

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1347 OF 2018
WITH
CIVIL APPLICATION NO.1348 OF 2018
WITH
CIVIL APPLICATION NO.2618 OF 2018
IN
WRIT PETITION NO.6132 OF 2018

Dattatray Maruti Sutar and Ors. }
Vs
The State of Maharashtra and Ors. }

Petitioners

Respondents

WITH
CIVIL APPLICATION NO.2259 OF 2018
WITH
CIVIL APPLICATION (ST) NO.33726 OF 2018
IN
WRIT PETITION NO.6132 OF 2018

Swapnali Pradeep Katgar }
Vs
The State of Maharashtra and Ors. }

Applicant/
Petitioner

Respondents

WITH
WRIT PETITION (ST) NO.15469 OF 2018

Rajesh Kisanrao Borate and Ors. }
Vs
The State of Maharashtra and Ors. }

Petitioners

Respondents

WITH
WRIT PETITION (ST) NO.15724 OF 2018

Dattatray Baliram Kumbhar. }
Vs
The State of Maharashtra and Ors. }

Petitioner

Respondents

WITH
WRIT PETITION (ST) NO.15808 OF 2018
WITH
CIVIL APPLICATION NO.1349 OF 2018

Sanjay Malgonda Bhikappa Patil and Ors. } Petitioners
Vs
The State of Maharashtra and Ors. } Respondents

WITH
CIVIL APPLICATION NO.1199 OF 2018
IN
WRIT PETITION (ST) NO.15808 OF 2018

Laxman Shankar Katekar and Ors. } Applicants
Vs
Sanjay Malgonda Bhikappapatil and Ors } Respondents

WITH
WRIT PETITION (ST) NO.16238 OF 2018

Subhash Dodha Ahire and Ors. } Petitioners
Vs
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION (ST) NO.16243 OF 2018

Ashish Rajan Pawar and Ors. } Petitioners
Vs
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION (ST) NO.16300 OF 2018

Mahesh Ramchandra Banne and Ors. } Petitioners
Vs
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION (ST) NO.16489 OF 2018

Sharadrao Sampatrao Mule and Ors. } Petitioners
Vs
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION (ST) NO.18262 OF 2018

Dilip Sadashiv Salunkhe and Ors. } Petitioners
 Vs
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION (ST) NO.37077 OF 2018

Suo.Nanda Sukhadeo Bhosale and Ors.} Petitioners
 Vs
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO.1323 OF 2019

Sudhir Bhimarao More and Ors. } Petitioners
 Vs
The State of Maharashtra and Ors. } Respondents

Mr.S.B. Talekar i/b Talekar & Associates for the
Petitioners/Applicants.

Mr.A.A.Kumbhkoni, Advocate General a/w Mr.S.B. Kalel, AGP
for State -Respondent Nos.1 and 2.

Mr.Ramesh D. Rathe for Respondent Nos.3 and 4.

**CORAM :- S. C. DHARMADHIKARI &
 M. S. KARNIK, JJ.**

DATE :- FEBRUARY 27, 2019

P.C. :-

1. Except Civil Application No.1347 of 2018, other matters are not on Board. Upon mentioning, they are taken on Board.

2. Civil Application No.1347 of 2018, filed in writ petition No.6132 of 2018 seeks leave to amend the writ petition in terms of the companion draft.

3. The applicants say that after the filing of the writ petition, the petitioners came to be transferred to far of places and thus, they were separated from their spouses. As a result, the petitioners are forced to challenge some of the actions and which have been taken post institution of the writ petition.

4. Most of the petitioners claim that they are transferred on 11th June, 2018 whereas some of them were transferred by order dated 16th June, 2018. It is claimed that all this has to be therefore placed on record as subsequent events and thereby avoiding multiplicity of litigation.

5. We have heard Mr.Talekar in support of this Civil Application and the learned Advocate General appearing for the State.

6. The learned Advocate General would object and submit that in the garb of such extensive amendments, now a fresh cause of action is introduced and virtually a new petition is sought to be placed on record.

7. On the other hand, Mr.Talekar would submit that these are the subsequent developments and related to the main issue. The main issue is that a transfer policy has been devised, which is not transparent and which gives scope to a large extent for nepotism,

favoritism, arbitrariness, illegalities and irregularities and which are highlighted.

8. It is claimed that these all teachers otherwise would not approach this Court and challenge a transfer, for what is now done is, in each of the Zilla Parishads across the State, a transfer policy framed by the State Government is foisted on the individual Zilla Parishad. The power to transfer is no longer vesting in the local functionary and the State reposes no trust, faith and confidence in it. The power to transfer is now centralised and the State is dictating to the local bodies what should be done in such matters. A policy is devised by the State and placed on its website. In terms of that policy, the primary teachers in each Zilla Parishad, whether they are due for transfer or otherwise, have to give their options. Such forced options are then construed as a voluntary act and then, transfer orders are issued. Such transfer orders displaces the family, spouses and even cause hardship to those suffering from illnesses or facing problems on account of illness of a close family member or are due for retirement and they are thrown of at far off places. In the circumstances, it is claimed that these petitions be retained on the file of the Court with all these amendments.

9. After extensively hearing both sides on Civil Application No.1347 of 2018, we find that the exercise carried out for the Academic Year 2018-2019 and post, a policy placed on website on 27th February, 2017 gave rise to the petitions complaining about the individual displacement by mass of transfers. Now this Academic Year is over. Those teachers, who have approached this Court at its Principal Seat, have been transferred and up-till now, there are no interim orders restraining either their superiors from effecting or enforcing the transfer orders or relieving them from the existing place of work. Resultantly, whether reluctantly or otherwise, the transfer orders have been executed and they have been implemented. It may be that the implementation has raised its own issues and problems. However, we do not think that we should go into this purely academic issue given the fact that we are at the fag end of the Academic Session. The Academic Year 2018-19 is virtually over. We are in the last week of February 2019 and close to first week of March, 2019. Now, almost all classes have come to an end and even the examination is underway. If at all, for the fresh Academic Session commencing in June, 2019 (2019-2020), another policy of transfer is framed or the existing policy is enforced with modifications or changes and that results in violation of the mandate of Articles 14 and 16 of the Constitution of India in any manner, all the petitioners

would be at liberty to challenge such orders and actions and in that challenge, they can raise appropriate issues including those set out in the present petitions.

10. We do not think that we should engage ourselves and waste our precious judicial time in matters of this nature given the fact that the Academic Year has come to an end. We are neither endorsing the policy of transfer as framed nor we are accepting the grievances or contentions based thereon of the petitioner.

11. Our real anxiety is somewhat different and going to the root of all this. It is the pathetic condition of primary education and prevailing in Zilla Parishads across the State which disturbs us. Today Zilla Parishads have become arena of politics. Everybody except those in-charge of running their affairs are inter-meddling and interfering. The day to day administration and management is not necessarily in the hands of the Executives who are placed at the disposal of the Zilla Parishads. They are forced to change their views or actions at the behest of some persons who are only interested in power politics or some superior officials who think that these persons at the local level are unfit to carry on the day to day affairs. The concentration of power in Mantralaya and in routine matters of transfer is also a disturbing factor. If the Chief Executive Officer of the Zilla Parishad is not trusted in the

matters of transfer of primary teachers from any Zilla Parishad school or other senior level official of Zilla Parishad and it is only the State, through its Rural Development Department, which must every time intervene in framing a policy and then enforce it, then, this is certainly not a happy situation. It is not conducive to efficient management and effective administration at all. In fact, it is a blot and must be seen as such. If a routine policy of transfer, which is to be framed and implemented at local level is also not being framed and implemented at that level, but at the apex level in Mantralaya, Mumbai, then, we do not think what purpose will be achieved by such intervention and interference by the State. That some portal is set up and that is also at a distant place and that somebody claiming to be a third party and independent is managing it, has hardly any solace. We know, how portals are operating and website works. Ultimately, the human brain is the one who feeds the information and details therein. That is the key person. If that person is not free from prejudices or bias or is not able to guarantee a clean administration, then, such experiment never work.

12. In the event, the Government thinks that it is the best policy, let it think so, but it must also consider that every time if it forces something on its employees, that is not going to work.

Equally, altering a policy frequently is also not good. A balance will have to be struck and if transfers are incidents of service, then, the transfers must be effected, but there must be some guidance and definite parameters applied in taking such decisions. The administrative exigencies and public interest ought to be the prime concern.

13. We do not think that the teachers or the Government are aware of their duties and obligations to the public. We think that they have their own interests and preconceived notions in mind. Such policies can never be conducive to quality education. This will definitely bring about closure of the Zilla Parishad's schools and will deprive large number of people of a so called progressive State of an opportunity to seek even primary education. Every child in this State cannot afford the fees of a International school or a private primary school claiming to be of that standard. That is not affordable and it is way out of his or her reach. The child's parents cannot afford a good school bus nor can afford to dump the child in a auto-rickshaw so as to drop it into some building known as a school even if it is located miles away from home. Then all the more, the child will lose interest as at the end of the journey, he or she is tired. They will be in no mood to play or to educate themselves. The opportunities are thus wasted and the

figures of dropouts from the schools is evidence of the same. This will keep out children from schools and thereafter force them either to enter in the world of crime or to leave its native place or village in search of source of livelihood and reside in urban areas in subhuman conditions. If there is no primary education and no introduction to letters, then, we will have a scenario which prevails in almost all underdeveloped countries. It is time that everybody should ponder and think and make appropriate changes and modifications in policies so that the grievances are minimised, particularly, in matters of placement and transfer. None should work to bring about a closure of the school or creating a situation where the State is forced to walk out of primary education also. It is time that this challenge is taken and a policy is framed whereby above complaints and grievances are minimised, if not completely eliminated.

14. Let such decisions be taken by the Chief Executive Officer and every individual teacher should be free to approach him or her. In the event, the decision is not taken in a time frame, then, the Commissioner of the Revenue Division can be approached by the aggrieved teacher/employee. It is only as a last sort that Mantralaya must intervene. We are, therefore, of the clear opinion that these petitions can be disposed of by keeping open

the challenge and in the event, such complaints and grievances as are raised in these petitions persist and if the petitioners are aggrieved by their transfers and postings, then, they can raise a fresh challenge. That can be raised in the event, all the Grievance Redressal Mechanisms fail to redress their grievances.

15. We express no opinion on the rival contentions and dispose of all the civil applications and writ petitions in the light of the above order.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)