

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO. 571 OF 2023
WITH
CIVIL APPLICATION NO.2137 OF 2023
AND
CIVIL APPLICATION NO.2139 OF 2023

PRALHAD MARIBA PAWAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...
Advocate for Petitioner: Mr. Avishkar S. Shelke
AGP for Respondent Nos. 1 and 4: Mr. P.S. Patil
Advocate for Respondent Nos. 2 and 3 : Mr. S.S. Thombre a/w Mr.
S.B. Pulkundwar
Advocate for intervener in CA No. 2139/2023: Mr. I. D. Maniyar

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 31st MARCH, 2023.**

PER COURT :-

1. On 17.01.2023, we had passed a speaking order, vide which we had directed the status quo to be maintained with regard to the Petitioner's posting. We had left it open to the Petitioner to opt for some other place, if he desires seeking a transfer. We were informed that the transfer process was ongoing.

2. The Petitioner points out the computer generated order dated 21.3.2023, which is a transfer order issued to him. His grievance is that though this Court had protected him, such a transfer order has been generated.

3. The learned advocate representing the Zilla Parishad submits that this transfer order is generated by the “*Teacher Transfer Management System*” which is operated by the Government of Maharashtra, Rural Development Department. It is an automated system, which does not permit human interference. The candidates have to apply online for transfers and options are to be indicated through such online transfer.

4. An intervention application has been filed. The applicant is aggrieved that he has been transferred in place of the Petitioner, as the Petitioner opted for a transfer and the vacancy shown against his name has been allotted to the intervention applicant. Because of the interim orders of this Court, his transfer is stuck.

5. The confusion amongst the litigating parties, except the Petitioner, is as regards clauses 3.1 and 3.2 under clause 3 of the Scheme for regulating the transfer, introduced by the Government Resolution dated 7.4.2021. For proper understanding, we are reproducing clauses 3.1 and 3.2, as under:-

"३ शिक्षकांकडून बदलीसाठी पसंती क्रम घेणे :

३.१ बदलीस पात्र शिक्षक यांचेकडून जिल्ह्यातील ३० शाळांचा पसंतीक्रम त्यांच्या बदलीने द्यावयाच्या नेमणूकीसाठी मागविण्यात यावा. (सोबतच्या विवरणपत्रानुसार).

३.२ बदली अधिकार पात्र शिक्षकांना बदली हवी असल्यास त्यांनी जिल्ह्यातील ३० शाळांचा पसंतीक्रम त्यांना बदलीने द्यावयाच्या नेमणूकीसाठी देणे आवश्यक राहील. (सोबतच्या विवरणपत्रानुसार)"

6. Clause 3.1 deals with those teachers, who are eligible to be transferred (बदलीस पात्र). This can also be interpreted to mean that these would be the teachers, who would be liable/due to be transferred. Clause 3.2 pertains to certain teachers, who are working in the difficult areas, which include hilly/naxalite affected areas etc. who acquired a right to be transferred after three years. They, therefore, acquired this right and can exercise the same. Acquiring such a right can be stated in Marathi as "अधिकार प्राप्त होणे". Unfortunately, the State Government has used a wrong word "अधिकार पात्र" instead of "अधिकार प्राप्त", in clause 3.2. The actual wording should have been "बदली अधिकार पात्र शिक्षक", means such a teacher, who has acquired a right to seek transfer. It is these teachers, who are working in difficult areas, who have a right to be transferred out of the difficult area, upon completion of three years tenure by setting out 30 choices/options at the places where they can be transferred.

7. We do not find such condition either in clauses 3.2.1. and 3.2.2, which pertain to special teachers (physically challenged teachers), falling in Part I and Part II couple convenience. For ready reference, we are reproducing clauses 3.2.1 and 3.2.2, as under:-

"३.२.१ विशेष संवर्ग शिक्षक भाग १ मधील शिक्षकांना बदली हवी असल्यास किंवा बदलीस पात्र यादीत नाव असताना बदली नको असल्यास त्यांनी सोबतच्या विवरणपत्रात नमूद केलेप्रमाणे अर्ज करावा.

३.२.२ विशेष संवर्ग शिक्षक भाग २ मधील शिक्षकांना बदली हवी असल्यास, किंवा बदलीस पात्र यादीत नाव असल्यास, त्यांनी सोबतच्या विवरणपत्रात नमूद केलेप्रमाणे अर्ज करावा. विशेष संवर्ग शिक्षक भाग २ मधील शिक्षकांनी पसंतीक्रम देताना जोडीदाराच्या शाळेपासूनच्या ३० कि. मी. अंतरातील अथवा त्या तालुक्यात असलेल्या शाळांचा पसंतीक्रम द्यावा."

8. The learned advocate Shri Thombre, representing the Zilla Parishad, on the basis of clause 1.10 contends that even these candidates, who are liable to be transferred should exercise their 30 options for transfer. For clarity, clause 1.10 reads, as under:-

"१.१० बदलीस पात्र शिक्षक :- बदलीपात्र शिक्षक म्हणजे ज्या शिक्षकांची सर्वसाधारण क्षेत्रात बदलीसाठी निश्चित धरावयाची सलग सेवा १० वर्षे पूर्ण झालेली आहे आणि विद्यमान शाळेत सदर शिक्षकाची सेवा ५ वर्षे पूर्ण झालेली आहे असे शिक्षक. तथापि, अवघड क्षेत्रातील शाळांमध्ये रिक्त असलेली पदे भरावयाची

झाल्यास सर्वसाधारण क्षेत्रात १० वर्षे पुर्ण झालेल्या शिक्षकांना विद्यमान शाळेतील ५ वर्षे सेवेची अट लागू राहणार नाही. अवघड क्षेत्रातील रिक्त जागा प्राथम्याने भरणे आवश्यक असल्याने सेवाजेष्ठता विचारात घेऊन सर्वसाधारण क्षेत्रात १० वर्षे पुर्ण सेवा केलेल्या शिक्षकांना वास्तव्य जेष्ठतेप्रमाणे आवश्यकतेनुसार अवघड क्षेत्रामध्ये बदली करुन पदस्थापित करण्यात येईल.”

9. The literal translation of clause 1.10, is as under:-

“1.10 Eligible Teachers For Transfer:- Eligible teachers for transfer means the teachers who have completed 10 years of continuous service to be considered for transfer in the general cadre and have completed 5 years of service in the present school. However, the condition of 5 years of service in the present school shall not be applicable to the teachers who have completed 10 years in the general cadre in order to fill up the vacant posts in schools in difficult areas. The vacancies in difficult areas are required to be filled on priority, teachers who have completed 10 years of service in the general cadre will be transferred considering the seniority and posted in difficult areas as per the requirement.”

(This translated portion is provided by the official translator of the High Court)

10. Considering the above submissions and the provisions, we are of the view that this scheme of 7.4.2021, requires fine tuning. The State authorities will have to introduce an unambiguous provision

to indicate that a person, who has acquired a right for transfer, will have to be defined as “बदली अधिकार प्राप्त झालेला शिक्षक”. Similarly, the State authorities specifically need to provide in the said GR that, the teacher who has acquired a right to transfer, should indicate 30 options, akin to clause 3.2.

11. The learned advocate for the Zilla Parishad submits that, on the one hand, it is regretted that the TTM system generated a transfer order which could not be held back. Consequentially, the only option is that the Petitioner will have to remain at the same place i.e. CPS, Martala Loha and will not be transferred to ZPPS, Pangar Pahad, Kinwat. He however, clarifies that this is a concession being given only for one year. On the other hand, since the Petitioner has worked at the same place for more than 10 years, in the next transfer season, in the academic year 2024-25, he would be due and liable to be transferred.

12. The learned advocate for the Petitioner submits that the Petitioner understands this scheme to mean that if his choice of transfer is not accepted, being a special teacher, he will not be transferred and he will not be liable to be transferred. We leave this issue open to the ZP in so far as it's interpretation. So also, let the State Government venture into the fine tuning of the scheme dated 7.4.2021. In view of the concession extended by the Zilla Parishad, the Petitioner would continue at the same place for the academic

year 2023-24 and no equities would be created in his favour with regard to he being liable to be transferred in the next academic year.

13. In so far as the intervention applicant is concerned, he is at liberty to approach the Chief Executive Officer, Zilla Parishad, in the light of clause 5.10 of the GR dated 07.4.2021. Let him follow the said scheme to seek redressal of his grievance.

14. With the above directions, this Writ Petition is disposed off.

15. The civil applications do not survive and stand disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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