admitted fact that the respective Zilla Parishads, in which the Petitioners have been working, have consented to such transfers and even the Pune Municipal Corporation had also agreed to absorb such candidates, who are desirous to be accommodated on the Pune Municipal Corporation's School Board. The Petitioners have followed the entire procedure of obtaining "no objection" certificate from the employer- Zilla Parishad in which they are rendering services and the Pune Municipal Corporation School Board had also granted sanction to 28 such transfers out of the 40 proposals before it and has acceded to the absorption of 28 employees on 10th February, 2014. By applying the policy of the inter district transfer and the amalgamation of husband and wife, all the petitioners are seeking implementation of the said decision and the petitioners are awaiting relieving orders so as to resume their duties on the establishment of the Pune Municipal Corporation School Board.

6 The Petitioners are, however, aggrieved by issuance of communication on 19th May, 2016 from the Pune Municipal Corporation School Board, addressed to the Chief Executive Officers of the Zilla Parishad, Pune, Satara, Sangli, etc., intimating the respective Zilla Parishads not to relieve their employees for resuming their posts on the establishment of the Municipal Corporation School Board. It is this communication which constrained the petitioners to approach this Hon'ble Court. The Petitioners are also further aggrieved by a report which is submitted by a three member Committee constituted by the Pune Municipal Corporation, alleging mal-practices in the entire episode of the transfers and permitting such inter district transfers. The Committee was constituted by the Pune Municipal Corporation by a resolution passed by it on 04.07.2015 and 09.09.2015 and it comprised of the Deputy Commissioner (General Administrative Department), Dy. Commissioner (Vigilance Department) and Dy. Commissioner (Property and Administration Department). A copy of the report prepared

and addressed to the Commissioner of Pune Municipal Corporation dated 09.09.2015 is placed on record and it is argued by the Petitioners that the said report deprives the petitioners' of a right which is already conferred on them in the light of the policy of inter district transfer and the transfers have been effected in the light of the policy of the State for amalgamation of husband and wife.

7 The learned counsel for the Pune Municipal Corporation has tendered a detailed affidavit before us, which is sworn on 23.02.2018 by the Education Officer of the Pune Municipal School Board. In the said affidavit the Education Officer has given details of the petitions listed before the court and have alleged that the petitioners have suppressed the material facts from this court. As per the said affidavit, the policy of the State Government in relation to the inter district transfer does not bind the Pune Municipal Corporation, which is a local authority established under the provisions of the Maharashtra Municipal Corporation Act, 1949 and it has its

own Service Regulations approved by the State of Maharashtra, framed in exercise of powers under section 457 (3) of the Maharashtra Municipal Corporation Act, 1949. Heavy reliance is placed on the Rule 6 of the Service Regulations which deal with transfers from other Municipal Corporation to Pune Municipal Corporation. The affidavit, further proceeds to state that the Anti Corruption Department had laid a trap, which resulted into filing of FIRs against the accused persons including the Chairman and one member of the erstwhile Pune School Board which had noted a large-scale mal-practices in issuing transfer orders and absorption of employees from various Zilla Parishad on the establishment of Pune Municipal Corporation School Board. The said orders of transfer were found to be tainted with corruption and the Pune Municipal Corporation passed a resolution on 4th July, 2015, appointing the three member committee to look into the irregularities in the matters of transfer of teachers from Zilla Parishads to Pune Municipal Corporation School Board. Heavy reliance is placed on the said report of the Committee,

which recommended cancellation of the entire process of transfer of 31 teachers under the guise of the Government Resolution of 2011. In this background, it is stated that the communication issued on 19th May, 2016 to the respective Chief Executive Officers of various Zilla Parishads, directing them not to relieve the teachers from their respective posts. Those cases, where the orders were not obeyed and the teachers came to be relieved from their original post of the Zilla Parishad, have been also mentioned in the affidavit. In view of the aforesaid facts, the affidavit categorically states that in view of Rule 6 of the Service Regulation of Pune Municipal Corporation, the Government Resolutions dealing with transfers from Zilla Parishad to Pune Municipal Corporation are not applicable to the Pune Municipal Corporation and the transfer, contrary to the service regulations, sanctioned by the State Government, cannot be given effect to. It is alleged that if such a mode of transfer is permitted, it would open the floodgates of backdoor entry for securing employment in the Municipal Corporation by first

getting employment in smaller government establishments where there is less competition to secure employment and then seeking transfer to School Board in Pune.

8 We have heard the learned counsel appearing for the Petitioners and the learned counsel appearing for the Pune Municipal Corporation. The State Government has a policy in existence, permitting inter district transfers and also a policy to deal with the problems faced by the women employees. The State of Maharashtra, as early as on 30th November, 1972, through the Government Administrative Department had issued a circular pursuant to which the committee was appointed by the State Government, which examined the problems faced by the women employees in the government service and it recommended that while effecting the inter district transfers, preference be given to the married women employees, if they do not claim any benefit obtained in their previous employment. The recommendation of the committee were accepted and the government issued

instructions through the said circular that inter department and inter district transfers from government service to Zilla Parishad / Municipalities and other offices and vice-versa may be allowed to the married women employees, as far as possible, provided they do not claim any benefits obtained in their previous employment.

Based on the said decision of the State Government, the Rural Development and Urban Development Department as well as Public Health and Housing Department, were directed to take steps to implement the said instructions by amending their recruitment rules, if necessary.

9 The State Government functions through various departments for the convenience of conduct of its business. The Zilla Parishads functioning in the State work under aegis of the Rural Development and Water Conservation Department, whereas the Corporations, work under the supervision of the Urban Development Department.

The Zilla Parishad employees are governed by the Rules framed by the State Government under the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 which govern their service conditions; whereas the employees of Corporations are subjected to the Rules framed in exercise of powers conferred under section 457 of the Maharashtra Municipal Corporation Act and various Corporations have framed their own service rules, governing the terms and conditions of employment of the employees working on its establishment.

The mode of transfer is considered as one of the manner in which the post on the respective establishments can be filled in, apart from the mode of nomination and promotion. Considering the transfer, being one of the mode of filling up of the post, the Rural Development and Water Conservation Department had issued circular on 20.03.2007 which came to be amended from time to time and on 29.09.2011, the State Government super-ceded all existing circulars in relation to inter district transfers and framed a

revised policy for transfers of Class-III and Class-IV employees, working in Zilla Parishad, desirous of being transferred in the Zilla Parishads of other district. The State Government prescribed the modalities for such transfers can be effected for transfers of class III and class IV employees working in the Zilla Parishad and seeking transfer from Zilla Parishad of one district to Zilla Parishad of another district. The said government circular does not contemplate transfers from one Zilla Parishad to the Municipal Corporation and to be more precise the Pune Municipal Corporation. In the group of petitions which we are dealing with, the petitioners are desirous of transfer from respective Zilla Parishad to Pune Municipal Corporation. The Pune Municipal Corporation has its own set of Rules, governing the service conditions of its employees and the said rules are known as "Pune Municipal Corporation Service (Recruitment and Qualification of Services) Rules, 2014". By virtue of Rule 6 of the said Rules of 2014, a provision is made, permitting the accommodation of an employee from the same class of Municipal Corporation, as the

Pune Municipal Corporation by way of transfer and such transfer is permissible with the approval of both Municipal Corporations subject to certain terms and conditions. As it is pointed out by learned counsel for the Corporation, Advocate Shri Pethe, that same Municipal Corporation under Rule 6 of the Rules of 2014 includes only Nagpur Municipal Corporation. So as a necessary corollary, a person seeking transfer from Nagpur Municipal Corporation may be accommodated on similar post in the Pune Municipal Corporation with the consent of both the Corporations. What is material to be observed is that the Zilla Parishad employees, specifically the Zilla Parishad Teachers, working in the Zilla Parishads are governed by the different set of Rules and the teachers working in the Corporation specifically the Pune Municipal Corporation are governed by its own set of rules, regulating the terms and conditions of its employment. There is no provisions for treating this service inter changeable and that is why the State Government, being conscious of this position through the Rural Development and Water

Conservation Department formulated a policy, governing transfer of Zilla Parishad employees from one district to another district and this did not contemplate the transfer from Zilla Parishad to the Pune Municipal Corporation and this is what has been precisely done in the said set of petitions before us.

10 The transfers of the petitioners from various Zilla Parishad to Pune Municipal Corporation were sought to be investigated when it was found that irregularities of grave nature have been committed while transferring 31 teachers from one district to another district under the policy of the husband and wife amalgamation. Resultantly, the Pune Municipal Corporation appointed the Committee to enquire into the said irregularities and the report submitted by the Committee clearly reflects that the circular of 29th September, 2011 issued by the Rural Development and Water Conservation Department was meant for effecting transfers from one Zilla Parishad to another Zilla Parishad i.e. inter district transfers. However, this circular can in no way be

invoked or to be used as a mode for transferring the employees to the Pune Municipal Corporation under the pretext of the husband and wife amalgamation and the said government circular has been mis-interpreted. It is observed by the Committee that 19 teachers working on the establishment of Zilla Parishads, have sought transfer and they have been transferred to the establishment of Pune Municipal Corporation, taking recourse to circular of 29th September, 2011 basis.

Resultantly, the Committee concluded that when the said transfers are permitted the service conditions of employees would undergo a change, since in Zilla Parishad 100% grant-in-aid for salary is available; whereas for the Municipal Corporation only 50% of grant-in-aid is received from the State Government. The Committee also observed that if such transfers are effected the budgetary allocation of the Corporation would be disturbed, as it would result into conferring of higher pay-scale and other ancillary benefits flowing from service conditions on the employees transferred

from Zilla Parishad. Resultantly, the Committee recommended that it is necessary to repatriate them if the employees have been already relieved and the other contingencies, where the employees have not been relieved may not be relieved from the respective Zilla Parishad since the Corporation is not in a position to absorb them.

11 In these circumstances, the Pune Municipal Corporation has issued the impugned communication, not permitting the relieving of the petitioners-employees on their transfer to the Pune Municipal Corporation and their absorption on the post within its establishment. We do not see any infirmity in the said order passed by the Corporation since the transfer order, which was effected, were not falling within the parameters of government resolution dated 29th September, 2011, which inter-alia govern inter district transfers of Zilla Parishad employees.

12 The learned counsel for the petitioners have placed heavy reliance on the judgment delivered by this Hon'ble

Court in writ petition no. 4478 of 2017 to which one of us, (B.R.Gavai, J) is a party. In the said judgment, the petitioners were aggrieved by the inaction on the part of the Nashik Municipal Corporation in allowing them to join in the Nashik Municipal Corporation and the petitioners were posted as “Shikshan Sevak” in Raigad Zilla Parishad. Relying on the policy contained in the government circular dated 29.09.2011, providing for inter district transfers from various categories, including husband and wife amalgamation, the petitioners had applied for transfers from Roha Nagar Parishad to Nashik Municipal Corporation and the Nashik Municipal Corporation had accorded its consent to such transfer and accordingly, the petitioners were relieved.

In the backdrop of the aforesaid facts, this court held that the action of Nashik Municipal Corporation, in not allowing the Petitioners to join its services was found to be unjustified, specifically when the Corporation/Municipal Council had already given their “no objection” and even relieved the petitioners. This Court in the said order had

found substance in the submission of the petitioners that once they have been relieved from the service of the respective Municipal Corporation, the Nashik Municipal Corporation was thereby acting contrary to the “no objections” and the writ petition was allowed.

In the aforesaid judgment, this Court's attention was not invited to any decision taken by the Municipal Corporation similar to a decision taken by the Pune Municipal Corporation, where the Pune Municipal Corporation appointed a committee to scan the transfers effected from Zilla Parishads to the Pune Municipal Corporation and had arrived at a finding that such transfers are unsustainable in view of the different set of rules, governing the respective employees.

In any case, in the present case, we are dealing with the Pune Municipal Corporation, who had taken positive steps by adopting a stand and communicating it to all these Zilla Parishads within the Pune district and adjoining district; from where the transfers are sought to the Pune Municipal Corporation.

12 For the reasons recorded above, we do not find any reason to address the grievance of the Petitioners.

13 Resultantly, we pass the following order :

 All these Writ Petitions are dismissed. However, in so as the Writ Petition No. 7140 of 2017 is concerned, the Respondent No.3-Solapur Zilla Parishad is directed to continue the Petitioner to work in Solapur Zilla Parishad and though we are not inclined to grant any salary for the period during which she was out of employment, she would be entitled to be continued in service for all purpose and in so far as, writ petition no.11215 of 2017 is concerned, the Respondent No. 4, the Zilla Parishad Sangli, is directed accordingly, in the same terms.

(SMT. BHARATI H. DANGRE, J.)

(B. R. GAVAI, J.)

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