

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

WRIT PETITION NO. 8518 OF 2021

Mastan Nabisha Murshad,
Age : 53 Years, Occu. : Service as Peon,
R/o Kranti Nagar, Ambajogai,
Tq. Ambajogai, Dist. Beed. .. Petitioner

Versus

1. The Education Officer (Secondary),
Zilla Parishad, Beed,
District Beed.
2. Shri Gurulingeshwar Public
Education Society, Devani (Bk),
Tq. Udgir, Dist. Latur,
Through its President/Secretary.
3. Headmaster,
Swatantryaveer Savarkar Madhyamik
Vidyalaya, Pimpla (Dhaiguda),
Tq. Ambajogai, Dist. Beed.
4. Headmaster,
Yogesheari Devi Madhyamik
Vidyalaya, Devani, Tq. Devani,
Dist. Latur.
5. Shri Untwale Sayyad Mosin Chandpasha,
Age : 57 Years, Occu. : Service as Peon,
R/o C/o Swatantryaveer Savarkar Madhyamik
Vidyalaya, Pimpla (Dhaiguda),
Tq. Ambajogai, Dist. Beed. .. Respondents

Shri Sachin S. Deshmukh, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for the Respondent No. 1.
Shri S. R. Kolhare, Advocate for the Respondent Nos. 2 to 4.
Shri Pundlik S. Kochar, Advocate for the Respondent No. 5.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR JUDGMENT ON : 23.09.2022
JUDGMENT PRONOUNCED ON : 29.09.2022

JUDGMENT (*Per Sandeep V. Marne, J.*) :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner challenges transfer order dated 31.05.2021, by which the respondent-management has transferred him from Swatantryaveer Savarkar Secondary School, Pimpala (Dhaiguda), Tq. Ambajogai, Dist. Beed to Shri Yogeshwaridevi Secondary School, Devani, Tq. Devani, Dist. Latur. The transfer is assailed on the ground that it violates the provisions of Rule 41 of the Maharashtra Employees of Private Schools (Regulation of Service Condition) Rules, 1981 (for short “Rules of 1981”).

3. Appearing for the petitioner Mr. Deshmukh, learned counsel would submit that under Rule 41 of the Rules of 1981, the transfer can only be on administrative grounds, promotion or at the request of the employee concern. He submits that except these three eventualities, transfer of an employee is impermissible. He would further submit that the petitioner has neither been promoted, nor had he requested for transfer. This leaves only the ground of administrative exigency. Inviting our attention to the impugned transfer order dated 31.05.2021, he would contend that the order does not state that the transfer has been effected on administrative grounds. Relying on the judgment of the Constitution Bench of the Apex Court in the case of **Mohinder Singh Gill and another Vs. Chief Election Commissioner** reported in ***AIR 1978 SC 851***, he would submit that the validity of the transfer order is required to be adjudged

only by the reasons stated in the transfer order and the reasons supplemented in the form of affidavit in reply are required to be ignored. Inviting our attention to Petitioner's representation dated 12-09-2022, Mr. Deshmukh would, lastly, submit that the Petitioner has not been permitted to join the transferred school.

4. Per contra, Mr. Kolhare, learned counsel appearing for the respondent-management submits that the petitioner has been transferred on administrative ground as he had completed 21 years of service in Swatantryaveer Savarkar Secondary School Pimpla (Dhaiguda), Tq. Ambajogai. He would further submit that the transfer orders of the petitioner and the respondent No. 5 have been duly approved by the Education Officer by order dated 28.07.2021. He would further submit that in place of the petitioner, the respondent No. 5 was transferred and that he has already joined on 01.06.2021 in place of the petitioner. He would further submit that, after filing application for leave on 07.07.2021, the petitioner has failed to report the place of transfer till date. Lastly, he would submit that the respondent No. 5 is due for retirement on 30.06.2023. This is also one of the grounds why he has been transferred in place of the petitioner.

5. We have heard the learned counsel for the parties and have perused the records.

6. Rule 41 of the Rules of 1981 deals with the issue of transfer in respect of multiple schools being operated by the management. Sub Rule 1 of Rule 41 of the Rules of 1981 provides as under :

41. Transfers. - (1) Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to

another except on administrative grounds, promotion or at the request of the employee concerned, if it is administratively convenient to do so.

7. In the present case, as rightly submitted by Mr. Deshmukh, the petitioner is neither promoted, nor has requested for his transfer. This leaves only the reason of administrative grounds. Undoubtedly, the transfer order does not specify any particular reason for effecting transfers. By that order, four non teaching staff members have been transferred. In the affidavit in reply, it is stated on oath that transfers are effected on administrative grounds. Two administrative grounds viz. petitioner working at same place for 21 years and the respondent No. 5 is on the verge of retirement have been stated in the affidavit in reply. Mr. Deshmukh submits that the transfer order must indicate reasons. We are unable to agree. Transfer or postong at a particular place is not a matter of right of an employee. Effecting transfers for administrative exigencies is an inherent right of the employer. Since the employee does not have a right to be posted or continued at a particular place, none of his rights would get violated by reason of his/her transfer. Since rights are not violated, there is no necessity of recording reasons for effecting transfer.

8. As long as it is not demonstrated that the transfer order violates the statutory rules or is actuated by malice, the same cannot be interfered with on the ground that reasons for transfer are not indiated in the order. We are therefore, of the view that it was not at all necessary for the respondent-management to record reasons for effecting transfers. It is also to be seen that four employees have been transferred by order dated 31.05.2021.

If the contention of Mr. Deshmukh is to be accepted, the respondent-management would be required to record reasons for transfer of each of the four employees.

9. Now, we turn to the reasons for transfer as disclosed in the affidavit in reply. A specific averment has been made in the affidavit in reply that the transfer has been effected on administrative ground under the provisions of Rule 41 of the Rules of 1981. Though it was not required, the respondent-management has gone ahead and disclosed the exact administrative ground in the form of petitioner completing 21 years of service at the same school as well as the respondent No. 5 being on the verge of retirement. Firstly, despite the exact administrative reasons being disclosed in the affidavit in reply, the same are not challenged in any manner by the petitioner. The petitioner has not disputed the position that he has been working at the place for 21 long years. Thus, we are not even called upon to decide the correctness or otherwise of the administrative ground mentioned in the affidavit in reply, as the same is uncontroverted. Even otherwise in exercise of power of judicial review, we are not expected to decide correctness of the reasons of transfer. We, therefore, hold that the transfer of the petitioner has been effected on administrative ground as provided in Rule 41 of the Rules of 1981.

10. Reliance of Mr. Deshmukh on the decision of the Constitution Bench in the case of **Mohinder Singh Gill** (supra) is misplaced. We have already arrived at a conclusion that it is not necessary for the employer to record reasons in support of transfer order in that order. Once there is no requirement of recording of reasons in the transfer order, the law enunciated by

the Constitution Bench in the case of **Mohinder Singh Gill** (supra) would automatically become inapplicable to the present case. In **Mohinder Singh Gill** (supra), the Constitution Bench of the Apex Court has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit. In **Mohinder Singh Gill** (supra) the Constitution Bench was dealing with an order passed by the Election Commission in exercise of its statutory powers which required recording of reasons. In the instant case, there is no requirement of recording reasons for transfers. Therefore, we find that the decision in the case of **Mohinder Singh Gill** (supra) has no application to the present case.

11. We would have ended the judgment here. However, we have noticed the conduct of the petitioner in not joining the transferred place since 31.05.2021. Here we may make profitable reference to the judgment of the Apex Court in the case of **S. C. Saxsena Vs. Union of India** reported in **(2006) 9 SCC 583**, in which the Apex Court has held as under :

6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. **In the first place, a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.** Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tejpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining

sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.

(emphasis & underlining supplied)

12. Even otherwise the restrictive scope for Courts to interfere in the matter of transfer is well established. We may refer to the judgment of the Apex Court in the case of Punjab and Sindh Bank and others Vs. Durgesh Kuwar reported in **(2020) 19 SCC 46**, wherein it is held as under :

17. We must begin our analysis of the rival submissions by advertent to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.

13. The petitioner has not challenged the transfer order on the ground of malafides. The only objection is violation of Rule 41 of the Rules of 1981, which we have already repelled hereinabove. The impugned transfer is also approved by the Education Officer by order dated 28.07.2021, which is not challenged before us. Thus, there is otherwise no scope for interference in the impugned transfer order.

14. Mr. Deshmukh has placed on record letter dated 12.09.2022, by which the petitioner has shown willingness to join the school at which he has been transferred. In that letter, the petitioner has contended that he had dispatched leave application dated 07.07.2021 to the school at which he was transferred and that he had made several requests for joining at that school, but the management did not permit him to do so. We find these contentions of the petitioner to be contrary to the records. The letter dated 12.09.2022 does not refer to any previous letter by which the petitioner had attempted to join the transferred school. Therefore, it is highly doubtful as to whether the petitioner ever attempted to join or that the respondent-management refused his joining as alleged. Be that as it may. Since the transfer order dated 31.05.2021 continues to remain valid, it would be always open to the petitioner to join the school at which he has been transferred. It has also been averred in the affidavit in reply that the respondent No. 5 would be superannuating on 30.06.2023. Mr. Kolhare has also submitted before that after retirement of the respondent No. 5, the case of the petitioner can be considered for transferring back to the original school. This is something, which is for the management to consider. We do not express any opinion in this regard.

15. Consequently, we do not find any merit in the petition. The same is dismissed without any orders as to costs.

Rule is discharged.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22