

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3444/2020

Mr. Ravindra Devidas Rathod,
Aged about 41 years, Occupation: Service,
R/o: Ward No.5, Zade Layout,
Sindhi Meghe, Near Maruti Bhau Samadhi,
Wardha, Maharashtra – 442001.

..... PETITIONER

// VERSUS //

The Chief Executive Officer,
Zilla Parishad, Wardha.

.... RESPONDENT

WITH

WRIT PETITION NO.3445/2020

Mr. Vinod Mahadeo Palwe,
Aged about 44 years, Occupation: Service,
R/o: Shri Mehar, House No.5046,
Opp – Anganwadi, Ward No.03,
Giripeth, Pipri, Pipri Meghe – Wardha,
Maharashtra – 442001.

..... PETITIONER

// VERSUS //

The Chief Executive Officer,
Zilla Parishad, Wardha.

.... RESPONDENT

WITH

WRIT PETITION NO.3446/2020

Mr. Girish Namdeo Kukde,
Aged about 43 years, Occupation: Service,
R/o: Near Satpute Hospital,
Ward No.8, Gandhi Nagar, Wardha
Maharashtra – 442001.

..... PETITIONER

// VERSUS //

The Chief Executive Officer,
Zilla Parishad, Wardha.

.... RESPONDENT

Mr. S. S. Ghatе, Advocate for petitioners in all petitions.
Mr. D. R. Bhoyar, Advocate for respondents in all petitions.

CORAM : AVINASH G. GHAROTE, J.
DATED : 14/10/2021

ORAL JUDGMENT :

1] Heard Mr. Ghatе, learned counsel for the petitioners and Mr. Bhoyar, learned counsel for the respondents.

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

3] In all these petitions, the petitioners are the employees of the respondent, working as Center Head at various places in Wardha District. All of them were transferred from their then place of posting to other places by various transfer orders, which were challenged by them in appeals before the learned Divisional Commissioner, who having dismissed the appeals, these petitions have been filed.

4] In Writ Petition No.3444 of 2020, the transfer order is dated 27.07.2020 transferring the petitioner Mr. Ravindra Rathod from

Panchayat Samati, Zadgaon to Panchayat Samati, Ashti – Chistur. In Writ Petition No.3445 of 2020 the transfer order is also dated 27.07.2020 transferring the petitioner Shri. Vinod Palwe from Panchayat Samati, Hinganghat – Alipur to Panchayat Samti, Samudrapur – Mandgaon. In Writ Petition No.3446 of 2020 the transfer order is dated 23.07.2020 transferring the petitioner Shri. Girish Kukde from Panchayat Samait, Wardha to Panchayat Samati, Hinganghat. The order of the learned Divisional Commissioner, Nagpur rejecting the appeals are dated 09.11.2020.

5] Mr. Ghate, learned counsel for the petitioners submits that the transfer orders, are bad, for the reason that the petitioners, have not completed continuous period of ten years at one place, for which, he relies upon the Government Resolution dated 15.05.2014 and specifically Part - 1 of the same, Clause 2 (2). He further submits that there is no Naxal area or tribal area notified in the entire Wardha District, due to which, the requirement of filling the vacancies in those areas would not arise at all. Further relying on Part - 2 Clause 2, he submits that the same also contemplates the continuous services of ten years at a place to be taken into consideration before the transfer is to be ordered. Reliance is also placed on Clause 4 (A) of the same part which according to him indicates the manner in which the category-wise factual seniority list for this purpose has to be prepared. He further

submits that in case an employee is the office bearer of a recognized union then by virtue of what is contained in Clause 4 Part – 5 such an employee, is required to be retained for a period of 10 + 5 additional years that is total of 15 years at the same place. Reliance is also placed upon the certificate issued by the State Secretary of the Maharashtra State Center Head Association dated 06.09.2020 to contend that the petitioner in Writ Petition No.3444 of 2020 was the District General Secretary and the petitioner in Writ Petition No.3445 of 2020 was the District President of the said Association due to which, they were entitled to benefit of Clause 4 of Part – 5 of the said Government Resolution. Reliance is also placed upon the communication dated 20.07.2020, addressed to the respondent by the aforesaid Association wherein it is stated that since the petitioners in Writ Petition No.3444 of 2020 and Writ Petition No.3445 of 2020 were the office bearers of the recognized union therefore, they should not be transferred. A further contention is raised that before entering into the question of transferring employees the respondent had called a meeting in which the office bearers of the recognized union were also called for discussion, in which the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020 were also called for which, reliance is placed upon the Attendance Sheet in respect of the said meeting which is held on 17.07.2020. Further reliance is placed upon the minutes of the meeting of the Standing

Committee of Zilla Parishad, Wardha dated 07.08.2020 which has resolved that the transfers of the employees should be cancelled.

6] Mr. Ghate, learned counsel for the petitioner further places reliance upon the Government Resolution dated 07.07.2020 which prohibited transfers during Covid – 19 pandemic. He further submits that in the month of July 2020, the schools were closed, and therefore, there was no reason or cause for effecting the transfer at that point of time and if at all any balance was to be achieved and maintained as per the Government Resolution dated 15.05.2014, the same could also have been done after the pandemic was over. He therefore, submits that the transfer orders are not in consonance with the requirements of the Government Resolutions dated 15.05.2014 and 07.07.2020.

7] Mr. Ghate, learned counsel further submits that in fact the petitioners were called for counseling in which it has been specifically stated that the petitioners were not due for transfers as they were holding the postings then presently occupied by them from 2016 onwards, and therefore, the period of ten years as required by the Government Resolution dated 15.05.2014 of being posted at the same place was not completed by them.

8] The orders passed by the learned Divisional Commissioner have also been criticized on the ground that it does not take into

consideration the aforesaid position neither gives any reason for upholding the transfers.

9] Mr. Bhoyar, learned counsel for the respondent submits that the Government Resolution dated 15.05.2014 requires the maintaining of a balance of vacancies vis-a-vis the staff in the entire district, which is a statutory obligation of the respondent. He further submits that this is the basic object of the policy enunciated in the Government Resolution dated 15.05.2014. Though there are no Naxal areas and Tribal areas in the Wardha district, he submits that even otherwise the balance of vacancies has to be maintained. He further submits that there are certain exceptions to this policy of transfer inasmuch as, persons who are 53 years of age and above are not to be transferred. He further submits that the transfer had been effected considering the requirement of maintaining the balance of vacancies, and therefore, cannot be faulted with. To demonstrate this he invites my attention to the Annexure – R2 and specifically page 95 and 97 which shows that for the purpose of maintaining balance a requirement of maintaining 59 % of the staff at one place is necessary. He, therefore, submits that since there was deficit staff at Ashti and Deoli and surplus staff at Wardha and Hinganghat, to balance the same the transfers have been effected.

10] He further submits that the issue that the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020 were office bearers of the

recognized union was a disputed question, and therefore, the question of applying the provisions of Part – 5 Clause 4 did not arise at all. He heavily relies upon the Judgment of this Court in ***Sau. Sunita Damodharrao Deshmukh Vs. The State of Maharashtra and others, 2017 (4) ABR 321*** to contend that the issue regarding the transfer and the implementation of the policy as reflected from the Government Resolution dated 15.05.2014, has been considered and settled therein and the matter in issue being covered therein needs to be so held and the order of the learned Divisional Commissioner is required to be maintained. He further submits that in pursuance of the orders of the transfers dated 20.07.2020 and 23.07.2020, the petitioners were relieved on various dates immediately thereafter, and they have successfully managed to avoid joining at the transferred place. He further submits that transfer is an incidence of service and no one can claim right to remain at the same place, which however is subject to the position as prevailing in that regard in the various Government Resolutions applicable thereto. Insofar as the Government Resolution dated 07.07.2020 is concerned, he submits that though in the earlier Government Resolution dated 04.05.2020 there was a complete ban of transfer, however, in the Government Resolution dated 07.07.2020, transfer to an extent of 15 % was permitted, as against which, the transfers effected by the respondent were only to the extent of 7 %

approximately. He further submits that the plea regarding the petitioners in Writ Petition No.3444 of 2020 and Writ Petition No.3445 of 2020 being the office bearers of a recognize union was never raised before the learned Divisional Commissioner, in view of which, since the plea requires examination and determination of a disputed question of fact, as the said position is disputed by the respondent, the same cannot be permitted to be raised for the first time before this Court. He further submits that the plea of the petitioners lacks bona-fides inasmuch as they have ought to have joined at the transferred place and then raised the grievance regarding the transfer which has not been so done, on which ground alone itself the petitions deserve to be dismissed.

11] It cannot be disputed that transfer is an incidence of service and same cannot be avoided by an employee, unless the reason for avoidance falls within the parameters applicable thereto. In the instant case, the Government Resolution dated 15.05.2014, governs the policy of transfer of the employees of the Zilla Parishad. The petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020, are both employed as Center Heads in the Zilla Parishad Primary Schools, in which capacity they also impart education to the students though to a lesser extent. The primary duty therefore, of the petitioners is towards the students and not towards themselves, as the very nature of the employment clearly encompasses duty to impart teaching wherever they are posted. It does

not augur well for the petitioners in these two petitions, to put their interest before the interest of the students. The employment of these petitioners, therefore, would naturally enjoin them to impart education wherever they are posted. The question of posting them at a particular place, would be at the discretion of the employer and unless it is shown that such discretion is not within the four corners of the policy or is mala-fide or is arbitrary, the Court would not interfere with the exercise of such discretion. In the instant case, admittedly there are no allegations of mala-fides. The question of any arbitrariness in the transfer of the petitioner's vis-a-vis some other eligible employees is also not raised. The only contention is that the petitioners under the transfer policy dated 15.05.2014, were not liable to be transferred, as they were required to be posted at one place continuously for a period of ten years and in the case of the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020 to an entitlement of an additional posting of five years at the same place, in view of the allegations that they were office bearers of a recognized union.

12] Insofar as the plea that the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020 were the office bearers of a recognized union is concerned, this position is disputed by Mr. Bhoyar, learned counsel for the respondent. No resolution/result of any nature has been placed on record to demonstrate that these petitioners had

been elected to the posts to which they claim to, in view of which, it was necessary for these petitioners to place something on record before the respondent or for that matter before the learned Divisional Commissioner to indicate an uncontroverted position in this regard, so as to claim the benefit of Part – 5 Clause 4 of the Government Resolution dated 15.05.2014. Admittedly, before the learned Divisional Commissioner, this plea has not been raised at all, in absence of which, the same would not be permissible to be raised for the first time in writ proceedings, considering that the position is disputed in nature, as this Court in its writ jurisdiction, would not go into a disputed question of fact.

13] Reliance placed on the Attendance Register of the meeting dated 17.07.2020 by Mr. Ghate, learned counsel for the petitioners, is also of no assistance as the same does not reflect that the union to which the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020 claim to belong is a recognized union. What appears from the Attendance Register, it is a general call to all the unions whether approved or not approved to participate in the discussion, to be held for implementing the transfer policy as per the Government Resolution dated 15.05.2014.

14] Admittedly, the certificate dated 06.09.2020 upon which reliance is placed by Mr. Ghate, learned counsel for the petitioners to

contend that the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020 were the office bearers of the Maharashtra State Center Head Union, is subsequent to the transfer order dated 20.07.2020 and secondly the certificate does not indicate that the said union is an approved one. So also, the communication dated 20.07.2020 addressed to the respondent though makes a mention that the said union is approved, however, except for the expression that it is approved union, the same does not contain any detail whatsoever regarding the said approval including the date and who has approved it, in view of which, the contention of Mr. Bhoyar, learned counsel for the respondent that the question of approval of the said union is a disputed one is clearly borne out from the material on record. That apart, it was permissible for these petitioners, to have raised these pleas before the learned Divisional Commissioner, which has not been done so.

15] Insofar as the petitioners in Writ Petition No.3446 of 2020 is concerned, the plea of Part – 5 Clause 4 being applicable, would not arise as the petitioner therein, is a Senior Assistant. No plea regarding violation of any Clause of the Government Resolution dated 15.05.2014 has been raised in his case.

16] Insofar as the plea regarding the transfer being effected during the Covid – 19 lock-down is concerned, what remains to be seen is that the earlier ban on transfer on account of Covid – 19 as was

imposed by the Government Resolution dated 04.05.2020 was relaxed by the Government Resolution dated 07.07.2020, which permitted transfer of 15 % of the staff. Admittedly, the transfer effected by the respondent is approximately 7 %, which position has not been disputed, in view of which, the plea of the transfer being in violation of the Covid – 19 guidelines would not stand to reason, as the same is within the permissible limits.

17] The position regarding the balancing of the vacancies is spelt out from Annexure – R2 (page 97) as filed by the respondent which indicates that there were surplus teachers at Wardha and Hinganghat and deficit teachers at Deoli and Ashti, which required the transfers to be done so as to that the deficit vacancies at the places stated above could be filled. The document at record page 95 which is the part and parcel of the document at Annexure – R2 would indicate that there were eight employees in the Panchayat Samati, Wardha which had ten sanctioned. Out of these eight, one was physically disabled and six others were over the age of 53, and therefore, in terms of the policy could not have been transferred, which left the petitioner in Writ Petition No.3444 of 2020 and one Sandhya Masram as the only persons who could have been transferred and whose transfer has been directed. Similar is the case of the petitioner in Writ Petition No.3445 of 2020, as spelt out from Annexure R-2 (Page 97) as filed by the respondent, which

indicates that the petitioner was the only person who could be transferred as all other employees at Panchayat Samati, Hinganghat, were above the age of 53 years. It therefore, is apparent that the policy has been implemented in a rational and fair manner. A Division Bench of this Court in the case of *Sau. Sunita Damodharrao Deshmukh* (supra) has clearly held that the implementation of the transfer, done on account of balancing of vacancies ought not to be interfered with, while discussing the object of the policy dated 15.05.2014 and the said finding would equally apply in principle to the present petitioners also.

18] The contention that an employee has to be continuously placed at one posting for a minimum period of ten years is not reflected from the Government Resolution dated 15.05.2014. Though, Part 2 Clause 2 and Clause 4(A) of the Government Resolution dated 15.05.2014 speak about taking into consideration continuous employment for a period of ten years, it cannot be held to mean that such an employment has to be at one single place or in one single post. This is in my considered opinion, does not appear to the meaning of the said expression. This is substantiated from Clause 3 of Part 3 which provides the percentage for transfer on administrative grounds and request transfers to be as 10 % and 5 % respectively, the continuous employment for which is stated to be five years.

19] In several judicial pronouncements the Hon'ble Apex Court in the matter of transfers has held a consistent view, that the interference by the Courts in such transfers should not be done unless a clear-cut case of malice or arbitrariness or violation is made out. It has also been consistently held that a transfer could only be challenged after the employee joins upon his place of transfer. The purpose is clearly apparent, to test the plea raised against the transfer only after the same has been effected. In the instance case, though the petitioners not only stood transferred by the orders dated 20.07.2020 and 23.07.2020, they also stood relieved on 06.08.2020, 31.07.2020 and 13.08.2020 respectively, they have not joined at the place of transfer for more than a year. Even if, the transfer had been challenged, in absence of any stay to the transfer, it was the bounden duty of the petitioners to have joined at the place of transfer. By not doing so the petitioners, have clearly made themselves open for the consequences as provided in Clause 7 of Part 1 of the Government Resolution dated 15.05.2014 and the respondent would be well within its rights, to initiate appropriate proceedings in this regard. This is more so, in respect of the petitioners in Writ Petition Nos.3444 of 2020 and 3445 of 2020, who were the Center Heads and had a greater responsibility in the arena, as is reflected from the nature of duties to be performed by them, which is listed in the Government Resolution dated 03.09.2002. The contention of Mr. Ghate, learned

counsel for the petitioners that these petitioners were not required to impart any teaching to the students is clearly misplaced as Clause 17 in Appendix A to the Government Resolution dated 03.09.2002, clearly spells otherwise. Though, March 2020 and onwards were times in which the Covid pandemic was prevailing, and therefore, the schools were shutdown, that did not prevail the petitioners from accepting the transfer orders and joining at the respective places, by seeking prior permission of the Authorities in that regard, including permission to travel. In case permission would have been denied, the petitioners would then have been well within the rights, to claim that because of the denial of the permission they were not in a position to comply with the transfer orders. This however is not the position here, as in spite of being relieved no further steps in that regard appear to have been taken except for challenging the transfer orders.

20] In the above view of the matter, I do not see any reason to interfere with the impugned orders. The petitions are therefore, without any merits and are accordingly dismissed. No costs.

21] Rule is discharged.

(AVINASH G. GHAROTE, J)