



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

WRIT PETITION NO.1700 OF 2024

(ZILLA PARISHAD AMRAVATI & ANR..VS.. VIJAY RAMCHANDRA KAPDE)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B.Kasat, Advocate for Petitioners.
Shri N.R.Saboo, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 01, 2024.

1. Heard.
2. The order dated 08/01/2024, passed below application Exh.U-2, by the Industrial Court, Amravati in Complaint (ULP) No.63 2023 raising a challenge to the transfer order dated 12/05/2023, transferring the respondent from Ner-Pinglai to Primary Health Centre Hatru, Panchayat Samiti, Chikhaldara, is under challenge in this writ petition.
3. The challenge to the impugned order is raised on the sole ground that the contentions of the petitioner were not considered and further on erroneous consideration stay was granted.
4. It is submitted that on the date of issuance of the transfer order dated 12/05/2023 the respondent had not completed 53 years of his age. It is therefore, submitted that the reliance placed on the Government Resolution,

dated 15/05/2014 which says that the employee, who has completed 53 years of age on 31st May, may be exempted from transfer, is erroneous and accordingly, a prayer is made to quash and set aside the impugned order.

5. On the other hand, Shri Saboo, learned counsel for the respondent supports the impugned order dated 08/01/2024 and prays for dismissal of the present writ petition.

6. It is apparent on the face of the impugned order that, the reasons for staying the impugned transfer order are recorded in para 3, which read thus :

“03] By the impugned order dated 12.05.2023 the complainant is transferred from Ner Pinglai to PHC Hatru. Record indicates that, seniority list was prepared and counseling was conducted. It is the main contention of complainant that, previously he had rendered his services at tribal area and again he is transferred in the tribal area. It is his contention that, he has completed 53 years of age and, therefore, he may be retained at the same place. The GR dated 15.05.2014 indicates that, the employee who has completed 53 years of age on 31st May he may be exempted from transfer. It is further stated that, if such employee request for choice posting, preference should be given to his claim. In the present case it is the contention of complainant that on 03.09.2023 he had completed age of 53 years and, therefore, he cannot be transferred on administrative ground. It is to be noted here that, the transfer order is of dated 12.05.2023 when

the complainant had not completed 53 years of age. The record indicates that, after filing this case ad interim relief was granted to the complainant by passing order dated 30.05.2023. At the present juncture, the complainant has crossed 53 years of age and if he is transferred to other place, it would be against the guidelines laid down in the GR dated 15.05.2014. Prima facie, I am of the view that the respondent has not considered at the time of transfer that the complainant is at the verge of crossing 53 years of age.”

7. Admittedly, when the transfer order was issued to the petitioner he was not fulfilling the condition of completion of the age of 53 years as per Government Resolution dated 15/05/2014. The respondent has completed the age of 53 years after three months of filing of the complaint.

8. Therefore, I have no hesitation to observe that the learned Industrial Court committed error in recording the finding that since, the respondent has completed 53 years of age, he cannot be transferred on the administrative ground.

9. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Industrial Court to take a decision afresh.

10. Accordingly, I pass the following order :

- i) The writ petition is partly allowed.
- ii) The impugned order dated 08/01/2024 passed below Exh.U-2 by the Member, Industrial Court, Amravati in Complaint (ULP) No.63 of 2023 is hereby quashed and set aside.
- iii) The matter is remanded back to the Industrial Court, Amravati for deciding it afresh.
- iv) The Industrial Court has a discretion to decide the application Exh.U-2 or the Complaint finally, after considering the willingness of both the parties.
- v) It is made clear that any decision, either on the application Exh.U-2 or the complaint shall be taken as expeditiously as possible and in any case on or before 10/05/2024.
- vi) The learned Industrial Court shall not get influenced by the *prima facie* findings recorded in this order, while deciding the application Exh.U-2 or the complaint finally.
- vii) All the contentions are kept open.

viii) In the meantime, the status quo, granted by the Industrial Court vide order dated 30/05/2023 shall continue.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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