

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

WRIT PETITION NO. 8410 OF 2023

Prakash s/o Sukhdeo Patole

...Petitioner

Versus

- 1) The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 2) The Secretary,
Rashtriya Sahakari Shikshan Prasarak
Mandal, Chalisgaon,
Dist. Jalgaon.

...Respondents

WITH

WRIT PETITION NO. 8411 OF 2023

Pravin Murlidhar Bagal

...Petitioner

Versus

- 1) The State of Maharashtra
Through Secretary, Department of Education, Mumbai.
- 2) The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
- 3) The Secretary,
Rashtriya Sahakari Shikshan Prasarak
Mandal, Chalisgaon,
Dist. Jalgaon.
- 4) Shri Chhatrapati Shivaji Madhyamik Vidyalaya,
Pohari, Taluka Chalisgaon,
District Jalgaon,
Through its Head Master.

...Respondents

...

Advocate for Petitioner in both petitions : Mr. Sachin S. Deshmukh
Addl. GP for Respondent No.1 in WP-8410-2023 and for Respondent No. 1 &
2 in WP-8411-2023/State : Mrs. M.A. Deshpande

Advocate for Respondent No.2 in WP-8410-2023 and for Respondent No.3 in
WP-8411-2023 : Mr. P.S. Shendurnikar

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 07 AUGUST 2023

ORAL ORDER (SHAILESH P. BRAHME, J.) :

. Rule. Rule is made returnable forthwith with the consent
of the parties. Heard the learned Counsel for the parties.

2. Both the petitioners are challenging the distinct orders of transfer dated 30.06.2023 issued by the respondent-management on various grounds. They are employees of the common management. The facts and circumstances of the matters are almost identical, therefore both the petitions are heard together and are being decided by common judgment and order.

Facts of Writ Petition No. 8410/2023 :

3. The petitioner-Prakash is the Head Master in a school at Ganeshpur. He was transferred from Ganeshpur to Kanashi by order dated 31.01.2023. It was challenged by filing Writ Petition No.1709/2023. By order dated 13.02.2023, the Single Judge granted stay to the operation of transfer order and the petition is pending. On 30.06.2023, an order cancelling earlier transfer order dated 31.01.2023 was issued by respondent/management. On selfsame date, the petitioner is transferred from Ganeshpur to Kanashi again. It is a midterm transfer and it is sought to be challenged.

4. The respondent/management raises a preliminary objection regarding maintainability of the writ petition seeking writ of certiorari, non-joinder of necessary parties and gross abuse of process of the Court coupled with legal estoppel.

5. It is submitted that on 30.06.2023 wife of the petitioner Shobana is also transferred from Ganeshpur to Gondegaon. The office bearers of the management were duly elected on 09.01.2023 for the period of 2022 to 2027 and had authority to administer the trust. It is contended that the earlier order dated 31.02.2023 was midterm transfer. The petitioner had expressed his desire to work at the transferred place from the next academic year by way of pleadings in Writ Petition No.1709/2023. The couple convenience of the parties was also considered. Hence, the impugned order of transfer was issued.

6. The respondent/management further contends that in a meeting of the managing committee on 28.06.2023, 113 employees were transferred but nobody challenged the orders except the petitioners. It is denied to be a midterm transfer. Previously also transfer orders were issued to the petitioner on 30.06.1994, 27.06.1999 and 28.06.2003, but he had not challenged those on the ground of midterm transfer. The management is justified in issuing the impugned order of transfer. There was administrative exigency as 34 schools are being run by the management.

Facts of Writ Petition No. 8411/2023 :

7. The petitioner-Pravin is rendering services in a school of the respondent/management at Pohare. He is disabled person. In view of circular dated 15.12.2004, the differently abled employees should be transferred to the nearest places. Despite that by impugned order dated 30.06.2023, the petitioner is transferred from Pohare to Gondegaon which is illegal besides being a midterm transfer. Therefore the impugned order is questioned by filing the petition.

8. The respondent/management raised preliminary objection identical with the objection raised in WP-8410/2023. The petitioner was working at Pohare for last 21 years. In a meeting dated 28.06.2023, the managing committee decided to transfer him for administrative reasons. It was not a midterm transfer. The management has to administer 34 schools and is difficult to keep a person at a place for prolonged time. The other employees are also transferred but none of them challenged the transfers.

Submissions of the parties :

9. The learned counsel for the petitioner would submit that an order of transfer dated 30.06.2023 is against provision of Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The impugned orders of transfer are void and without jurisdiction because the respondent/management had no authority to effect the transfer. It is against principles of couple convenience. The

petitioner/Prakash is 55 years old and nearing superannuation. The impugned order is causing hardship as his daughter is taking education at Ganeshpur. When the interim relief has been in operation in Writ Petition 1709/2023, the cancellation of earlier transfer order and issuing present impugned order is colourable exercise of power and imperious.

10. It is further submitted that the conduct of the management shows the character of disobeying of the orders of the High Court. The learned Advocate for the petitioners has placed reliance upon the judgment of Supreme Court in the matter of State of **U.P. Through Secretary and Others Vs. Prem Chopra**, reported in 2022 LiveLaw (SC) 378.

11. In case of Pravin, it is additionally submitted that the transfer of differently abled employees is against the policy decision of the State Government.

12. The respondent/management emphatically raised preliminary objections for the maintainability of the writ petitions. The learned Counsel for the respondent/management would submit that the transfer order of the petitioner/Prakash Patole was issued considering administrative exigency, the desire of petitioner and couple convenience. It is further submitted that the respondent has to administer 34 schools and for administrative exigency transfer orders were issued. It was not a midterm transfer. He would submit that no

hardship would be caused to the petitioners. He relies upon the order passed in writ petition no.6035/2019 on 05.03.2021 and judgment and order of the High Court in writ petition no.8518/2021 in case of **Mastan Nabisha Murshad Vs. the Education Officer, Beed and Ors.**

Considerations in Writ Petition No. 8410/2023 :

13. The present petition alongwith writ petition no.8411/2023 were filed in the High Court before the learned Single Judge. The objection regarding maintainability of the matter before the Single Judge was raised by the respondent. On the preliminary objection, matter was heard at length. Both the parties cited provisions of law and the judgments to support their contentions. By a reasoned order dated 18.07.2023, the learned Single Judge held that both the petitions would lie before the Division Bench. This is how both the petitions came before us for consideration. Before us also, the learned Counsel for the petitioner tried to argue that impugned orders are not the purely administrative orders but quasi judicial orders and the petitions would be maintainable before the Single Judge. By our order dated 31.07.2023, we have expressed our inability to accept the contentions of the petitioner. Thereafter the matters are heard on merits including the preliminary objections.

Preliminary Objections :

14. The respondent/management raises three fold preliminary

objections namely (i) writ petitions seeking writ of certiorari are not maintainable; (ii) there is non-joinder of necessary parties as the education society, office bearers of the education society and beneficiary of transfer order are not impleaded; (iii) It is an abuse of process of law coupled with legal estoppel. The preliminary objection regarding the prayers of writ of certiorari is hyper technical objection. Initially both the petitions were heard by the learned Single Judge and by order dated 18.07.2023 those were held to be maintainable before the Division Bench. The wordings of the prayer clause of petition does not matter much. In substance the petitioner is challenging the orders of transfer. In respect of the second objection, the respondent no.2 is a Secretary of Education Institution, who represents the management. The beneficiary of the impugned order are not necessary parties because the petitioners are not claiming their displacement. The last objection involves adjudication of the matter on merits. It cannot be considered as a preliminary objection. Thus, we propose to proceed with the merits of the matters overruling first two preliminary objections of the respondent/management.

15. The petitioner-Prakash was transferred from Ganeshpur to Kanashi by order dated 31.01.2023. Against that, writ petition no.1709/2023 was preferred. On 13.02.2023, the notices were issued for final disposal and stay was granted to the operation of transfer order. The relevant part is as follows :

“3. During the pendency of this writ petition, until

the next date, the transfer order dated 31.01.2023 would remain stayed.”

. The writ petition is still pending for final disposal at the admission stage.

16. It is relevant to notice that the petitioner has contended in paragraph no.8 of the memo of writ petition no.1709/2023 as follows :

“8. The petitioner further submits that, the petitioner is ready to work at the transferred place from the next academic year since the impugned transfer is the mid-term transfer, which is contrary to clause (2) of Rule 41 of the Rules of 1981. The petitioner categorically and responsibly submits that, the petitioner is ready and willing to join at the transferred place in the next academic year 2023-2024 with further request that the transfer should be effected in accordance with the principles of couple convenience. Nevertheless, the petitioner is having a daughter who is also prosecuting her studies. The impugned order is also prejudicial to the interest of the daughter of the petitioner.”

17. The interim order passed on 18.07.2023 by the learned Single Judge, would indicate that operation of transfer order dated 31.01.2023 was stayed. It was midterm transfer and against Rule 41(2) of the Rules. No injunction was issued by the learned Single Judge restraining the management from revoking, modifying the transfer order under challenge or passing any other transfer order. Transfer is the prerogative of the management which is regulated by Rule 41 of the Rules. The management would have the discretion to effect the transfer

of its employees considering the administrative exigencies. It was not necessary for the respondent/management to seek permission of the High Court for cancelling earlier order of transfer and for passing present impugned orders.

18. The managing committee of the respondent passed resolution in its meeting dated 28.06.2023. The objections to the midterm transfer dated 31.01.2023 raised in Writ Petition No.1709/2023 and the interim orders passed on 13.02.2023 in that writ petition were considered. The desire expressed by the petitioner to join the school at the transferred place from education year commencing from June, 2023 which was expressly stated by the petitioner was also considered. Considering the administrative exigency, the impugned order of transfer was passed on 30.06.2023. We do not find that the management has committed any illegality in revoking the earlier transfer and issuing impugned transfer order.

19. The last academic year ended in May 2023. The petitioner had already expressed in paragraph no.8 of memo of Writ Petition No.1709/2023, his readiness to join the transferred place from next academic year. The respondent/management has to administer 34 schools. The administrative exigency expressed by the management cannot be faulted with. The submission of the learned Counsel for the petitioner that the impugned order was unilateral and it was passed without seeking leave of the Court, is without any merit. The operation

of interim order in earlier petition was not an impediment to issue the impugned order.

20. In the matters of transfer, there is no vested right in the employee to claim to be kept at a particular place. The order of transfer dated 31.01.2023 was clearly against Rule 41(2) of the Rules of 1981. The management has rectified the mistake by cancelling earlier order and by issuing the impugned order, which is permissible and cannot be faulted with. We, therefore, do not find any reason to interfere with the impugned order of transfer.

21. We have noticed that the wife of the petitioner/Prakash, is also employee of the respondent/management. She was working in the school at Ganeshpur. She was transferred on 30.06.2023 from Ganeshpur to Gondegaon. The place Gondegaon is about 3 Kms. away from Kanashi a place where the petitioner/Prakash is transferred. We appreciate the approach of the management in taking into account the couple convenience of the petitioner and his wife. The petitioner's wife has not challenged her transfer order. In this scenario, the objections of the petitioner for the impugned transfer order is preposterous.

22. The learned Counsel for the petitioners would submit that the academic year commenced from 15.06.2023 in view of Government Circular dated 20.04.2023. The impugned order was issued on 30.06.2023, after fourteen days and therefore it was midterm transfer.

On 28.06.2023, there was a meeting of the managing committee, wherein the resolution was passed for transferring the employees. The impugned order was passed immediately within fifteen days from the commencement of the academic year 2023-2024. It was passed considering the desire of the petitioner as well as administrative exigency. In the strict sense, the impugned order cannot be said to be in the middle of the academic term or half way of the term. Nothing is placed on record by the petitioners that the academic year progressed substantially and the impugned order would cause prejudice or hardship either to the administration or the interest of the students. In that view of the matter, the submissions of the learned Counsel for the petitioners cannot be countenanced.

Considerations in Writ Petition No. 8411/2023 :

23. It is noticed that the petitioner/Pravin was at Pohare for last 21 years. The respondent/management transferred him to Gondegaon. The management runs 34 schools. For the administrative convenience of the management, few orders of transfer were required to be passed. The petitioner/Pravin was transferred to a place which was 22 Kms. away from his actual residence. The petitioner has not pointed out any hardship or inconvenience. We find that it is the prerogative of the management to transfer an employee and the transfer in question is not violative of Rule 41. We do not find any case is made out to interfere with the impugned order.

24. We have already recorded our reasons holding that the impugned order is not a midterm transfer in companion writ petition. The same are applicable in this matter also.

25. The petitioner/Pravin has contended that he is disabled person and there are restrictions for transferring such an employee. In that regard, a reliance is placed on circular dated 15.12.2004. The management has disputed the disability as well as applicability of circular. We do not propose to go into the extent of disability. It is a disputed question of fact. We are also doubtful whether the circular in question can be made applicable to the private schools. The submissions of disability does not command to us.

26. Our attention is invited to paragraph no.24 of the judgment in the matter of Prem Chopra (supra). The facts are distinguishable. The matter before the Supreme Court was not in respect of transfer or any interim stay granted to earlier transfer order. In the present matter, the clinching fact is that there was no prohibition for the management in cancelling the earlier order of transfer and passing impugned order in the matter of petitioner/Prakash. The case cited by the petitioner is not applicable.

27. The judgment relied upon by the learned Advocate for the respondent/management in the matter of Mastan Nabisha Murshad (supra) pertains to the transfer which was challenged on the ground of

want of administrative reasons. In the present matter, transfer order is challenged on the ground of midterm transfer. The facts are different and the principles laid down is not applicable to the present case. The learned Advocate for respondent/management has also relied upon the order dated 15.03.2021 passed by this Court at Nagpur Bench in Writ Petition No.6035/2019 in the matter of Kumari Ranjana Tulshiramji Dharmale Vs. The Yeoda Education Society, Yeoda and Others. Considering the facts and circumstances of the present matter, the same is not applicable.

Conclusion :

28. For the reasons stated above, we do not find any merit in both the petitions. The petitions are dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]