



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

WRIT PETITION NO. 13635 OF 2019

Amol S/o Vasant Rao Shinde,
Age : 31 Years, Occu. : Assistant Teacher,
R/o Nawabpur, Tq. Gangapur,
Dist. Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 400 032.
2. The Chief Executive Officer,
Zilla Parishad, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Dhule. .. Respondents

Shri S. R. Sapkal, Advocate for the Petitioner.
Shri N. S. Tekale, A.G.P. for the Respondent No. 1.
Shri U. B. Bondar, Advocate for the Respondent No. 2.
Shri N. N. Desale, Advocate for the Respondent No. 3.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 18.11.2024
JUDGMENT PRONOUNCED ON : 19.12.2024**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent of the parties heard litigating sides finally at the admission stage.

2. The petitioner is claiming unpaid salary for the period from 31.10.2015 till 11.04.2018 and all the consequential benefits. During this period he was not permitted to join the transferred place and according to him no fault could be attributable to him.

3. The petitioner is a primary teacher, who is the resident of Nawabwadi, Tq. Gangapur, Dist. Aurangabad. He was appointed as an assistant teacher with the respondent No. 3/Zilla Parishad Dhule at Deur, Tq. and Dist. Dhule. One Mr. Bharat Abhimanyu Khairnar, who was the ordinarily resident of district Dhule was appointed as an Assistant teacher in the respondent No. 2/Zilla Parishad, Aurangabad at Kolwadi, Tq. Kannad, Dist. Aurangabad. Petitioner and Mr. Bharat Khairnar requested for mutual transfers. Accordingly, vide order dated 27.10.2015 issued by the respondent No. 3 – Chief Executive Officer, Zilla Parishad, Dhule, they were transferred to the mutual posts. The petitioner was relieved on 31.10.2015, but he was not permitted to join with the respondent No. 2 – Zilla Parishad Aurangabad. He made various representations, which are produced on record at Exhibit – C. He was required to approach the respondent No. 1 and on 23.09.2016 direction was issued to the respondent No. 2 to accommodate him, but no steps were taken.

4. The petitioner was required to file Writ Petition No. 4351 of 2017. It was finally decided by order dated 08th March, 2018. Considering vacancies, directions were issued to accommodate the petitioner against the available post and accordingly writ

petition was allowed. In pursuance of the orders of the Court, petitioner was issued with order dated 08.03.2018 giving him posting at Manjari. Thereafter, petitioner submitted representations which are annexed at Exhibit – F claiming the salary for the period from 31.10.2015 to 11.04.2018. Those representations were not considered by the respondent No. 2, which is the cause of action for the petitioner to approach this Court.

5. Learned counsel for the petitioner submits that by way of mutual transfer he came to be posted with the establishment of the respondent No. 2. He was relieved on 31.10.2015 from the respondent No. 3 and he should have been allowed to join immediately by the respondent No. 2. The petitioner was required to persuade various authorities and ultimately he was constrained to file Writ Petition No. 4351 of 2017. It is submitted that he is deprived of the salary and consequential benefits without having any fault on his part. It is submitted that there was no valid reason for not allowing him to join by the respondent No. 2 – Zilla Parishad. His counter part Mr. Khairnar suppressed the fact that he was working on different scale i. e. trained graduate teacher. The respondents are liable to make good the loss caused to the petitioner. Reliance is placed on the **order dated 03.09.2018** passed by the Division Bench of this Court at Nagpur in the matter of **Prakash Shamrao Sable Vs. Zilla Parishad, Akola in Writ Petition No. 337 of 2018.**

6. The respondent No. 2 – Zilla Parishad, Aurangabad

opposed the petition by filing affidavit in reply. It is contended that as per the transfer order, the petitioner was relieved on 31.10.2015. It is further contended that Mr. Bharat Khairnar suppressed that his scale was different than that of the petitioner and the mutual transfer was not permissible. It is further submitted that action was initiated against Mr. Bharat Khairnar and other erring officers. It is further submitted that in view of the orders passed by the High Court on 08.03.2018 in Writ Petition No. 435 of 2017, the posting was given to the petitioner. The respondent No. 2 was not liable to disburse the salary, as the petitioner did not render the work. The petitioner was timely informed and he should have reported the respondent No. 3 – Zilla Parishad, Dhule.

7. Learned counsel for the respondent No. 3 – Zilla Parishad, Dhule adopted the submissions of the respondent No. 2. It is contended that the petitioner was relieved on 31.10.2015 and the respondent No. 3 had no role to play thereafter.

8. We have considered rival submissions of the parties.

9. Undisputedly, the petitioner was initially appointed as an Assistant Teacher in a school run by the respondent No. 3 – Zilla Parishad, Dhule at Deur, Tq. and Dist. Dhule. Mr. Bharat Khairnar was appointed in a school at Kolwadi, Tq. Kannad, Dist. Aurangabad by the respondent No. 2 – Zilla Parishad, Aurangabad. Their pay scales were different. Mr. Bharat Khairnar was drawing salary of a trained graduate teacher.

These facts were not disclosed by Mr. Bharat Khairnar.

10. No sooner than, the mischief was disclosed to the respondent No. 2 – Zilla Parishad, Aurangabad, it addressed a letter on 16.03.2016 directing the petitioner to report back to the respondent No. 3 – Zilla Parishad, Dhule, as such type of mutual transfer was not permissible.

11. It also reveals from record that respondent No. 2 – Zilla Parishad, Aurangabad issued show cause notice not only to Mr. Bharat Khairnar on 16.03.2016, but to the Head Mistress of the school also, who forwarded the proposal for mutual transfer and the Block Education Officer, Panchayat Samiti, Kannad. The disciplinary action was proposed by the respondent No. 2 – Zilla Parishad. It is not made clear about the conclusion of disciplinary proceedings. But fact remains that they misled the concern authorities in procuring the orders of mutual transfer.

12. It is admitted fact that petitioner was not allowed to join the respondent No. 2 – Zilla Parishad, Aurangabad and no posting was given to him during the period from 31.10.2015 to 11.04.2018. He was given posting only after the orders were passed by the High Court in Writ Petition No. 4351 of 2017 on 08.03.2018. He was not rendering services during the said period.

13. The petitioner could have prayed in Writ Petition No. 4351 of 2017 for the salary after 31.10.2015 and the posting with the

respondent No. 2 – Zilla Parishad, Aurangabad. In view of availability of vacancy, he was directed to be accommodated and thereafter he was given posting on 08.03.2018. It was possible for him to claim the present relief in that petition itself. No valid reasons are shown by the learned counsel for the petitioner for not claiming the said relief. We are not inclined to grant the said relief under the principles of constructive *res-judicata*.

14. The petitioner did not render services for the period for which the arrears have been claimed. As it was a case of mutual transfer, the petitioner should have been cautious enough before relying Mr. Bharat Khairnar, who represented that he was holding equivalent post and the scale. Considering the disciplinary action taken against Mr. Bharat Khairnar and others, it is suffice to infer that the concerned authorities were misled in procuring the transfer order. It is difficult to accept that the petitioner was not knowing the facts. The petitioner was a party to the consent letters and the proposals for the transfer. He was a silent spectator and was taking a chance. We are, therefore, not inclined to exercise our jurisdiction in granting equitable relief to him.

15. Atleast when petitioner was addressed a letter on 16.03.2016 disclosing the mischief of Mr. Bharat Khairnar, he should have taken steps for reporting the respondent No. 3 – Zilla Parishad, Dhule. Rather, he continued to persuade the respondent No. 2 – Zilla Parishad, Aurangabad for implementing the transfer order. This conduct of the petitioner is objectionable

and we have every reason to infer that he was in connivance with his counter part.

16. The order passed in the matter of **Prakash Shamrao Sable Vs. Zilla Parishad, Akola** (supra) by the Division Bench at Nagpur cannot be made applicable to the case at hand. Firstly it is not binding precedent and secondly facts in that case are not similar to the facts of the matter in hand.

17. For the reasons stated above, no case is made out to cause our indulgence. The writ petition is dismissed. Rule stands discharged.

[**SHAILESH P. BRAHME, J.]**

[**S. G. MEHARE, J.]**

bsb/Dec. 24