

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3455 OF 2021

Vinod Sitaram Uikey,
aged about 50 years, Occupation -
Deputy Engineer, Maharashtra
Housing and Area Development
Authority, Resident of behind
Telephone Exchange at post
Kondhali, Tahsil : Katol,
Dist. Nagpur.

.... **PETITIONER.**

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1. State of Maharashtra,
through Secretary, Housing
Department, Mantralaya,
Madam Cama Road,
Mumbai-440 032.
2. Maharashtra Housing and Area
Development Authority, through
its Secretary, Gruha Nirman Bhawan,
Bandra (East), Mumbai.

.... **RESPONDENTS.**

Shri Akshay Naik, Advocate a/w. Shri A.A.Choube, Adv. for Petitioner.
Shri A.S.Fulzele, Addl.G.P. for Respondent No.1.
Shri Bhushan Mohta, Advocate for Respondent No.2.

CORAM : **SUNIL B. SHUKRE AND**
 ANIL S. KILOR, JJ.

DATED : **SEPTEMBER 09, 2021**

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

1. Heard Shri Akshay Naik, learned counsel for the petitioner, Shri A.S.Fulzele, learned Addl.G.P. for respondent No.1 and Shri Bhushan Mohta, learned counsel, who appeared by waiving notice for respondent No.2.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. It is submitted on behalf of the petitioner that the wife of the petitioner and the petitioner both are undergoing IVF treatment and the petitioner has completed three years of his service at Nagpur and as the petitioner and the wife are undergoing the IVF treatment already at Nagpur and there have been available vacancies at Nagpur, the request of the petitioner for his retention at Nagpur and being posted against the available vacancies can always be granted by the respondents, especially when the respondent/State has also granted request of Smt.M.N.Aundhekar, Smt.D.B.Salunkhe and Shri Sudhakar Bahegavhankar for their retention at their respective places of posting before their transfer, in spite of the fact that at least two of them Smt.

Aundhekar and Smt. Salunkhe had completed 9 years of their tenure at the same place. It is submitted that the similar request of the petitioner, based upon the genuine grounds, has not been considered in any manner by the respondent/State.

4. On going through the revised transfer order dated 27/08/2021, we find that the request of some of the Deputy Engineers for their retention at the same place, in spite of the fact that they had completed about 9 years of service at that place has been granted by the State Government. If this is so and also when there are vacancies available at Nagpur, the State Government would be required to reasonably consider the request of the petitioner by applying the Rule of Equality and without making any discrimination between its own employees.

5. In view of above, we **partly allow** the petition and direct respondent No.1-State of Maharashtra, through Secretary, Housing Department, Mantralaya, Mumbai to treat this petition as fresh representation of the petitioner and decide the same in accordance with law on the basis of equality and without any discrimination, as early as possible and in any case, within four weeks from the date of the order.

6. Meanwhile, the petitioner having not been relieved from his present posting at Nagpur, as stated by learned counsel for the petitioner, and there being available vacancies also at Nagpur, the petitioner shall be retained at Nagpur till the representation in the nature of this petition is decided by the respondent No.1 appropriately and in accordance with law.

Rule accordingly. No costs.

(ANIL S. KILOR, J)

(SUNIL B. SHUKRE, J.)

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