
(2017) 02 BOM CK 0166
In the Bombay High Court
Case No : 6418 of 2016

Satish Janardhan Sakhare

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Rules, 1981](#), [Rule 41](#)

Citation : (2017) 02 BOM CK 0166

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

Bench : DIVISON BENCH

Advocate : A.C.Deshpande, S.B.Joshi, D.J.Choudhari

Judgement

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

2. This petition is filed for challenging the impugned communication/order issued by respondent no.3 on 17.02.2016 (by mistake, in prayer clause, the date of the communication is shown as 29.09.2015), thereby refusing to grant approval to the transfer of the petitioner

3. The petitioner was working as a Clerk with respondent no.6 College. Due to the order of transfer issued by the Institutions, he came to be transferred to respondent no.7 College. A proposal was forwarded by the Institutions on 03.12.2016 seeking approval to the transfer of the petitioner, but it was turned down by respondent no.3 for the reasons that prior sanction for the transfer was not obtained and the transfer is midterm.

4. The learned Counsel for the petitioner and the learned Counsel for respondent nos.5 to 7 - Institutions invite our attention to Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("the Rules", for short), which reads 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 case, and unless reasons are recorded in writing by the Management, such transfers shall not be effected in the middle of the term.

(3) The Management shall see that the transfers do not adversely affect the pay or pay scale of the employees concerned and that such transfers do not result into loss in the pensionary benefits as admissible to them.

(4) The expenditure on Travelling allowance and Daily allowance if any, at the rates applicable to the Government employees of the comparable status, shall be borne by the Management. If the transfer is at the request of the employee, this expenditure shall be borne by the employee concerned. Provided that, the transfer involves change of headquarters, the joining time to be allowed to an employee shall be limited to six days (excluding Sunday) and actual days of journey. Subject to this limit, the period of joining time shall be treated as "duty" for all purposes:

Provided that, an employee shall not be entitled to joining time if transfer is effected during the vacation.

(5) Where a Management runs a secondary school and a Junior College of Education.

(a) Teachers in a Junior college of Education shall not be transferred to a Secondary school against their will. Such transfers may, however, be made if they are at employees own requests, subject to availability of vacancies in secondary schools. In the event of such a transfer, the pay drawn by the teacher in the Junior College of Education shall not be protected.

1. He shall be deemed to be working in a secondary school during the period he worked in the Junior College of Education, and his pay shall be accordingly reflexed on his joining the secondary school.

(b) Teachers in secondary school shall not be transferred to a Junior College of Education against their will. Such transfers may, however, be made if they are at the employees own requests, subject to the following conditions, namely

(i) Vacancies should be available in the Junior College of Education;

(ii) The concerned employee shall retain the same place in the common seniority list; and

(iii) Their pay in the Junior College of Education shall be fixed at the same stage of pay as their existing pay or at the minimum of the scale of pay in the junior College of Education, whichever is higher.

5. The learned Counsel for the petitioner places reliance on the observations made by this Court in the cases of (i) Marathwada Banjara Seva Sangh Vs. State

of Maharashtra and ors., 2004(4) Mh.L.J. 8; and (ii) Sayada Mumtaz Jahan Sayad Ahteshmuddin Vs. Talat Shikshan Mandal, Aurangabad, 2016(4)Mh.L.J.511, wherein this court has held that Rule 41 of the Rules, shows that in exceptional cases, midterm transfer can be made by the Institutions.

6. The learned Counsel for respondent nos.5 to 7 - Institutions submits that the post of Clerk with respondent no.7 - College was vacant and the Laboratory Assistant was working as Incharge of the said post due to which, the administration of respondent no.7 was suffering and therefore, petitioner has been transferred to respondent no.7 College.

7. The petitioner is interested only in getting the salary as due to the impugned communication/order passed by respondent no.3, salary of the petitioner is not being released. In view of these circumstances, this Court holds that relief needs to be granted in favour of the petitioner.

8. In the result, the Writ Petition is allowed. The impugned communication/order dated 17.02.2016 issued by respondent no.3 is hereby set aside. Respondent no.3 to reconsider the proposal in respect of transfer of the petitioner in view of the observations made by this Court. Respondent no.3 to take decision on the proposal as early as possible and preferably, within a period of thirty days from today. Respondent no.3 shall also take decision about payment of backwages to the petitioner from the date of his joining with respondent no.7 - College i.e. 30.09.2015, on its own merits.

9. Rule made absolute accordingly. There shall be no order as to costs.