

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

5 PUBLIC INTEREST LITIGATION NO.99 OF 2013

SUKLAL PAHUJI SURYAWANSHI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Shri Patil Paresh B.

AGP for Respondent nos.1 to 5: Mrs.M.A. Deshpande

Advocate for Respondent no.6 : Shri S.P. Brahme h/f Shri Maheshkumar S. Sonwane

Advocate for Respondent no.7: Shri U.B. Bondar

Advocate for Respondent no.8 : Shri Nilesh N. Desale

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 23.09.2019

PER COURT :

- 1] Heard learned counsel for the parties.
- 2] The public interest litigation draws attention of the Court to circulars dated 5.7.2008 and 3.11.2008 issued by the Home Department of the State of Maharashtra requiring Zilla Parishads to take steps to ensure that the employees of the Zilla Parishad reside at the headquarter allotted. The reason is obvious. If the employees do not reside at the headquarters, they would not be available during sudden unexpected emergencies and

further would be wasting time to travel from the place where they reside to the headquarters. Suffice it to highlight that the problem is accentuated in rural areas. Employees of the Zilla Parishad do not reside at the headquarter if the same is in a rural area.

3] The respondents do not refute the factual assertions made in the petition, but feel helplessness in view of a Division Bench judgment dated 19.10.2015 passed by a Bench of this Court at Aurangabad in **Writ Petition No.5822/2014 – Maharashtra Rajya Prathamik Shikshak Sangh v. The State of Maharashtra & Ors.** Marching under the banner of the Shikshak Sangh, teachers in the schools established by Zilla Parishads questioned the two circulars, which form the fulcrum of the instant public interest litigation, on the plea that vide Government resolution dated 5.2.1990 issued by the Finance Department of the Government of Maharashtra, employees were entitled to house rent allowance irrespective of the place where they reside. Precise plea was that in the teeth of the Government resolution dated 5.2.1990 issued by the Finance Department of the Government of Maharashtra, the field being occupied, could not be re-occupied by the two circulars dated 5.7.2008 and 3.11.2008.

4] It is apparent that the challenge succeeded on the principle of

law being that if a field is occupied by a general resolution of the Government duly notified, the same cannot be re-occupied by a circular.

5] Faced with the handicap of the denial of house rent allowance being set aside by a Division Bench of this Court, learned counsel for the petitioner urges that disciplinary action needs to be taken against such employees who do not reside at their headquarters in spite of being directed to do so. This, as per the petitioner, would be an act of delinquency attracting disciplinary proceedings to be initiated. Learned counsel for the respondents state that the respondents have no objection for taking disciplinary action against the errant employees. But we note that as per the reply filed, the number of delinquents is large. It nears about 6033 employees. We wonder what would be the fate of large number of disciplinary enquiries ordered. What we mean to say is that the end would be so far away that nothing would happen. 6033 enquiries would need 6033 Inquiry Officers to be appointed. 6033 Presenting Officers to be appointed and this would result in State administrative machinery virtually holding enquiries rather than performing their duties.

6] Thus, we guide the Government. The solution is simple. The circulars supersede the Government resolution dated 5.2.1990. Field

occupied would become vacant if said G.R. is revoked. The vacant field can be filled up by another Government resolution duly notified that such employees of Zilla Parishads, who do not reside in their headquarters in spite of being directed to do so would not be entitled to house rent allowance. Hoping that the Government would do the needful, we terminate the public interest litigation.

7] No costs.

(R.G. AVACHAT, J.)

CHIEF JUSTICE