

**(2010) 02 BOM CK 0071**

**In the Bombay High Court**

**Case No : Writ Petition No. 1097 of 2009**

Maharashtra Rajya Prathmik Shikshak Samiti

APPELLANT

Vs

The State of Maharashtra, Rural Development and Water  
Conservation Department, Zilla Parishad, Akola and The  
Block Development Officer

RESPONDENT

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**Date of Decision : 22-02-2010**

**Acts Referred:**

**Citation : (2010) 6 BomCR 324**

**Hon'ble Judges : P.B. Varale, J;A.H. Joshi, J**

**Bench : Division Bench**

**Advocate : B.G. Kulkarni, for the Appellant; D.P. Thakre, Asstt. Govt. Pleader for Respondent No. 1 and G.G. Mishra, for the Respondent**

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## **Judgement**

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Learned Asstt. Govt. Pleader Mr. D.P. Thakre waives service for respondent No. 1, and learned Adv. Mr. G.G. Mishra, for respondent Nos. 2 and 3.

2. Heard finally by consent of parties.

3. This is a Writ Petition filed by Association of Primary Teachers in State of Maharashtra.

4. The teachers claim to have been aggrieved by the decision of Govt. of Maharashtra announced through the Circular dated 6th October, 2008 [Annex.C]. Petitioner has prayed for setting aside the said Govt. decision and for consequential directions.

5. Perusal of the Govt. Circular dated 6th October, 2008 reveals the following:

[a] Number of teachers in Zilla Parishad schools has to be decided on the basis of number of students on the roll.

[b] 30th September is the date fixed for ascertaining number of students every 3 year.

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[c] Whenever it is seen that teachers in a particular school exceed the prescribed number of teachers permissible with reference to the number of students, such surplus teachers are to be absorbed in such of the schools in the Talukas where number of teachers is less than the prescribed.

[d] If the number of teachers to be absorbed is more than the availability of vacancies in the Taluka, the absorption be done in the schools in the neighbouring district.

[e] While transferring the teachers from any establishment where the number of teachers is more than the permissible strength, those teachers, who have put in longest service, be preferred.

6. The last condition, namely [e], mentioned in foregoing para, which is underlined for emphasis, which is Condition No. 4 in the Circular, has aggrieved the petitioner.

7. The foundation of challenge, as is argued and seen from the petition, is extracted as below:

[1] Normal rule of retrenchment or absorption in Service Jurisprudence is the rule of "last come; first go."

[2] When the staff on the roll is in excess of the permissible limit, it becomes imperative to effect transfers, however, the practice adopted in various districts is that indiscreet transfers are made mostly in order to accommodate the teachers of choice at the station of the choice of such transferred teachers.

[3] Due to such excess transfers, those who are already working at a particular station are rendered surplus and those who may not otherwise be liable to be transferred get victimized and transferred.

8. This Court had passed an order on 19th November, 2009 and gave a direction as follows:

1. ...

2. We direct respondent No. 1 to file an affidavit incorporating this clarification distinctly based on existing need of number of teachers in school concerned. The affidavit should also contain a clarification that, in future, while effecting transfers posting of teacher shall not be done in excess of sanctioned strength of school concerned and with reference to workload, number of students etc.

9. As regards Condition No. 4 contained in the Circular, this Court has analyzed and tested it at the touchstone of reasonableness.

10. This Court has to notice and record that the rule of "last come; first go" applies to retrenchment. The transfers - subject-matter - are, by and large, liable to be regarded as administrative transfers. The principle, which would govern such transfers, has to be the same as in vogue, i.e., based on overstay or higher stay and administrative reasons.

11. Whenever it is a matter of transfer, the normal rule followed by the State and Zilla Parishads is that a person having longer stay would always be preferred to the person having a shorter stay.

12. Condition No. 4 impugned does not introduce any new doctrine or rule, but simply incorporates the existing practice, though under the title "absorption".

13. The submission that service jurisprudence would require observance of rule of "last come; first go" has no application. This argument is crafted with ingenuity, and is based on a fallacy and cannot receive judicial approval.

14. Just because the Govt., denotes these transfers as absorption, the rule of "last come; first go" does not get introduced.

15. It is seen that the respondent No. 1 has filed an Affidavit-in-Reply. Perusal of affidavit discloses that a specific statement in terms of the direction given by this Court is not incorporated in the affidavit. Govt. has pleaded that it has power to regulate allowances, issuance of such directions etc. However, it contains a statement which reads as follows:

5. ...It is further submitted that during the transfer, Z.P. employees should be posted only on the vacant post, as per the provision of the Rule 11 of Chapter-I of the Government Resolution dt. 27/5/2009 and accordingly, the transfer of Z.P. employees against no vacancy is termed as irregularity in transfer. The copy of G.R. dtd. 27.5.2009 is annexed as Annexure IV. The Government has also given instructions to all Divisional Commissioners to take the vigilance over to avoid such irregularity in the transfers, vide the G.R. dated 27/5/2009.

[Quoted from page Nos. 54 and 55 of the Writ Petition paper-book].

16. The above quoted portion from the affidavit of the State gives sufficient assurance that in absence of available vacancy, any transfer would not be effected.

17. The apprehensions expressed in the petition are sufficiently attended to in the affidavit of the State Govt., dated 10th December, 2009, portion whereof is quoted in foregoing para of this judgment.

18. In the premises, prayers in the petition cannot be granted.

19. Rule is, therefore, accordingly disposed of.

20. It shall suffice to express that there shall not be midterm transfers, except in such a manner as permitted by the policy of the Govt.

21. In the circumstances, parties are directed to bear their own costs.