

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4642 OF 2016

(Narendra s/o Ramchandra Butke vs. Zilla Parishad, Yavatmal thr. its CEO & Anr.)

AND

WRIT PETITION NO. 2947 OF 2017

(Narendra s/o Ramchandra Butke vs. Zilla Parishad, Yavatmal thr. its CEO & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI, JJ.
JANUARY 12, 2018.**

Heard Shri N.S. Khubalkar, learned counsel for the petitioner, Shri R.D. Bhuibhar, learned counsel for respondent No. 1 and Shri S.A. Ashirgade, learned Additional GP for respondent No. 2.

2. The petitioner claims to be a President of a duly approved Employees' Association in the employment of respondent No. 1. He has challenged the order of transfer dated 05.08.2016 transferring him from Public Works Division No. 1 Zilla Parishad, Yavatmal to Panchayat Samiti, Moregaon.

3. The submission is, as per policy decision regulating transfers, the petitioner can continue for a period of additional five years after his election as President of such association. This Court on 09.08.2016 directed parties to maintain status quo while issuing notice.

4. As this order was not properly implemented or recognized, the petitioner made fresh grievance in Writ

Petition No. 2947 of 2017. In that petition, on 16.05.2017, the Court clarified that the petitioner cannot be compelled to join at transferred place. Because of this clarification and order dated 09.08.2016 mentioned supra, the petitioner continues at Yavatmal only.

5. In this backdrop, we heard the learned counsel for the parties. We find that the petitioner is continuing at Yavatmal since 2003. He, therefore, completed normal tenure of 10 years somewhere in the year 2013. As he has been elected as President of Employees' Association in June 2012 for a period of 5 years, he has been given five years more in that capacity after his election and the said period expired in June 2017. However, the petitioner claims that he has been re-elected as President and that tenure is yet to expire.

6. A perusal of Chapter V of Policy decision (A)(4) shows normal tenure of 10 years plus extension of five years in such contingency. Thus, for office bearers like the petitioner, the maximum possible tenure is 15 years. This tenure is also due to expire in this year i.e. in 2018.

7. Shri Bhuibhar, learned counsel has, however, submitted that this concession is available only to the President of the Employees' Association which is approved by the State Government. He submits that Employees' Association represented by the petitioner is not so recognized. He is relying upon the reply affidavit filed in

this respect by the State Government along with list of Unions/ Associations.

8. The learned counsel for the petitioner has invited our attention to a Circular dated 03.01.1989 issued by the Rural Development Department at Annexure P-5. In that annexure name of the Employees' Association represented by the petitioner figures.

9. In present jurisdiction, it is not necessary for us to go into correctness or otherwise of this position. If respondent No. 1 – employer has already given that concession to the petitioner or then has declined it, due application of mind by it would reveal that it has looked into that claim and found association either to be duly approved or not approved. There is no such disclosure on record.

10. Hence, in present matter when the interim orders are operating since 09.08.2016 and impugned order is also about 18 months old, we find that interest of justice can be met with by directing respondent No. 1 to reconsider the claim of the petitioner in terms of policy and thereafter to take fresh decision as per law. Such decision shall be taken within a period of two months after the communication of order of this Court.

11. With these directions and keeping all rival contentions open, impugned order dated 05.08.2016 is

quashed and set aside. Consequently, Writ Petition No. 4642 of 2016 is allowed and disposed of. Because of this, Writ Petition No. 2947 of 2017 is disposed of as infructuous. No order as to costs.

12. At this stage, it is pointed out to us that the petitioner had also approached Industrial Court, Yavatmal, against transfer order. The learned counsel for the petitioner submits that instructions were already issued to withdraw that complaint. If the complaint is not already disposed of, we direct the petitioner to withdraw it forthwith. If it is not withdrawn within two weeks from today, the judgment delivered by this Court shall not come into force.

JUDGE

JUDGE

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