

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

WRIT PETITION NO.4538 OF 2020

Kishor s/o. Vilas Wankhede,
Age : 50 years, Occ. Service,
presently working as Section Officer,
r/o. Plot No.8, Shiv Colony,
Underkheda Road, Parola,
Tq. Parola, Dist. Jalgaon

..Petitioner

Vs.

1. Zilla Parishad, Jalgaon
through its
Chief Executive Officer,
and anr.

..Respondents

Mr.S.R.Barlinge, Advocate for petitioner
Mr.H.R.Kshirsagar, Advocate for respondent no.1
Mr.A.R.Borulkar, Advocate for respondent no.2

**CORAM : S.V. GANGAPURWALA
AND
R.G. AVACHAT, JJ.
DATE : JULY 09, 2020**

PER COURT :-

The petitioner is challenging the order of transfer from Education Department, Zilla Parishad, Jalgaon to General Administration Department.

2. Mr.Barlinge, learned Counsel for the petitioner, contends that within two years, the

petitioner is transferred from his present department. He submits that only to accommodate respondent no.2, the petitioner is transferred. No special reason for transfer is mentioned in the transfer order. Learned Counsel relied upon the Government Resolution dated 15.05.2014, to contend that the petitioner cannot be transferred from one table/section to another before three years. Learned Counsel also submits that because of COVID-19, the transfers have been freezed.

3. Mr.Kshirsagar, learned Counsel for respondent no.1, supports the transfer order and submits that the transfer is permissible. He submits that the Commissioner had allowed the appeal filed by present respondent no.2 and directed respondent no.1 to take decision sympathetically in regard to transfer of respondent no.2.

4. Mr.Borulkar, learned Counsel for respondent no.2, submits that within a period of six months,

respondent no.2 was transferred. Respondent no.2 had approached the Commissioner. The Commissioner allowed the appeal filed by respondent no.2 and directed respondent no.1 to take appropriate steps after hearing respondent no.2. It was pursuant to the order of the Commissioner, respondent no.1 has issued the impugned order. Learned Counsel also relied upon the Government Resolution dated 15.05.2014, to contend that the transfer from one table/section to another does not amount to transfer and the same is permissible. He submits that to implement the order of the Commissioner, some person will have to be displaced. He further submits that in exceptional circumstances, the period before which the person can be transferred, can be curtailed by the authority for special reason.

5. We have considered the submissions canvassed by learned Counsel for the parties. It is not in dispute that though the petitioner has completed only two years in the educational department, he has been

transferred to Administrative Department. The Government Resolution dated 15.05.2014 provides that a person can work on same table for three years and in the same department upto five years and after completion of three years, the table can be changed and after five years the person can be transferred from one department to another. Said Government Resolution also provides for the powers of the authority to curtail the period of three years and five years, respectively. The same has to be for special reasons.

6. The impugned order of transfer is on the administrative ground without assigning any special reason. The petitioner was not a party before the Commissioner. Respondent no.2 is required to be accommodated and the case is required to be considered by the Chief Executive Officer but not at the cost of the rights of another employee.

7. It also appears that the petitioner was transferred from Education Department to General

Administrative Department within two years only, which is contrary to Clause 8(7) of the Government Resolution dated 15.05.2014.

8. In the light of the above, we quash the impugned order to the extent of the present petitioner. Respondent no.1 is at liberty to consider the case of respondent no.2 as per the order passed by the Commissioner, without effecting the rights of the petitioner.

9. The Writ Petition is accordingly allowed and disposed of. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA , J.]

kbp