

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

915 WRIT PETITION NO.789 OF 2020

Ratnamala Vitthalrao Bidgar alias
Sau. Ratnamala Santosh Narate,
Age: 42 years, Occu: Service as
A.N.M. (Arogya Sevika),
R/o. Chhatrapati Chowk, Nanded
Tq. and Dist. Nanded

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-400 032

2. Deputy Commissioner (Establishment),
Office of the Divisional Commissioner,
Aurangabad Division, Aurangabad

3. Chief Executive Officer,
Zilla Parishad, Nanded

4. District Health Officer,
Zilla Parishad, Nanded

...RESPONDENTS

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Mr V. S. Panpatte, Advocate for petitioner;
Mr S. R. Yadav-Lonikar, A.G.P. for respondent Nos.1 & 2;
Mr S. B. Pulkundwar, Advocate for respondent Nos.3 & 4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 8th September, 2021

ORAL JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses (B) and (C) as under :

“B. By a writ of certiorary or any other appropriate writ or direction in the like nature, the transfer order dated 06.06.2019 issued by the respondent no.3 transferring the petitioner from Martala under P.H.C., Kapsi, Tq.: Loha to Umari (Ba.), Tq.: Kinwat at Exhibit ‘E’, so also the decision dated 05.12.2019 passed by the respondent no.2 at Exhibit ‘J’ may please be quashed and set aside;

C. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.3 – Chief Executive Officer, Zilla Parishad may please be directed to give posting to the petitioner at appropriate place on vacant posts within 30 Kms. from the present posting of her husband i.e. Kaudgaon, Tq.: Loha, Dist.: Nanded.”

3. The petitioner has joined service with the Zilla Parishad as a ‘Arogya Sevika / Auxiliary Nurse Midwife (ANM)’ in 1994.

(3)

After marriage, she has been working at various places. She sought a change in the Zilla Parishad employment and has been accommodated by the Government by moving her to Zilla Parishad, Nanded.

4. Grievance is that the petitioner has been transferred from Martala sub-centre of Primary Health Centre, Kapsi, Tq. Loha, to Umari (Ba.), Tq. Kinwat, in the Nanded District. After she put in 16 years for the Prabhani Zilla Parishad, she moved over to Nanded Zilla Parishad. Her husband is a primary school teacher with the Nanded Zilla Parishad. Her husband had once worked at Jaldhara, Taluka Kinwat, which is a tribal area, from 16/06/2016 to 15/08/2018. He sought a transfer on request and therefore, within two years, moved out from tribal area.

5. It is submitted that the location at which the petitioner has been transferred, does not figure in the list of the villages of Taluka Kinwat. She was not due for transfer. She has been working at Kapsi from 01/06/2019. She has been transferred by the impugned order dated 06/06/2019 to Umari (Ba.), which is a tribal area. She has not put in 10 years service at Kapsi. There is

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no vacancy available at Umari. She is the treasurer of the Maharashtra Zilla Parishad Nurses Sanghatana, Nanded, elected on 27/01/2019. The Government Resolution dated 15/05/2014 carves out an exception to the union leaders and they are insulated from transfer.

6. The learned Advocate representing Nanded Zilla Parishad relied upon the affidavit-in-reply filed by the Chief Executive Officer, Zilla Parishad, Nanded, dated 25/02/2021. He points out specific paragraph Nos.9, 10, 11, 13 and 14, which can be summarized as under :

- (a) The Government Resolution referred to above mandates employees to work in tribal and naxalite areas;
- (b) Out of the total posts of 406 A.N.Ms. in Nanded district, 112 were working in Kinwat and Mahur Talukas.
- (c) 10% of the senior employees are required to be transferred from Kinwat and Mahur Talukas as they are working in tribal areas so as to enable them to work in non-tribal area;

(5)

(d) As per the seniority list prepared and which is not objected to by the petitioner, she is the senior most employee at Kapsi and has never worked in tribal or naxalite areas for last 26 years;

(e) The exempted persons from being transferred to the tribal area or naxalite area are:-

- i) Handicapped employees and parents of mentally retarded child. Provided they produce the certificate issued by competent authority to that effect before 30th of April.
- ii) Widow, Divorcee, Cancer patient/ Paralysis patient who is under treatment of Dialysis.
- iii) All employees above 53 years of age.
- iv) Employees who are in category of Drivers or Draftsman.

As per above G.R. except these four categories there is no category which is exempted from general transfer;

(f) The petitioner has worked at a single place for 15 years;

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(g) Only four elected office bearers of the authorised/approved associations can be exempted from transfer vide Government Resolution dated 02/01/2017;

(h) The petitioner has been elected as a treasurer of a newly registered union which is not recognized with the State Government;

(i) A treasurer of a union cannot be exempted;

(j) If the husband of the petitioner requests for couple arrangement as he is working in the same Zilla Parishad as an 'Assistant Teacher', he can be accommodated within 30 kms. from the place where the petitioner is posted.

7. It calls for no debate that transfer is a normal incident of service. So also, this Court had suo-moto registered Writ Petition No.3278/2010 and had delivered orders on 13/09/2012 and 21/11/2012 at the Principal Seat, directing the State Government to have a policy of deploying members of the health services at tribal or naxalite areas since it was noticed that the employees are not willing to work in such areas. With an intention of ensuring that proper health services are rendered to the people residing in

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tribal and naxalite areas, this Court had issued the said orders. The Government Resolution dated 15/05/2014 was in pursuance of the directions of this Court.

8. The petitioner was earlier working with the Parbhani Zilla Parishad. After marriage, on account of couple arrangement, she applied for movement from the Parbhani Zilla Parishad to Nanded Zilla Parishad. This does not mean that her service in the Nanded Zilla Parishad is to be reckoned as a fresh stint with the Zilla Parishad so as to contend that she cannot be transferred within a particular period. She has been working in non-tribal and non-naxalite areas for 26 years. Being the senior most person and having never been posted in the tribal area, she was transferred to the said place where she has joined and is presently working for more than two years.

9. The contention of the petitioner that because she is now elected as a treasurer of a Union, she is insulated from transfer, is misconceived. This Court held in **Blue Star Limited Vs. Blue Star Workers' Union & others, 1996(3) Bom.C.R. 480**, that an employee is first an employee of the organization. He draws

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salary because he is an employee. Becoming a union office bearer is a matter of choice and that does not place an employee in a special category.

10. The learned Advocate for the Zilla Parishad has relied upon the following judgments :

- i) *State of Uttar Pradesh and others Vs. Siya Ram and another, (2004) 7 SCC 405;*
- ii) *Yogesh Pratap Singh Vs. Government of Maharashtra through the Additional Chief Secretary (Home), and others, 1998 (2) BCR 1;*
- iii) *Mohd. Masood Ahmad Vs. State of Uttar Pradesh, (2007) 8 Supreme Court Cases 150;*
- iv) *Vyankatrao Ghalappa Savle Vs. Zilla Parishad and others, 2010 (2) All M.R. 48.*

11. As the law laid down by the Hon'ble Apex Court in State of Uttar Pradesh and ors. Vs. Siya Ram and another (supra), unless the transfer is shown to be with mala fide intention and there are no administrative exigencies, there should not be any interference in the transfer orders. Same is the view taken by the learned

Division Bench of this Court in Yogesh Pratap Singh (supra). In Mohd. Masood Ahmad (supra), the Hon'ble Apex Court held that a transfer is a normal incident of service and therefore, judicial interference should be in rarest of rare case. Though the transfer of Mohd. Masood was on the recommendation of the M.L.A., the Hon'ble Apex Court concluded that this would not vitiate the transfer.

12. We find that no mala fides or laches are attributable to the conduct of the Zilla Parishad. The petitioner has not worked in a tribal area for 26 years. Due to the administrative exigencies and being the senior most A.N.M., she has been posted in a tribal area for the first time.

13. In view of the above, this petition, being devoid of merits is, therefore, dismissed. Rule is discharged.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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