



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

45 WRIT PETITION NO. 10046 OF 2024

SANDIP TRIMBAK GOSAVI

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

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Advocate for the Petitioner : Mr. Wagh Umakant U.

AGP for Respondents: Mr. R.S.Wani

Advocate for Respondent No. 7 : Mr. B.M. Dhanure

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

DATE : 18.09.2024

PER COURT :

We have heard the learned advocate for the petitioner once again in spite of the fact that we had heard him extensively even on the last date i.e. 12.09.2024. In spite of we having indicated that we were not inclined to entertain the petition, the learned advocate for the petitioner had sought time and by way of indulgence the matter was directed to be listed today.

2. The learned advocate was merely supposed to take instructions as to if the petitioner was inclined to withdraw the petition, instead the learned advocate again started persuading us to point out that the petition is maintainable and would cite a division bench decision in the matter of **Parma Nand Sharma Vs. State of H.P. & Ors.**, decided on 07.12.2022 (Himachal Pradesh, Shimla High Court), and a copy of the correspondence by the State Government in the form of a general instruction to the Department of Education, dated 08.01.1985.

3. The petitioner was serving in respondent no. 4-school as a teacher and was even appointed by the National Cadet Corps (NCC) as an Associate

NCC Officer (ANO). The management having issued a transfer order dated 19.01.2024 whereby he was transferred from respondent no. 4 school to respondent no. 5-school is challenging the order of transfer. As is submitted by his learned advocate he has already joined respondent no. 5 pursuant to the transfer order.

4. In view of the admitted fact that the transfer order has already been effected and even he has joined the post, on this ground alone the petition would not be maintainable.

5. Independently, emphasis of the petitioner and his learned advocate on the undertaking furnished by respondent no. 4-school with the NCC Organization not to effect the transfer of the petitioner, who has been appointed as ANO, without consent of the NCC, in our considered view, would not restrict the powers of respondent no. 3 management as far as employer-employee relationship between it and the petitioner is concerned. Even if it is being pointed out that the transfer order is contrary to such understanding between the two sides as is mentioned in the circular issued by the commanding officer of the NCC dated 09.07.2024, it would not bind the management much less would operate contrary to the provisions of the MEPS Rules, 1981, contained in Rule 41 and 41A from effecting transfers of its employees to another school being run by the same management.

6. Even if by the communication dated 01.08.2017, the Commanding Officer of the NCC has warned the institutes of withdrawal of NCC from the institution and imposition of financial penalties as per the government order, when respondent no. 3-management is not objecting to it, reference to this circular and the policy of the NCC would not take the petitioner's matter any further.

7. Similar would be the case in respect of the government circular dated 08.01.1985. If the management is not taking any objection and apparently is ready to face the consequences and has effected transfer of the petitioner,

the circulars issued by the NCC and the State Government would be inconsequential. Under the guise of the circulars, he seems to be objecting to the transfer, that too after joining the post at the new place with respondent no. 5.

8. So far as the decision of the Himachal Pradesh High Court, we are in respectful disagreement. The issue as to the binding nature of the circulars issued by the NCC qua the management and its right to transfer an employee was not considered by the division bench.

9. There is no merit in the petition. It is dismissed *in limine*.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-