

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

**WRIT PETITION NO.8488 OF 2018
with CIVIL APPLICATION NO. 11278 OF 2018**

1. Anil s/o Govindrao Kale
Age 41 years, Occu.Service-
Assistant Teacher,
Swami Vivekanand Academy,
Chikalthana M.I.D.C. Aurangabad
District Aurangabad
Email : anilgovindraokale@gmail.com
2. Udhav s/o Purushottam Bidwai
Age 40 years, Occu.Service-
Assistant Teacher,
Swami Vivekanand Academy,
Chikalthana M.I.D.C. Aurangabad
District Aurangabad.
3. Sachin s/o Sawaliram Dange,
Age 37 years, Occu.Service-
Assistant Teacher,
Swami Vivekanand Academy,
Chikalthana M.I.D.C. Aurangabad
District Aurangabad.
4. Mahendra s/o Hiranman Chavan,
Age 38 years, Occu.Service-
as Assistant Teacher,
Swami Vivekanand Academy,
Chikalthana M.I.D.C. Aurangabad
District Aurangabad.
5. Vijay s/o Natha Aade,
Age 32 years, Occu.Service-
as Assistant Teacher,
Swami Vivekanand Academy,
Chikalthana M.I.D.C. Aurangabad
District Aurangabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Department of School Education,
Mantralaya, Mumbai,
E-mail: schedu@maharashtra.gov.in
2. The Director of Education,
Maharashtra State, School Education
Administrative Building, Pune
District Pune
E-mail :
3. The Education Officer (Secondary)
Zilla Parishad, Aurangabad
Taluka & District Aurangabad.
E-mail :
4. The Education Officer (Primary)
Zilla Parishad, Aurangabad
Taluka & District Aurangabad.
E-mail :
5. Maharashtra Academy of Engineering
& Education Research, Pune,
through its President – Dr. Vishwanath
s/o Dadarao Karad,
R/o Survey No.124, Ex-servicemen
Colony Post Office, Paud Road,
Kothrud, Pune, District Pune,
Email : vdkarad@mitpune.com
6. Swami Vivekanand Academy,
P-5, M.I.D.C. Chikalthana,
Aurangabad, District Aurangabad,
Through its In-charge Head Master
Email: svaschool@gmail.com
7. Shri Saraswati Karad Secondary School
Umbarge, Taluka Barshi,
District Solapur,
Through its In-charge Head Master

8. Shri Mata Ratneshwari Devi Vidya Niketan
At/Post Wadeपुरi, Taluka Loha,
Dist.Nanded Through its
In-charge Head Master

9. Vishwshanti Gurukul Primary School,
Arvi, Sai Road, Latur,Dist.Latur
through its In-charge Headmaster.

...RESPONDENTS

Shri B.L.Sagar Killarika, Advocate for petitioners.

Shri V.M.Kagne,AGP for respondents 1 to 3.

Shri D.B.Pawar,Advocate for respondent no.4.

Shri N.P.Patil Jamalpurkar,Advocate for respondents no.5 to 9.

**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 17.07.2019
PRONOUNCED ON : 08.08.2019**

JUDGMENT [PER MANGESH S. PATIL,J.] :

Heard. Rule. The Rule is made returnable forthwith. The learned AGP waives service for respondents. Mr. D.B. Pawar waives for respondent no.4 and Mr. N.P. Patil waives service for respondent nos.5 to 9. With the consent of both the sides the Writ Petition is being disposed of finally at the stage of admission.

2. This is yet another Writ Petition taking objection to the transfer of the teachers from one school being run by the management to another school. The petitioners are assailing the order of transfer on the ground of it being prompted by *mala fides* and does

not conform to the the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977.

3. The learned advocate Mr. Karad for the petitioners submits that the petitioners were appointed as Assistant Teachers and are serving with the respondent no.5 which runs the respondents no. 6 to 9 schools and have been discharging their services as such in the respondent no.6 school. Their services have been approved by the concerned Education Officers. Their services are regulated by the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977 and the Rules framed thereunder of 1981 (hereinafter referred to as the Act and the Rules). The petitioners had submitted a joint representation claiming salary and allowances as per the provisions of the Act and the Rules. Annoyed by such demand, the respondents 5 and 6 started harassing them. They were served with various show cause notices under some pretext or the other. Since the respondents 5 and 6 were not taking any decision the petitioners filed Writ Petition No.9921/2012. By the order dated 17.6.2012, the respondent no.2 Director of Education on the representations of the petitioners directed the respondent no.5 Society to pay the salary and allowances to the petitioners as per revised pay scale. Annoyed by such a direction, the respondent no.5

issued memorandum to the petitioners and other employees to which they had promptly replied. The petitioners and the other employees then preferred Writ Petitions No.1921/2014 and 7519/2016. The High Court allowed both the Writ Petitions on 20.3.2017 and directed the respondent no.5 Society to pay the salary to them in accordance with the law from April 2017 onwards and further directed it to clear the arrears within 6 months. Since thereafter the petitioners insisted for implementation of the directions of this Court. The respondent no.5 Society avoided to pay the arrears under the pretext that it was yet to receive arrears of fees from students running into lakhs of rupees. The respondent no.5 Society called upon the petitioners to discuss the issue and threatened of consequences if they failed to attend. The petitioners therefore preferred Contempt Petition No.550/2017. The respondent no.5 Society preferred Special Leave Petition in the Supreme Court but failed to secure any interim relief. According to the learned advocate, annoyed by such steps, the respondent no.5 Society has vindictively transferred the petitioners and therefore the order is illegal and void.

4. The learned advocate for the petitioners also pointed out that the schools where the petitioners have been ordered to be transferred do not have vacancies to absorb them. No cascading

transfer orders displacing the teachers from the respective schools has been passed, simultaneously therefore even practically the impugned order of transfer cannot be effectuated.

5. The learned advocate for the contesting respondents Mr. N.P. Patil-Jamalpurkar, referring to the affidavit-in-reply submitted that transfer is an incidence of job when the respondent no.5 has been running several schools at different places all over Maharashtra. The petitioners have been serving at the same place for last number of years and cannot be heard if they are now transferred to meet the administrative exigencies. He would submit that the schools being run by the respondent no.5 do not receive any grant-in-aid from the State Government and the salary of the staff is being borne by it. Therefore even if it is found that there are no vacancies in the schools where the petitioner have been transferred to absorb them, it would be primarily and exclusively the responsibility of the respondent no.5-Society to pay their salary. Lastly, the learned advocate would submit that merely because the petitioners claim for revision of their pay had ended up in some litigation between them and the Society, that *per se* would not be sufficient to attribute *mala fides* to it. The transfers have been effected purely for administrative reasons within the four corners of the powers vested in it under Rule 41 of the Rules and the

petition does not contain substance and be rejected.

6. The learned advocate Mr. Patil further pointed out that the attitude of the petitioners is also hostile to the school and the respondent no.5-Society. In spite of the order they have failed to join at the place of their new posting and instead have been entering into the school precincts and creating law and order problem. Therefore no equitable relief can be granted to them when they are bent upon to harass the respondent no.5-Society and the school authorities. The incident has led to even lodging of a police complaint and after such bitterness and hostility it would not be in the interest of the students as well if the petitioners continue to officiate in the same school.

7. In response the learned advocate for the petitioners submitted that no incident as alleged has ever taken place. A false police complaint seems to have been lodged by the respondent no.5-Society and the school authorities to harass the petitioners and just to create some doubt in the mind of the Court about the genuineness of the petitioners' grievance.

8. We have carefully perused the papers. It is trite that when a Management runs several schools at different locations, the transfer of teachers is merely an incidence of the job they are doing.

A teacher can assail the order of his transfer either on the ground of lack of statutory power or failure to effect the transfer strictly in accordance with the powers conferred by the statute or if the order of transfer is prompted by some *mala fides* on the part of the Management.

9. The petitioners have been alleging that the impugned order of transfer has not been passed strictly in accordance with the power vested in the respondent no.5-Society under Rule 41 of the Rules. In support of their such contention they have relied upon a letter issued by the respondent no.3 dated 22.06.2018 addressed to the respondent no.5-Society and the Head Master of the respondent no.6-school, directing them that the transfers are not in accordance with Rule 41 of the Rules and therefore the order be cancelled and their salaries be released.

10. We have carefully gone through this letter dated 22.06.2018 issued by the respondent no.3- Education Officer (Secondary). It does say that the impugned order is not in accordance with the Rule 41. However it is absolutely devoid of any ground or reason as to why the impugned order does not conform to the powers conferred upon the respondent no.5-Society under the Rule 41. It is clearly a vague and blanket direction calling upon the

respondent no.5-Society to cancel the impugned order of transfer and release the salary of the petitioners. To our mind, the respondent no.3 would have been better advised to have come out with some specific and precise reason to justify his direction. Since neither the letter contains any such reason or ground for such a direction nor has the respondent no.3 come out with any by filing any affidavit in response to the petition. We find it difficult to subscribe to the conclusion drawn by him, merely for asking. In the absence of any such specific ground or reason, the impugned order cannot be assailed on the ground that it does not conform to Rule 41 of the Rules.

11. There is no dispute that the schools being run by the respondent no.5-Society do not receive any grant-in-aid from the State Government, still the provisions of the Act and the Rules are applicable and govern the relation between the petitioners and the respondent no.5- Society. Consequently, Rule 41 of the Rules would be applicable and vest the respondent no.5-Society with a power to transfer the teachers since it runs several schools at different locations in the state of Maharashtra. Admittedly petitioners have been serving in the same school for last so many years and apparently, the respondent no.5-Society does have the statutory power to transfer

them and no fault *per se* can be found with the impugned order on the touch stone of the statutory power.

12. However, the petitioners have been primarily assailing the order of transfer on the ground that it has been prompted by *mala fides*. In order to substantiate their such allegation they have pointed out as to how they have been agitating for revision of their pay scale and as to how the dispute has culminated into lot of litigation between them and the respondent no.5-Society over a period of few years right up to filing of a contempt petition by some of the teachers. However as has been submitted by the learned advocate for the respondent no.5-Society Mr. Patil, this circumstance *per se* would not be sufficient to jump to any conclusion much less as has been sought to be drawn by the petitioners.

13. But then there are few other circumstances which coupled with the aforementioned circumstance would cumulatively lead to a clear inference that the impugned order of transfer has not been passed due to some administrative exigency but smacks of some ulterior motive.

14. The first such circumstance is regarding the fact that except the petitioners no other teachers have been sought to be

transferred simultaneously albeit the impugned transfers have been sought to be effected coinciding with the end of an academic year and beginning of a new academic year. The affidavit-in-reply is conspicuously silent regarding this aspect. If at all the impugned order of transfer has been passed in the routine manner in the ordinarily course of the administration, it is not made clear by the contesting respondents as to why and how except the petitioners no other teacher has been sought to be transferred simultaneously. In our considered view this circumstance clinchingly demonstrates that the impugned order of transfer though has been made to appear to have been passed in a routine course, in reality there is some motive behind it.

15. The second circumstance which lends credence to our inference attributing *mala fides* in passing the impugned order of transfers is the fact that there is no corresponding vacancy sought to be created in the schools where the petitioners have been directed to be transferred. If at all the petitioners are to be transferred to a school at a different place, simultaneously some teachers from that school ought to have been transferred. Again, the affidavit-in-reply is absolutely silent about this aspect of the matter as well. The petitioners have produced on the record the staffing pattern and the

existing staff available at the respondent schools where the petitioners have been sought to be transferred duly certified by the Education Officer (Secondary), Zilla Parishad, Aurangabad. A bare look at this letter clearly shows that in respondent no.7-School, against the approved post of one under graduate teacher and three graduate teachers all the posts have been filled. Similarly in respondent no.8 against four posts of under graduate teachers all the seats have been filled in. As far as respondent no.9 is concerned, the letter mentions that the school has failed to forward the statistics on the portal and the information could not be generated. Similar is the case with respect to the respondent no.6-School where the petitioners have been currently posted. This circumstance in our considered view further creates a serious doubt about the *bona fides* on the part of the respondent no.5-Society in directing the petitioners to transfer by the impugned order.

16. Pertinently, instead of meeting this circumstance with some rational explanation, the respondent no.5 in its affidavit-in-reply has made an attempt to dodged it by submitting that it would be the headache of the respondent no.5-Society to bear the brunt of paying salary to the petitioners, if at all they cannot be absorbed in the schools to which they have been transferred and the petitioners

need not worry about it and should not make any grievance, since the respondent no.5-Society and the respondent-schools are being run / managed on no-grant-basis.

17. Clearly such an evasive stand by the respondent no.5-Society smacks of not only arrogance but demonstrates as to how still it has been having some heart burn due to the challenge by the petitioners to the order of transfer. Therefore this circumstance according to us further corroborates our inference about the impugned order of transfer being prompted by *mala fides*.

18. Lastly, even during pendency of this writ petition, the contesting respondents seem to have been entertaining some grudge against the petitioners which has led them to lodge a police complaint against them. We do not intend to comment upon the veracity or otherwise of the allegations made in the complaint.

19. To conclude, all the above mentioned circumstances clinchingly demonstrate that the impugned order of transfer of the petitioners passed by the contesting respondents is prompted by *mala fides* and under the garb of administrative powers vested in them. Therefore although a transfer is an incident of their job the impugned order cannot sustain in law and is liable to be quashed and set aside.

20. The Writ Petition is therefore allowed in terms of prayer clause “C”. Rule is accordingly made absolute. Civil Application also stands disposed of.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]