

(2017) 02 BOM CK 0186
In the Bombay High Court
Case No : 7743 of 2016

Narayan s/o. Mahadu Vishwabrahma APPELLANT
Vs
The State of Maharashtra & Ors. RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Citation : (2017) 02 BOM CK 0186

Hon'ble Judges : T.V. Nalawade, Sangitrao S. Patil

Bench : DIVISON BENCH

Advocate : V.S.Panpatte, A.R.Kale, S.B.Pulkundwar

Judgement

1. Rule, made returnable forthwith. With the consent of the learned Counsels for the parties, heard finally.

2. This petition is filed for direction. The petitioner is working as Assistant Teacher in Zilla Parishad School, Wazra (Bk.), Tq.Kinwat, Dist. Nanded, which is a tribal area. It is the grievance of the petitioner that though, as per the scheme prepared under the Government Resolution dated 15.05.2014 issued by the Rural Development Department, Government of Maharashtra, Mantralaya, Mumbai, he is entitled to get posting outside the tribal area, he is retained there. It is the case of the petitioner that he is a heart patient and has undergone a surgery of heart. He has continuously worked for three years in the tribal area. The learned Counsel for the petitioner submits that considering the above grounds, the petitioner should be transferred on request basis from his present posting to Zilla Parishad Primary School, Wangi, Tq. Nanded.

3. The learned Counsel for the Zilla Parishad disputed the contention that the petitioner has worked continuously for three years at present station. The record shows that he was posted at the present place on 08.07.2013 and so admittedly, he had not completed three years of continuous service by 31.05.2016.

4. Though this circumstance is there, the scheme shows that not only the employees of the special category mentioned in Part-I Clause 4 of the

aforementioned Government Resolution who are due for transfer, but the employees who are not due for transfer but fall under special category, can also be considered for request transfer. Thus, there was some misconception that unless an employee is due for transfer, he cannot be transferred though he falls under the special category.

5. It is not the specific case of the respondent - Zilla Parishad that there are no vacant posts available outside the tribal area. The petitioner had worked on the said post in the tribal area also in the year 2001. All these circumstances need to be considered. This Court yesterday decided many petitions and noticed that many employees are not ready to go to tribal area. When that is the approach of many employees and present petitioner had joined present posting, this circumstance ought to have been considered by the Zilla Parishad.

6. In view of these circumstances and as admittedly, there are many vacant posts available outside the tribal area (outside Kinwat and Mahur Tahsils), it is possible for the respondent - Zilla Parishad to give posting to the petitioner in other Tahsil. The scheme under the aforesaid Government Resolution also provide for giving Tahsil as per the choice of the employee. It appears that when the representation was made by the present petitioner, the Block Education Officer had given direction to verify and ascertain, whether there is such irregularity.

7. In view of these circumstances, this Court holds that the present petition needs to be allowed.

8. In the result, the Writ Petition is allowed. The respondent - Zilla Parishad is hereby directed to consider the claim of the petitioner for transfer in accordance with the Government Resolution dated 15.05.2014. The decision be taken within a period of one month from today.

9. Rule made absolute in the above terms. The Writ Petition stands allowed accordingly.