

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

WRIT PETITION NO. 3469/2021

(UJWALA RAJU KOTHALE (FORMERLY UJWALA SHRINIWAS CHOUDHARY) **VERSUS** THE E.O.
 (SECONDARY), ZILLA PARISHAD, NAGPUR & OTHERS)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders.*

Court's or Judge's order

Shri S.S. Joshi, counsel for the petitioner.
 Ms H.N. Jaipurkar, A.G.P for the R-1.
 Shri H.D. Dangre, counsel for the R-2 to 4.
 Shri A.D. Dangore, counsel for the R-5.
 Shri S.P. Bhandarkar, counsel for the Intervenor in C.A.W. No.1851/2021.

CORAM : A. S. CHANDURKAR AND SMT. PUSHPA V. GANEDIWALA, JJ.

DATE : FEBRUARY 01, 2022.

In light of notice for final disposal issued earlier, we have heard the learned counsel for the parties at length.

The challenge raised in this writ petition is to the order of transfer dated 30.07.2021 approving the proposed transfer of the petitioner who is an Assistant Teacher from Prakash Highschool, Namakganj, Nagpur to Prakash Vidyalaya, Telkamthi, Taluka Kalmeshwar, District Nagpur. A challenge is also raised to the order of transfer dated 09.08.2021 that has been issued by the Management effecting such transfer.

Shri S.S. Joshi, learned counsel for the petitioner submits that the order of transfer dated 09.08.2021 is in breach of the provisions of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the said Rules') inasmuch as there is no administrative reason for transferring the petitioner. According to him, the petitioner is a Physical Training Instructor having qualifications of M.A., B.P. Ed. While transferring the petitioner to the school at Telkamthi, the respondent no.5 who is also an Assistant Teacher has been transferred from the school at Telkamthi to the post where the petitioner was serving at Namakganj. The respondent no.5 has the qualifications of B.Sc., B.Ed. and was teaching subjects of Science and Mathematics. By transferring a teacher who was teaching the subjects of Science and Mathematics in the place of an Assistant Teacher who was a Physical Training Instructor it was obvious that the transfer was made not for an

administrative exigency but only at the whims of the Management. The learned counsel invited attention to the staff sanction position of both the schools and urged that in the absence of any material reason there was no basis whatsoever to effect such transfer. Placing reliance on the decision in *Pawar Bhagwantrao Bhivrao Versus Shri Swami Vivekanand Shikshan Sanstha, Kolhapur & Others* [2011(1) Mh.L.J. 307] it was submitted that as the impugned order of transfer was *de hors* the provisions of Rule 41 of the said Rules the same was liable to be set aside. It was submitted that pursuant to the order of transfer the petitioner had joined at the transferred post on 23.08.2021 but without prejudice to her rights to challenge the order of transfer. It was thus submitted that the impugned order was liable to be set aside as it was not in accordance with law.

Shri H.D. Dangre, learned counsel for the respondent nos.2 to 4 supported the order of transfer. He has submitted that having joined at the place of transfer on 23.08.2021 the present writ petition filed on 07.09.2021 was belated and hence did not deserve to be entertained. Inviting attention to the reply filed on record alongwith various documents it was submitted that the petitioner has been serving at the school at Namakganj since last sixteen years. The petitioner was teaching the subject of Mathematics at Classes 5th and 6th alongwith other subjects being Social Science, Geography and Physical Training. As the petitioner was found fit to teach these subjects at the school at Telkamthi she had been so transferred. It was stated that the schools did not require an exclusive Physical Training Instructor and as the petitioner was competent in teaching the aforesaid subjects she was so transferred. The respondent no.5 was not a Science Graduate but had obtained her degree in B.Sc. in Home Science. Since the Management was of the view that the services of the petitioner were necessary at Telkamthi the order of transfer came to be effected. In absence of any *mala fides* or arbitrariness there was no reason to interfere with the order of transfer since it was issued considering administrative exigency. Moreover, the Education Officer having approved the proposed transfer on 30.07.2021 there was no reason to interfere in writ jurisdiction.

Shri A.D. Dangore, learned counsel for the respondent no.5 adopted the aforesaid submissions and stated that pursuant to the order of transfer the respondent no.5 had joined at the transferred place.

We have heard the learned counsel for the parties and we have perused the documents placed on record. The Division Bench in *Pawar Bhagwantrao Bhivrao* (supra) while considering the provisions of Rule 41 of the said Rules has referred to three exceptions to Rule 41(1) of the said Rules. If a transfer is effected for administrative reasons or on an employee being promoted or an employee being transferred at his own request, there would be no reason to hold that transfer effected on such grounds would be bad in law. In the present case, the Management seeks to justify the order of transfer as being necessitated on administrative grounds. In the reply filed by the Management alongwith supporting documents it has been stated that the petitioner has been engaging classes in the subjects of Mathematics, Social Science, Geography and Physical Training. She has been discharging duties at the school at Namakganj for the last sixteen years. It was thus found convenient for the Management to transfer her services at Telkamthi for teaching the aforesaid subjects. The time table of the school at Namakganj from the year 2018-19 and onwards substantiate the contention of the Management that the petitioner has been engaging classes of Mathematics and Geography at that school. It is also relevant to note that prior approval of the Education Officer was obtained before issuing the actual order of transfer. We find that it would be for the Management to decide the suitability of an Assistant Teacher for being placed at a particular school considering the exigencies in that regard. In absence of any allegation of *mala fides* or favouritism being brought on record and as it is found that the transfer has been effected on account of administrative exigency, the scope to interfere in the order of transfer would be limited.

On the basis of the material on record we find that the transfer has been effected on account of administrative exigency and the same has been indicated by placing on record various documents alongwith the reply filed by the Management. We therefore do not find any reason to interfere with the order of transfer.

C.A.W. No.1851 of 2021 has been filed by three applicants seeking to intervene in the present proceedings. In the said application it is sought to be demonstrated that Shri Rajendra Prakashe has been posing as President of the Society and this was an act which was not legally permissible.

We find that these aspects are not required to be gone into in the present proceedings where the petitioner has challenged her order of transfer. The applicants would be free to raise their grievances if any in appropriate proceedings and hence we have not entertained the application for intervention in this writ petition.

For aforesaid reasons, we do not find any merit in the challenge to the order of transfer. The writ petition is thus dismissed leaving the parties to bear their own costs. C.A.W. No.1851 of 2021 is also disposed of as not being entertained.

(SMT. PUSHPA V. GANEDIWALA, J.)

(A. S. CHANDURKAR, J.)

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