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wp 10427.15 (1).odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 10427 OF 2015**

Sulbha Rangrao Pawar,
Age 44 years,
Occupation : Assistant Teacher,
R/o. Murli Manohar Colony,
Maloni, Tq. Shahada,
District Nandurbar.

.. Petitioner.

Versus

1. The State of Maharashtra
through
the Secretary,
Department of Education,
Mantralaya, Mumbai-32.
2. The Commissioner of Education,
Maharashtra State
Dr. Any Bezant Road,
Pune 0 411 001.
3. The Directorate of Education
through
the Deputy Director of Education,
Nashik Division, Nashik.
4. The Education Officer (Primary),
Zilla Parishad, Nandurbar.
5. The Suvarta Alliance Ministries Trust
through
The Secretary,
The Suvarta Alliance Ministries Trust,
Central Office, Near Panchayat Samiti,
At Girls Hostel,
Church Compound,
Nandurbar, 425412
E-mail : sam_tindia@ rediffmail.com.

6. Suvarta Alliance Mission's Private Primary School,
Selinpur, Tq. Taloda, District Nandurbar
Through
The Head Master,
7. Suvarta Alliance Mission's Private Primary School,
at Maloni, Tq. Shahada, District Nandurbar
through
The Head Master.
8. Suvarta Alliance Mission's Private Primary School,
Nandurbar, District Nandurbar,
through
the Head Master.
9. Suvarta Alliance Mission's Private Primary School,
Mundalwad, Tq. Dhadgaon, District Nandurbar,
through
the Head Master.

.. Respondents.

Petitioner – Party-in-person;

Mr. S.K. Shirse, AGP for respondent Nos. 1 to 3

Mr. P.S. Patil, Advocate for respondent No.4

Mr. Y.B. Bolkar, Advocate for respondent Nos. 5 to 9.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 19TH MARCH, 2024.
PRONOUNCED ON : 5TH APRIL, 2024.**

JUDGMENT [PER S.G. CHAPALGAONKAR, J.]

1. Heard. Rule. Rule made returnable forthwith. By consent of parties, taken up for final hearing.

The petitioner impugns the transfer order dated 6.12.2014 issued by the respondent No.5 Trust, thereby transferring her services from the School at Nandurbar to the school at Mundalwad, Taluka Dhadgaon, Dist. Nandurbar.

2. The petitioner contends that the respondent No.5 is an educational institute and runs schools at various places in Nandurbar District. The petitioner was appointed as Assistant Teacher at Primary School at Taloda on 1.6.1996. However, the respondents intentionally started harassment towards her. She was subjected to transfers from one school to another. The service period of the petitioner is given in tabular form which reads thus :-

- “a] Selinpur School, Taluka Taloda
from 1.9.1996 to 31.5.2001
- b] Maloni School, Shahada,
from 1.6.2001 to 31.5.2011
- c] Mundalwad School, Taluka Dhadgaon,
from 1.6.2011 to 31.5.2013
- d] Nandurbar
from 1.6.2013 to 8.12.2014.”

3. According to the petitioner, Mundalwad is situated in Hilly area of Satpuda Mountains. It is exclusive tribal area having no facilities for accommodation, transport, medical etc. She served there during the period from 1.6.2011 to 31.5.2013. Since her husband, who is also a teacher under the establishment of Zilla Parishad School was sent on deputation at Dhadgaon by way of couple convenience, the petitioner could attend her school from Dhadgaon. However, the petitioner's husband is transferred to Nandurbar. Now, the petitioner is again transferred to Mundalwad, Taluka Dhadgaon under the impugned order dated 6.12.2014. The petitioner represented the management to give her convenient posting. However, they are acting in revengeful manner and transferred her from Nandurbar to Mundalwad for obvious reasons. According to petitioner, such transfer is contrary to the provisions of

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981.

4. Although she represented to respondent No.3 – Education Officer to intervene in the matter, no steps were taken by him. The petitioner in absence of alternative remedy approached this Court invoking jurisdiction under Article 226 of the Constitution of India and seeks to quash and set aside the impugned order dated 6.12.2014. She raised challenge to validity of Rule 41 of the MEPS Rules that enables the management to transfer an employee. Petitioner also seeks to issue directions against the respondents to release payment of regular salary and arrears.

5. The respondent- Management filed affidavit in reply contending that the transfer order has been passed by the management on the ground that there were numerous complaints by Head Master regarding petitioners misconduct in the school, which led to filing of police complaint. She indulged in misbehaviour with the co-employees. The management was compelled to passed resolution in the interest of the administration. The transfer order is issued with due adherence to Rule 41 of the MEPS Rules of 1981. It is further contended that the petitioner failed to join at transferred place and claiming the salary without work. She is paid regular salary till date of the transfer. The affidavit in reply further makes reference to petitioners unauthorized absence, indiscipline etc. The reply also refers to defamatory statements made by the petitioner against management and consequential civil suit filed by the management claiming for damages of Rs. 50 Lakhs.

6. The petitioner party-in-person made her submissions in tune

with the contentions raised in the petition. She restricted her challenge only to transfer order and consequential reliefs. The other prayers raising challenge to validity of MEPS Rules is not pressed during the course of arguments.

7. Mr. Yogesh Bolkar, learned advocate appearing for the respondents submits that Rule 41 of the MEPS Rules, empowers the management to transfer the employees from one school to another on administrative grounds, promotion etc. He placed on record the resolution bearing No. 9(A) dated 3.12.2014 passed by the Governing Body, to transfer the petitioner. It states that the petitioner reports the school belatedly, manipulates the register by scoring late marks. She is responsible for the loss to the students. Her behaviour is unbecoming of a teacher. She has disturbed the school environment. Accordingly, it is resolved to transfer her services to Primary School at Mundalwad.

8. Mr. Bolkar would further rely upon following judgments in support of his submissions :-

1. *Maya Manikumar Vs. Shikshan Prasarak Mandal and others*” 2014 (4) Mh.L.J. 255 ;
2. *Marathwada Banjara Seva Sangh Vs. State of Maharashtra and others* 2004(4) Mh.L.J. 8
3. *Shilpi Bose vs. State of Bihar and others* 1991 Supp.(2) SCC 659;
4. *National Hydroelectric Power Co.Ltd. Vs. Shri Bhagwan* (2001)8 SCC 574
5. *Public Services Tribunal Bar Association Vs. State of UP and another* (2003)4 SCC 104
6. *State of U.P. vs. Gobardhan Lal* (2004) 11 SCC 402

7. *Mohd. Masood Ahmed Vs. State of U.P*
9. *Rajendra Singh Vs. State of UP (2009) 15 SCC 178*
10. *Namrata Verma vs. State of U.P 2021 SCC Online 3337*
11. *Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra 2013(2) Mh.L.J. 107*

9. After hearing the submissions advanced on behalf of respective parties, the issue that arises for consideration before us, is :-

“As to whether the impugned transfer order dated 6.12.2014 issued by the respondent management is sustainable in law.”

10. The respondent school is a private school governed by the provisions of the MEPS Act, 1977 and Rules framed thereunder. Rule 41 of the MEPS Rules of 1981 stipulates powers of the management regarding transfer of the employee. Sub-clause(1) and (2) of Rule 41 states as under :-

“41. Transfers. - 1) Subject to the provisions of this rule the Management conducting more than one school shall not transfer any of its employees from one school to another except on administrative grounds, promotion or at the request of the employee concerned if it is administratively convenient to do so.

2) Save in exceptional cases, and unless reasons are recorded in writing by the Management, such transfers shall not be effected in the middle of the term.”

11. The clause (1) of Rule 41, it can be gathered that management conducting more than one school is not expected to transfer any of its employees from one school to another except on administrative

grounds or promotion, or at the request of an employee. Sub-clause (2) of Rule 41 specifically states that save in exceptional cases, and unless reasons are recorded in writing by the management, such transfers shall not be effected in middle of the term. Meaning of “Term” as prescribed in Secondary School Code would depict that the “first term” of the School shall be from “June to October” and “second term” shall be from “November to April”. Thus, mid-term transfers are prohibited. However, in exceptional circumstances only upon recording reasons in writing by the management, mid-term transfers are permissible.

12. Perusal of impugned transfer order depict that the petitioner has been transferred in pursuance of Governing Body resolution No. 9(A). The transfer order is bereft of any administrative reason, particularly, for mid-term transfer. The copy of the proceeding book of the General Body Meeting dated 3.12.2014 is placed before us during the course of hearing. Since it is part of pleading in the affidavit in reply, we allowed its production at this stage.

13. The contents of the proceeding book shows that subject of petitioner’s transfer was not on the agenda, but it was taken up in the meeting as a “addendum” or “last minute item”. It records instances of misconduct on the part of the petitioner and refers to various complaints. If the tenor of the resolution is considered, apparently, transfer of the petitioner is by way of punishment. However, she was not served with any show cause notice or she was not offered any opportunity to explain the allegations or put up her stand.

14. We find that the petitioner’s transfer is bereft of administrative reason as sought to be contended before us. In case of

transfer by way of punishment, least that could have been done is to serve a show cause notice upon the petitioner with imputations and grant her opportunity to put up her stand, which is apparently not done in the present case. Secondly, transfer order has been issued on 6.12.2014. Sub-clause (2) of Rule 41 bars mid-term transfers, but for exceptional circumstances, that too by recording reasons in writing by the management. The text of transfer order dated 6.12.2014 nowhere record reasons for mid-term transfers; more particularly, exceptional circumstances warranting such mid-term transfer.

15. Mr. Y.B. Bolkar, learned Advocate for the respondents relies upon the judgment of this Court in the case of ***“Maya Manikumar Vs. Shikshan Prasarak Mandal and others” (Supra)*** to contend that if the transfer is made immediately at the beginning of the second term that would not be termed as mid-term transfer. We observe that in the case referred, the transfer was effected on 14th November, whereas, in present case, transfer is effected on 6th December, i.e. much after commencement of the second term which begins on 1st November. Therefore, the ratio in the case of Maya (supra) would not assist the cause of the respondents.

16. Mr. Bolkar, learned advocate for the respondents further submits that if the transfer is effected on administrative grounds by way of resolution passed by the Governing Body and no malafides are discernable, it cannot be interfered in writ jurisdiction. However, we are convinced that no administrative ground exists for transfer of the petitioner. We are not oblivious of the limitations of judicial review of administrative action in exercise of writ jurisdiction, however, when we find that the order is contrary to the Rules governing/regulating transfers of the employees and in violation of principles of natural justice, exercise

of writ jurisdiction would be essential to correct the wrong.

17. Mr. Bolkar has further submitted that the petitioner has not joined at the transferred place and, therefore, she cannot claim salary from the date of her transfer. Although the petitioner has employed a prayer for release of the salary from the date of her transfer, we are not inclined to enter into the disputed questions of fact. Suffice to say that the petitioner would be entitled to receive salary as per her entitlement. For that purpose, we deem it appropriate to relegate parties to the jurisdiction of respondent No.4 - Education Officer, who shall after hearing all concerned, work out the entitlement of the petitioner, after examining the relevant record. In that view of the matter, we proceed to pass the following order :

O R D E R

- [A] Writ petition is partly allowed;
- [B] The impugned transfer order dated 6.12.2014 passed by the respondent Management is hereby quashed and set aside;
- [C] The respondent/Management shall retain the petitioner at her posting i.e. SAM Private Primary School at Nandurbar. However management shall be at liberty to take further steps in accordance with MEPS rules, if so required in the interest of administration.
- [D] Rule made partly absolute in above terms. Civil Application No. 5341 of 2020 stands disposed of. In the circumstances, there shall be no orders as to costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

After pronouncement of order in open court, Mr. Y. B. Bolkar learned Advocate appearing for respondents No. 5 to 9, submits that respondent management may approach Hon'ble Supreme Court impugning order of this court, hence seeks stay to the operation of order for period of four weeks.

Considering submissions, we deem it proper to keep operation and effect of our order in abeyance for period of four weeks from today to enable respondents to avail appropriate remedy as permissible under law.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-