

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

WRIT PETITION NO. 2311 OF 2022

Vijay Laxman Hatwar

Age: 47 years, Occ. Assistant Teacher,
R/o Zilla Parishad High School
Nakadongri, Taluka Tumsar, Dist.
Bhandara

...Petitioner

// VERSUS //

1. The State of Maharashtra, through its Secretary, Rural Development Department, Mantralaya, Mumbai-32
 2. The Divisional Commissioner, Nagpur Division, Nagpur
 3. The Zilla Parishad, Bhandara, through its Chief Executive Officer
- ... Respondents

Shri P.S.Kshirsagar, Advocate for the petitioner.

Shri H.D.Dubey, AGP for the respondent nos. 1 and 2.

Shri R.J.Khobragade, Advocate for the respondent no.3.

CORAM : ANIL S. KILOR, J.

DATED : 18th APRIL, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner raised a grievance by filing an appeal before the Divisional Commissioner, Nagpur Division, Nagpur as regards the final seniority list prepared for transfer, the said appeal came to be rejected vide order dated 3rd January, 2022, the same is under challenge in this writ petition.

3. The petitioner is an Assistant Teacher working with Zilla Parishad, Bhandara and he is presently working in a Zilla Parishad School in Tumsar Taluka.

4. It is the case of the petitioner that he has completed his is in 'Tumsar' Taluka since last 16 years and therefore he is entitled for transfer outside District Bhandara in view of the Government Resolution dated 15th May, 2014 which stipulates eligibility criteria of having service of 10 years in one Taluka to transfer outside the Taluka.

5. It is the further case of the petitioner that primary seniority list published for transfer wherein his placement was properly shown at serial number 13, whereas, in final seniority list he was shown at serial number 108, which is contrary to the Government Resolution dated 15th May, 2014. He, therefore, filed an appeal under Rule 14 of Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964, before the Divisional Commissioner.

6. The Divisional Commissioner dismissed the said appeal on the ground that the petitioner has not completed five years in a school to which he was lastly transferred. The said order dated 3rd January, 2022, is the subject matter of the present writ petition.

7. From the facts stated herein above, it could be seen that the controversy revolves around the Government Resolution dated 15th May, 2014.

8. After going through the said Government Resolution dated 15th May, 2014, the condition of having five years service at one place relates to transfer within Taluka. However, for transfer outside the Taluka the eligibility criteria is of having worked for ten years in one Taluka or in different establishments in one Taluka.

9. Admittedly, the seniority list prepared by the Chief Officer of Zilla Parishad shows that the petitioner has worked for more than fifteen years in Taluka 'Tumsar', District Bhandara and as such he is entitled to transfer outside the Taluka within District Bhandara.

10. However, after going through the reasons recorded by the Divisional Commissioner, it is apparent that he has not interpreted the relevant clauses of Government Resolution dated 15th May, 2014 in right perspective and has wrongly applied the conditions of transfer of an employee within Taluka, whereas, the request of the petitioner is for transfer outside the Taluka.

11. For both the transfer i.e. within Taluka and outside Taluka, two different criteria are prescribed under the said Government Resolution and *prima facie* the petitioner is eligible for transfer outside Taluka as per the Government Resolution dated 15th May, 2014, as he has completed more than 10 years in Taluka Tumsar.

12. In the circumstances, as the Divisional Commissioner has not considered the case of the petitioner in right perspective and also not considered the relevant clauses which are applicable to the case of the

petitioner, I am of the opinion that the matter needs to be remanded back to the Divisional Commissioner for deciding the appeal filed by the petitioner a fresh. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 31st January, 2022 passed by the Divisional Commissioner, Nagpur Division, Nagpur is hereby quashed and set aside;
- iii. The Divisional Commissioner, Nagpur Division, Nagpur is directed to decide the appeal of the petitioner a fresh after considering the criteria applicable and provided for employees eligible for transfer outside the Taluka.

[ANIL S. KILOR, J.]

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