

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

WRIT PETITION NO.9149 OF 2019

Shri Sharad S/o Vitthal Bhange,
Age-32 years, Occu:Service,
R/o-Bhanashivare, Tq-Newasa,
Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The Chief Executive Officer,
Zilla Parishad, Aurangabad,
- 2) The District Education Officer (Primary),
Education Department, Zilla Parishad,
Aurangabad

...RESPONDENTS

...
Mr. Hemant U. Dhage Advocate for Petitioner.
Mrs. Vaishali A. Shinde (More) Advocate for Respondents
No.1 and 2.
...

**CORAM: SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 12th JANUARY, 2021

ORDER :

1. The petition has been moved seeking joining certificate for the period 13-07-2016 to 12-04-2017 pursuant to inter-district transfer as allowed under the scheme referred to in Government Resolution dated 29-09-2011. The petitioner had been relieved

from his earlier employment in Zilla Parishad, Bhandara and transferred to Zilla Parishad, Aurangabad. Initially, administration of Zilla Parishad, Aurangabad had purportedly given to him assignment at a school at Katvanwadi, Tq-Sillod, which while petitioner tried to join on 13-07-2016 but had found that it had not been functioning. Thereafter, alteration in placement had been sought and accordingly that has been acceded to under order dated 12th April, 2017 issued by respondent No. 1 – chief executive officer, zilla parishad, Aurangabad.

2. While the petitioner indisputably has joined at altered place, thereafter for the period from 13-07-2016 to 12-04-2017, the benefits which would ensue on transfer and were legitimately expected, have not come petitioner's way, as the joining certificate has not been issued.

3. Earlier, the petitioner had been before this court taking up his grievance in writ petition bearing No. 5566 of 2018. Pursuant to order dated 07-08-2018 passed in said petition, it appears that an order dated 17-12-2018 has been issued by respondent No. 2, wherein it has been referred to that partial alteration in the placement has been on the condition that the concerned

period i.e. 13-07-2016 to 12-04-2017 will be considered as admissible paid leave. While there has been no fault on the part of petitioner, such a condition had been imposed taking away legitimate benefits which accrued to petitioner on transfer.

4. Learned counsel appearing for petitioner, during the course of hearing, has placed reliance on order dated 13th August, 2018 passed in writ petition No. 1955 of 2017, wherein situation close to the one involved in the present petition appears to have been considered. The petitioner therein had not been getting monetary benefits for the period from 25-06-2015 to 22-02-2016 while the petitioner's posting had been partially altered, as in the present petition on the very similar condition. The court under the facts and circumstances has observed as under:-

" 3. After the petitioner was relieved from Ahmednagar Zilla Parishad and the petitioner was issued with the posting order on 16.07.2015, the petitioner was duty bound to join that transferred place. The petitioner has taken the risk by not joining at the transferred place and the petitioner thereafter sought mutual transfer at another place. Subsequently on 26.10.2015 fresh order was issued for transfer at Borsir. It was communicated by the Head Master of the said school that there is no vacancy available. Again further order was issued on 22.02.2016.

4. It is not the fault of the petitioner in not joining the school at Borsir as per order dated 26.10.2015. The communication of the Center Head clearly states that, there is no vacant post available to accommodate the petitioner.

Thereafter fresh orders are issued only on 22.02.2016. So far the period from 26.10.2015 to 22.02.2016, the petitioner is not at fault. The said period ought to have been considered as a continuous officiation period. However, the period upto 25.10.2015 is concerned, the said period will have to be considered as an admissible paid leave, because it is the petitioner who did not join the place of the posting. "

. The court in concluding paragraph of aforesaid order, has observed that period after 26-10-2015 shall be considered as an officiating period.

5. The petitioner also refers to an order dated 27-02-2020 in writ petition No. 9192 of 2019, wherein it has been observed as under:-

" . The petitioner seeks directions to grant the joining certificate of the period 01.08.2016 to 30.06.2017.

2. Mr. Dhage, the learned counsel for the petitioner submits that the transfer order was issued to the petitioner on 05.07.2016 by Panchayat Samiti, Mulshi. The petitioner was relieved on 25.07.2016 to join at primary school, Pathan Wasti, Janephal centre. The petitioner on 30.07.2016 came to Aurangabad to join at the transferred place. The petitioner was not allowed to join as one Mr. Waghmare was not relieved by the respondents. The petitioner is not at fault. The respondents are not issuing the certificate of joining to the petitioner from the initial date of his joining i.e. 01.08.2016.

3. Mr. Gaikwad, learned counsel for respondent No. 2 states that though the transfer order was issued, the relieving order was issued to the petitioner by the Deputy Chief Executive Officer, Pune Zilla Parishad. He did not have authority to relieve the petitioner. Communication was made by the present respondent with the Pune Zilla Parishad. The time was consumed in the said communication.

4. The petitioner cannot be faulted with. The transfer order was already issued to the petitioner. Pursuant to the transfer order issued by the Chief Executive Officer the petitioner was relieved by the Deputy Chief Executive Officer. The petitioner attended the transferred place for joining. The respondents did not allow the petitioner to join. The petitioner cannot be penalized for no fault of the petitioner. If the time was consumed at the behest of the respondents, they cannot penalize the petitioner.

5. Considering the above, the respondents shall consider the petitioner to have joined from 01.08.2016 with the respondents and shall take steps accordingly. The petitioner shall be entitled for all consequential benefits. "

6. Having regard to aforesaid position, we consider it appropriate to follow the course since the facts involved in present petition are not disputed, and direct the respondents that the period from 13-07-2016 to 12-04-2017 be considered as an officiating period and give treatment to the same accordingly along with the incidental, ancillary and consequential benefits accruing therefrom without getting bogged down by the condition referred to in the order dated 12-04-2017 under which partial alteration in the place of posting has taken place.

7. Writ petition is accordingly disposed of.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]